

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5645 of 2014 (O&M)
Date of Decision : 21.09.2016

Roop Kishan

....Appellant

Versus

Hari Kishan and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. B.R. Gupta, Advocate
for the appellant.

Surinder Gupta, J.

Plaintiff-Hari Kishan filed suit for declaration that he and proforma defendants no. 6 to 9 i.e. Satya Narain son of Sri Ram, Kaushalya, Roshni and Mina Devi daughters of Sri Ram are owners in possession of suit land as fully described in headnote of the plaint and defendants no. 1 to 5 have no concern with the same. He also sought setting aside of mutation no. 1088 dated 07.06.2004.

2. Claim of plaintiff was based on judgment and decree dated 25.07.1989 passed in Civil Suit no. 467 of 1989 suffered by Gindori daughter of Ram Narain in favour of Sri Ram predecessor-in-interest of plaintiff. Gindori died on 25.09.1996. Plaintiff and proforma defendants applied for sanction of mutation of suit land in their favour, which was initially entered but at the stage of comparison by the A.C. II Grade, it was dismissed in default. Later on defendants no. 1 to 5 got mutation no. 1088 dated 07.06.2004 sanctioned in their favour being legal heirs of Gindori. Defendant no. 1-Roop Kishan contested claim of plaintiff challenging decree dated 25.07.1989 pleading that Sri Ram was not related to Gindori and had no vested right in her property. Decree dated 25.07.1989 was

termed as illegal, null and void, false and fabricated.

3. Suit filed by Hari Kishan was dismissed by learned Civil Judge (Junior Division), Charkhi Dadri with the observation that a family settlement qua a separate property of a person does not constitute a pre-existing right, which cannot be recognized by judgment in the garb of a declaration. Learned Ist Appellate Court, Bhiwani set aside the observation of learned Civil Judge (Junior Division) on appraisal of evidence and recording of finding that testimony of appellant as well as other witnesses make it clear that Gindori suffered a decree in favour of Sri Ram. Regarding the pre-existing right and requirement of registration of decree, Ist Appellate Court observed in para 15 of the judgment as follows:-

*“15. Admittedly, respondents No.1 to 5 were more close to Gindori instead of Sri Ram but as per the appellant, the land in dispute was given by Gindori to Sri Ram in the family settlement. Respondents No.1 to 5 also claimed that Sri Ram had no pre-existing right in the property of Gindori. The plea of respondents No.1 to 5 cannot be accepted as the land in dispute was given to Sri Ram in the family settlement and by virtue of the family settlement, Sri Ram had acquired a right which can be said a pre-existing right. As per law laid down in **Jai Prakash versus Pritam Singh and another, 2005(2) Cur.L.J. (P&H) 182**, even a person who does not have a right of inheritance but was closely related member of the family, could be covered by the family settlement and that family settlement does not require to be registered.*

*Our Hon'ble Apex Court has also held in **Bachan Singh versus Kartar Singh and others, 2001(3) Latest Judicial Reports (SC) 790** that if a decree is passed with the consent of the parties to the suit, that decree does not require registration. Our Hon'ble High Court has held in **Jailal versus Chhattar Singh and others, 2005(2) L.J.R. (P&H) 352** that it is not necessary that the family settlement should be reduced into writing. That dispute can be settled orally also and the decree of Civil Court does not require registration. Our Hon'ble High Court has also held in **Gurdev Kaur and another versus Mehar Singh and others, AIR 1989 (P&H) 324** the decree of Civil Court does not require registration even if it creates title in respect of immovable property of the value of Rs.100 or more, provided it is subject matter of suit. In the present case, the land in dispute was the subject matter of the suit and therefore, the decree dated 25.7.1989 does not require registration. The above facts made it clear that the decree of Civil Court dated 25.7.1989 does not require registration."*

4. Learned counsel for the appellant has mainly stressed on the point that decree passed in Civil Suit no. 467 of 1989 is the result of fraud and was never suffered by Gindori. To support his contention he has referred to statement of PW-1 Ramesh Kumar, Advocate, who was engaged by Sri Ram in his civil suit. He has stated that a lady who had put thumb impression as Gindori was not known to him. However, he has identified

signatures of person, who identified Gindori in Court. PW-1 Ramesh Kumar being counsel for plaintiff-Sri Ram was not supposed to know Gindori. He has also not identified her in Court. Defendant no. 1-Roop Kishan while appearing as DW-1 has stated that there was lot of litigation of Gindori with her brothers. Gindori put her thumb impression on the written statement and on her statement recorded in the Court. Defendants have not dared to get the thumb impression of Gindori compared with her specimen thumb impression in other litigation, which she had contested, to prove that she had not appeared in Court and suffered decree in question. No cogent and convincing evidence was produced on record to prove that decree dated 25.07.1989 was the result of fraud or misrepresentation. Gindori died on 25.09.1996 i.e. more than seven years after the decree but had never challenged this decree during her life time.

5. Submission by learned counsel for the appellant points out no legal or factual infirmity in the judgment of Ist Appellate Court calling for any interference. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

September 21, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No