

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.1817 of 2002 (O&M)

Date of decision : 04.12.2017

Balwinder Kaur and others

...Appellants

Versus

Karnail Singh (deceased) through his LRs.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.K. Khunger, Advocate for the appellants.

Mr. C.S. Jattana, Advocate for the respondent(s).

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the judgment passed by the First Appellate Court reversing the judgment and decree passed by the trial Court.

The plaintiff-respondent-Karnail Singh had filed a suit for declaration claiming that the transfer of land measuring 57 kanals and 12 marlas effected by Kartar Singh through the consent judgment and decree dated 22.02.1990 is illegal, ineffective and inoperative and hence liable to be set aside as the property is Joint Hindu Family Coparcenary Property.

It is not in dispute that Kartar Singh had constituted a Joint Hindu Family with his five sons namely Karnail Singh, Karam Singh, Chand Singh, Gurbax Singh and Jagir Singh. It is further not in dispute that there was division in the family and all sons of Kartar Singh were given 8

acres of land each. This fact is admitted by Jarnail Singh while appearing as PW2. This fact is also not disputed before me. After the division of the land, Kartar Singh had kept for himself the land measuring 57 kanals and 12 marlas. Pursuant to a family settlement, the aforesaid land measuring 57 kanals and 12 marlas was acknowledged to have been given to grandsons i.e. sons of Karam Singh and Chand Singh, respectively in a subsequent family settlement. This family settlement was further acknowledged in a Civil Court decree dated 22.02.1990 suffered by Kartar Singh in favour of his grandsons.

After the death of Kartar Singh on 16.06.1996, Karnail Singh filed a suit on 11.04.1997 challenging the aforesaid Civil Court decree.

Learned trial Court after appreciating the evidence available on the file dismissed the suit, however, the learned first Appellate Court reversed the decree passed by the trial Court by giving two reasons:-

1. The Civil Court decree is not registered and, therefore, not enforceable.
2. Limitation for filing such suit is 12 years.

This appeal was admitted on 10.02.2005 and following substantial questions of law were framed:-

“(i) Whether the judgment and decree passed by the first Appellate Court is sustainable in law in view of the finding recorded by the Trial Court that the property was partitioned by Kartar Singh amongst all his sons and himself as reflected in the jamabandi for the year 1979-80, Ex.P3?

“(ii) Whether Kartar Singh was competent to suffer consent decree in favour of his grandsons who are members of his family”

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Both the questions are being dealt together. It is not disputed before this Court that Kartar Singh alongwith his sons had constituted a Joint Hindu Family. It is further not in dispute that the division took place between the members of the family. Kartar Singh, after keeping the land measuring 57 kanals and 12 marlas for himself, distributed the remaining land to all his sons i.e. 8 acres each. After the distribution of the property and division amongst the members of the Joint Hindu Family, the remaining land in the hands of Kartar Singh cannot be said to be a Joint Hindu Family Coparcenary Property. After the division in the Joint Hindu Family, the land which fell to the share of Kartar Singh would be his exclusive property. It is not in dispute that Kartar Singh being absolute owner, in a family settlement gave this property to his grandsons and acknowledged that family settlement in a Civil Court judgment and decree dated 22.02.1990. In the considered opinion of this Court, such decree shall not require registration. The Civil Court decree is not an instrument of transfer. Through the Civil Court decree, no right, title or interest in a immovable property is being created for the first time.

The consent decree which is passed under Order 12 Rule 6 CPC only acknowledges the previous family settlement. Amongst the members of the family, distribution of the property by way of a family settlement is well recognized and upheld by the Courts in India. This Court while deciding RSA No.2708 of 2005 already discussed in detail the judgments right from

AIR 1995 Supreme Court 481, Sahu Madho Dass Vs. Mukund Ram.

In these circumstances, the finding of the First Appellate Court that decree require registration is clearly erroneous.

Learned First Appellate Court has further committed an error in recording a finding that the suit filed by the plaintiff was within limitation. The suit was filed after a period of more than 7 years from the date of the decree. The limitation for filing such suit is 3 years from the date the cause of action first accrues in favour of the plaintiff. Article 59 of the Schedule attached to the Limitation Act 1963 would govern the field. The plaintiff had filed a suit for declaration. Limitation for filing such suit is three years.

Hence, both the questions are answered in favour of the appellants.

In view of the discussions made above, the judgment passed by the first Appellate Court is liable to be reversed.

Regular Second Appeal is allowed.

The suit filed by the plaintiff is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

04.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No