

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

RSA No.3433 of 1999 (O&M)

Date of decision : 21.12.2017

Uday Ram

...Appellant

Versus

Ram Sarup and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Garg, Sr. Advocate with
Ms. Supriya Garg, Advocate for the appellant.

Mr. Kulbhushan Sharma, Advocate

Mr. Sushil Jain, Advocate
for respondent No.1(i), 2, 3, and 4(i)and (ii).

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff had filed a suit for declaration, permanent injunction and possession.

It is not in dispute that Net Ram had three sons from Smt. Jeevani i.e. Gheesa Ram, Het Lal and Manohar Lal. Smt. Jeevani had another son namely Chunni Lal from the first husband namely Nand Ram. Gheesa Ram died issueless. The mutation was sanctioned in favour of Manohar Lal, the only surviving brother as Het Lal had already died. There is no dispute between the parties with regard to the inheritance of the

property by Manohar Lal from Gheesa Ram because such succession was based upon as per the Schedule, Class-2, entry (II)(3)

Manohar Lal suffered a decree on the basis of family settlement in favour of sons of Chunni Lal, defendant Nos.1 to 3 in the suit. Manohar Lal is defendant No.4 in this suit.

The plaintiff-appellant being son of Het Lal challenged the aforesaid decree and sought possession thereof claiming that children of Chunni Lal were not part of the family and, therefore, pursuant to the family settlement, Manohar Lal could not have given the property to sons of Chunni Lal.

Manohar Lal in this suit also defended the decree and supported defendant Nos.1 to 3.

Both the Courts below after appreciating the evidence available on the file have dismissed the suit and held that Civil Court decree acknowledging the family settlement passed in Civil Suit No.608 of 1990 dated 09.06.1990 is valid.

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

Learned counsel for the appellant has submitted that since Chunni Lal was only uterine brother of Manohar Lal, therefore, he or his children cannot be member of the family.

Learned counsel for the appellant has further submitted that the family is to be understood only in terms of a Schedule attached to the Hindu Succession Act, 1956. He has further submitted that since defendant Nos.1

to 3 had no pre-existing right, therefore, the property could not be transferred through the consent decree unless it is registered.

I have considered the submissions, however I do not find any merit in the same. It is not in dispute that Chunni Lal is a uterine brother of Gheesa Ram, Het Lal and Manohar Lal. Defendant Nos.1 to 3 are sons of Chunni Lal. They are members of the family. It is well settled by now that while considering the members of the family for the purposes of family settlement, it is not necessary that only persons who are having any pre-existing rights are to be considered as members of the family. The definition of family for the purposes of family settlement cannot be understood in a narrow sense. Reference in this regard can be made to the judgment passed by Hon'ble the Supreme Court in *AIR 1971 Supreme Court, 1041, Krishna Beharilal V. Gulabchand*. Para No.8 of the same reads as under:-

*“8. The next question that we have to consider is whether the compromise in question can be considered as a settlement of family disputes. It may be noted that Lakshmichand and Ganeshilal who alongwith Pattobai were the principal parties to the compromise were the grandchildren of Parvati who was the aunt of Bulakichand. The parties to the earlier suit were near relations. The dispute between the parties was in respect of a certain property which was originally owned by their common ancestor namely Chhedilal. **To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in Ram Charan Das v. Girija Nandini Devi, (1965) 3 SCR 841 at pp.850 and 851 = (AIR 1966 SC 323 at pp.328 and 329) the word "family" in the context of a family arrangement is not to be understood in a narrow***

sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement-see Ramcharan Das's case 1965-3 SCR 841 = (AIR 1966 SC 323) (Supra) ”

It is also well settled that Civil Court decree is not an instrument of transfer. Civil Court decree is only acknowledgment of a family settlement which had been arrived at between the members of the family. Such decree does not require registration. Reference in this regard can be made to *RSA No.2708 of 2005, titled as Dhian Singh and others Vs. Mohinder Singh and others, decided on 26.10.2017.*

In view of the discussions made above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

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

21.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No