

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

**RSA No.3938 of 2004(O&M)
Date of Decision-11.01.2017**

Hari Ram and others ... Appellants

Versus

Madan Lal and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikas Bahl, Sr. Advocate with
Mr. Parvinder Singh, Advocate and
Ms. Balpreet Sidhu, Advocate for the appellants.
Mr. Jaivir Yadav, Advocate for the respondents.

RAJ MOHAN SINGH, J.

[1]. Vide order dated 27.08.2015, the Hon'ble Supreme Court has remanded this case to this Court for re-consideration of the matter after framing the substantial questions of law and decide the same after hearing the parties within a specified period.

[2]. This regular second appeal was filed by the plaintiffs-appellants against the concurrent judgments and decrees passed by the Courts below, dismissing the suit for declaration filed by the plaintiffs.

[3]. Plaintiffs filed a suit for declaration to the effect that the plaintiffs were owners in possession of 1/4th share in the land measuring 118 kanals, 3 marlas situated in the revenue estate of village Barawas, Tehsil and District Mohindergarh in addition to the

shares recorded in their favour in the revenue record. Civil Court decree date 13.06.1995 in Civil Suit No.234 dated 13.06.1995 titled as Madan Lal Vs. Smt. Moharli was claimed to be illegal, fraudulent and not binding upon the rights of the plaintiffs. Dungar Singh was the original owner. He had two sons namely Khem Chand and Ganeshi. Khem Chand had three sons Chhaju Ram, Matadeen and Ram Kumar (plaintiffs), whereas Ganeshi was survived by his widow Moharli (defendant No.2).

[4]. Plaintiffs alleged that defendant No.2 had inherited the suit property from her husband Ganeshi who in turn inherited the same from his father Dungar Singh. Suit property was ancestral property. Plaintiffs and defendant No.2 formed a joint Hindu family. Defendant No.2 being widow was living with the plaintiffs and they were looking after her. Plaintiffs were cultivating the suit property. Defendant No.1 was the son of real sister of defendant No.2. Defendant No.1 in his endeavour got a civil Court decree dated 13.06.1995 suffered by defendant No.2. The said decree was claimed to be fraudulent and not binding upon the rights of the plaintiffs. It was claimed that defendant No.2 never engaged any Lawyer, nor defendant formed any joint Hindu family. Judgment and decree was not registered and was sought to be set aside in the suit.

[5]. Defendant No.1 contested the suit and claimed that the decree was validly executed by defendant No.2. The allegations in

the plaint were denied. It was claimed that defendant No.2 was living with defendant No.1 as he was real sister's son of defendant No.2. Defendant No.2 was being looked after by defendant No.1 and defendant No.2 suffered the decree voluntarily in favour of defendant No.1. The cultivating possession of the plaintiffs over the suit property was denied. Defendant No.2 inherited the property from her husband as absolute owner and thereafter, suffered the decree in favour of defendant No.1. Defendant No.2 also contested the suit and asserted that she was living with defendant No.1 who was looking after her. The decree was claimed to be voluntarily executed in favour of defendant No.1. Other allegations of the plaintiffs were denied.

[6]. After completion of pleadings, both the parties went to trial on the following issues:-

“1. Whether the plaintiffs are owner in possession to the extent of 1/4th share in the suit property in addition to their own share, if so, to what effect? OPP

2. Whether the judgment and decree dated 13.06.1995 passed in Civil Suit No.234 of 1995 are illegal, based upon fraud, mis-representation and are liable to be set aside? OPP

3. Whether the suit is not maintainable in the present form? OPD

4. Whether the plaintiffs have no cause of action to file the suit? OPD

5. Whether the plaintiffs have no locus standi to file the suit? OPD

6. Whether the plaintiffs are estopped by their own act and conduct from filing the suit? OPD

7. Whether the suit is liable to be dismissed with special costs? OPD

8. Relief.

[7]. Both the parties led their respective evidence. Plaintiffs got examined Chhaju Ram as PW 1 who reiterated the relationship of the plaintiffs with Dungar Singh. He asserted that Ganeshi was his uncle. Defendant No.2 was living with them. Ration card of defendant No.2 was prepared with the family of plaintiffs. Defendant No.1 had no concern with the suit property. Defendant No.2 was owner in possession of the share of Ganeshi after inheritance. Ramji Lal was examined as PW 2, Laxminarain, Lambardar as PW 3, Mohar Singh, Lambardar as PW 4 and Ramji Lal, Lambardar as PW 5. Thereafter, statement of defendant No.2 was recorded by the trial Court in terms of Order 10 Rule 1 CPC. Defendant No.1 did not examine any witness in defence. No evidence was led by the plaintiffs in rebuttal.

[8]. Trial Court decided issues No.1 and 2 against the plaintiffs and in favour of the defendants on the premise that defendant No.2 had herself admitted that she had voluntarily without any pressure suffered the decree in question in favour of defendant No.1. The decree was challenged on the basis of fraud. Defendant

No.2 herself has admitted validity of decree and was absolute owner of the same at the time of passing of the decree. Defendant No.2 was competent to alienate the property in the manner which she liked being widow of Ganeshi. She had inherited the property from her husband Ganeshi. Since, defendant No.2 was alive, therefore, in the event of any fraud, she was the best person who could have instituted the suit by giving particulars of fraud allegedly played upon her. She had filed the written statement in which she had mentioned that the civil Court decree was voluntarily and freely suffered by her in favour of defendant No.1. She had also appeared before the Court on 12.08.1995 and gave the statement in terms of Order 10 Rule 1 CPC endorsing the factum of suffering the decree in question in favour of defendant No.1. Issues No.3 to 5 were also decided on the basis of decision of issues No.1 and 2 and the suit was dismissed by the trial Court vide judgment and decree dated 28.09.2002. Plaintiffs remained unsuccessful before the lower Appellate Court who dismissed the appeal vide judgment and decree dated 02.06.2004.

[9]. RSA No.3938 of 2004 filed by the plaintiffs in the High Court was dismissed in limni vide order dated 15.12.2006 against which Civil Appeal No.890 of 2008 was entertained by the Hon'ble Supreme Court and the order passed by the High Court was set aside and the case was remanded to the High Court for decision on merits after framing substantial questions of law. It would be just and

appropriate to quote the observations of the Hon'ble Apex Court while determining the matter:-

“..... By a reading of paragraphs No.15 and 16 of the impugned judgment and decree of the first Appellate Court, in our opinion, it has fell into an error in law in not appreciating the facts involved in the case and applying the ratio laid down by this Court in the case referred to supra to the fact situations. The fact situations are totally different upon the case on which reliance was placed by the first Appellate Court to the facts of the present case and the reasoning assigned by the first Appellate Court in its judgment stating that the family settlement is in favour of the first respondent-Madan Lal is the basis on which the decree is passed in favour of the first defendant is not legally correct.”

*“..... That the decree passed in favour of the first defendant was required to be compulsorily registrable under Section 17(2) (vi) of the Registration Act that has not been admittedly done. This important legal aspect of the case has been omitted to be considered by the trial Court and the first Appellate Court so also the High Court. The non-registration of a decree passed in favour of the first defendant is not valid in law. The reason given by the first Appellate Court in paragraphs 15 and 16 of its judgment that the decree in favour of the first respondent is passed on the basis of a remote chance of succession in a family settlement, the property could be settled upon the defendant. Necessity of his having a remote chance of succession as held in the case of **Shakuntala Yadav and others Vs. Yadvinder Singh and others, 1998 (2) PLJ 547**, on the basis of which much reliance is placed to hold that the decree passed in favour of the first*

respondent on the basis of a family settlement is not required to be registered is not correct.”

*“..... The second Appellate Court was required to examine this aspect of the case. As it is a substantial question of law which fell for consideration under Section 100 CPC, as could be seen, the impugned judgment passed by the High Court is simply concurred with the finding of fact concurred with by the first Appellate court in its judgment in exercise of its appellate jurisdiction and it had not adverted to the substantial question of law with respect to compulsory registration of a decree in favour of the first defendant and the consequences for non-registration of a decree under Section 17(2) (vi) of the Act and the law laid down by this Court in the case of **Bhoop Singh Vs. Ram Singh Major and others, (1995) 5 SCC 709** is not applied to the case on hand, which rendered the impugned judgment and decree bad in law.”*

[10]. Apparently, the Hon’ble Apex Court in the aforesaid order has commented upon the decree under challenge in the suit which was legally required to be compulsorily registered under Section 17(2) (vi) of the Registration Act. Secondly, remote chance of succession as held in **Shakuntala Yadav and others case (supra)** was also required to be re-appreciated as the view taken by the lower Appellate Court was not found to be correct. This issue was considered to be a substantial question of law.

[11]. In view of aforesaid, this Court finds the following substantial questions of law which arise for consideration of this Court:-

“1. Whether Civil Court decree dated 13.06.1995 passed in Civil Suit No.234 of 1995 based on family settlement was legally required to be compulsorily registered under Section 17(2) (vi) of the Registration Act?

2. Whether defendant No.1 had remote chance of succession in a family settlement which resulted in passing of Civil Court decree 13.06.1995?

3. Whether defendant No.1 had any pre-existing right in the suit property or the decree itself created right in favour of defendant No.1 for the first time which ultimately required the same to be compulsorily registered having conveyed immovable property of the value of Rs.100/- or upwards?

[12]. I have heard arguments of learned counsel for the parties and have also perused the material on record.

[13]. Learned counsel for the appellants vehemently submitted that estate of defendant No.2 was the subject matter of dispute between the parties. In the plaint, it was specifically recited that defendant No.2 got the property inherited from her husband Ganeshi and the property was ancestral property and the parties were members of joint Hindu family. Defendant No.1 was sister's son of Moharli (defendant No.2). In the written statement, it was admitted that the property was received by defendant No.2 in inheritance of Ganeshi, but it was claimed that the same was not the ancestral property of the parties. Defendant No.2 was claimed to be absolute owner of the property in question.

[14]. Learned counsel highlighted that in the judgment and decree dated 13.06.1995 (Ex.P1), there was no reference of any family settlement, nor there was any reference of any pre-existing right of defendant No.1. The judgment was not based on any compromise. The evidence of the plaintiffs was closed on 06.09.2000 when learned counsel for the plaintiffs after tendering the documents Exs.P1 to P12 and Mark A1 to Mark A3 closed the evidence in affirmative. Defendants did not lead any evidence even after availing six opportunities. The evidence of the defendants was closed by order of the Court on 27.02.2001.

[15]. Learned counsel submitted that the observations of the Hon'ble Apex Court clearly demonstrated that the Civil Court decree dated 13.06.1995 was required to be compulsorily registered and the observations made by the Hon'ble Apex Court has virtually decided the fate of this case on the aforesaid aspect. Further in view of Section 15(2) (b) of the Hindu Succession Act, the property after the death of defendant No.2 would revert back to the legal heirs of Ganeshi. Sister's son would not have even remote chance of succession. Defendant No.2 allegedly got right for the first time in the suit property, therefore, the decree was legally required to be registered. The plaint and the written statement of the decree dated 13.06.1995 were only marked as Mark A2 and Mark A3. Defendant No.1 was not the part of family.

[16]. A plea of ancestral nature of property was raised in the plaint. The plea was denied in the written statement and still no issue was framed. There was no adjudication on the aforesaid issue of the property being ancestral or otherwise done by the Courts below. The plea should have been adverted to and decided in accordance with law. The witnesses of the plaintiffs stated that they were in possession. No witness was produced in the defence. The evidence of the defendants was closed by order, therefore, oral evidence of the plaintiffs went unrebutted and should have been accepted by the Courts below.

[17]. Learned counsel emphasized that alternate relief of injunction should have been granted in favour of the plaintiffs. There was no issue of ancestral nature of property framed by the trial Court. The findings recorded by the trial Court that the family settlement would itself confer the pre-existing right in favour of defendant No.1 in whose favour decree was passed and defendant No.1 would have remote chance of succession in view of **Shakuntala Yadav and others case (supra)** were not the correct proposition as held by the Hon'ble Apex Court in order of remand.

[18]. Learned counsel further emphasized that in view of remand order, the case has to be decided afresh on all points. The only ground taken in the written statement that defendant No.1 was the sister's son of defendant No.2 and no other relationship was pleaded, nor any evidence was led to show any relationship in terms

of pedigree between the parties. Since issues No.1 and 2 could not be proved in favour of defendants, therefore, issues No.3 and 4 were legally required to be decided in accordance with law. In the event of finding the property to be ancestral, Section 14 of the Hindu Succession Act would have no strict application and the property would have been governed by Section 15(2)(b) of the Hindu Succession Act. Learned counsel also by referring to an analogy of family settlement contended that the judgments and decrees are not focused on the point of compromise decree, rather, as per observations of the Hon'ble Apex Court, the factum of decree should have been appreciated in the light of its being unregistered. Learned counsel relied upon **K.T. Suresh Kumar Vs. P. Kunhappa Nair and others, 1999(2) SCC 711** to contend that once the case was remanded by the Hon'ble Apex Court, then the findings recorded in the remand order are binding on the parties.

[19]. In view of stand taken by the defendants in the written statement, learned counsel contended that proper issues should have been framed by the trial Court on the aspect of ancestral nature of the property and matter should have been decided on the basis of available evidence. Learned counsel further relied upon **Chebrol Sriramalu Vs. Vakalapudi Satyanarayana, 2013(9) SCC 404, M/s Divya Exports Vs. M/s Shalimar Video Company and others, 2011 AIR (SC) 3063** and **REMCO Inds. Workers House Bldg. Co-op. Socy. Vs. Lakshmeesha M. and others, 2003 AIR (SC) 3167.**

[20]. It was further submitted by learned counsel for the appellants that the plea of family settlement could not be attracted as it was necessary that the member of the family settlement should have some antecedents title, claim or interest or even a possible claim of property. Any alleged settlement with the strangers to the family cannot be given colour of a valid family settlement. A question was decided in **Jagdish Vs. Rajwanti, 2008(1) RCR (Civil) 677,** whether the sister's son would not have any antecedent title, claim or interest in the suit property. He cannot have any claim over the property of the plaintiffs who were successors of Ganeshi. This Court while interpreting ratio of **Bachan Singh Vs. Kartar Singh, 2002(3) RCR (Civil) 495** and **Kale and others Vs. Deputy Director of Consolidation and others, (1976) 3 Supreme Court Cases 119** held the aforesaid proposition while interpreting remote chance of succession of sister's son in the property left by Mausi. Learned counsel further submitted that defendant No.1 was not member of the family, nor was having any remote chance of succession in the family property and there was no question of any settlement of dispute between such a person viz-a-viz the family.

[21]. By referring to **Shakuntala Yadav and others case (supra)**, learned counsel contended that there could not be any family settlement between defendants as defendant No.1 had no remote chance of succession, nor was having any antecedents right of succession. The ratio of **Kale and others case (supra)** was explained and it was held in the facts and circumstances of that

case that the person like defendant No.1 put to similar facts and circumstances as that of **Shakuntala Yadav and others case (supra)** would not have any absolute right, neither remote nor antecedent to succeed the estate of defendant No.2.

[22]. By referring to Section 15(2)(b) of the Hindu Succession Act, learned counsel on the strength of **Joginder Singh Vs. Rulda Singh and others, 1964 PLR 150** submitted that any property inherited by a female Hindu from her husband shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in Sub-Section (1) in the order specified therein, but upon the heirs of the husband.

[23]. While endorsing the findings recorded in the remand order, learned counsel based his arguments on the ratio of **Bhoop Singh case (supra)** and contended that Section 17(2) (vi) of the Registration Act is an exception to Sub-Section (1). Sub Section 1 of Section 17 of the Act mandates that the instrument enumerated in Clause (a) to (c) shall be registered compulsorily if the property to which they relate is immovable property value of which is Rs.100/- or upwards. When the document purports to create or extinguish in the present or in the future any right has to be registered compulsorily. Clause (vi) of Section 17(2) of the Act relates to any decree or order of a Court, except a decree or order expressed to be made on a compromise or comprising immovable property other

than the subject matter of the suit. Therefore, it was the duty of the Court to examine whether the parties have pre-existing right to the immovable property or whether under the order or decree of the Court one party having right agreed to extinguish and created any right in the property of the value of Rs.100/- or upwards in favour of other party for the first time, either by compromise or pretended consent.

[24]. In the last, learned counsel emphasized that since the pleadings of the decree dated 13.06.1995 in terms of plaint and written statement were not exhibited on record by the defendants, therefore, no benefit should have been given to them as these documents could not be considered by the Courts adverse to the interest of the plaintiffs.

[25]. On the other hand, learned counsel for the respondents vehemently submitted that the Hon'ble Apex Court has only confined the case to the issue of registration. Moharli was living with defendant No.1, therefore, on account of love and affection, the Civil Court decree was suffered which was based on family settlement. The factum of family settlement was pleaded in the plaint (Mark A2) of the Civil Court decree. The concept of family settlement relied upon in the context of **Kale and others case (supra)** and the documents Mark A2 and Mark A3 were sought to be relied as the same were tendered by the plaintiffs themselves to which defendant

had no objection, therefore, these documents can be read in evidence for the said purpose.

[26]. Learned counsel also emphasized that in view of testimonies of PW 1 and PW 2. Defendant No.1 was not only sister's son of defendant No.2, but was related to the family of defendant No.2 in terms of pedigree. PW 1 stated that sister of Moharli namely Mishri was also married in the village and according to PW 2- Ramji Lal, defendant No.1 was related to Moharli by 20 tables in pedigree. Similarly according to PW 3-Laxminarain, Lambardar, defendant No.1 was related to defendant No.2 in 15 to 16 pedigrees. According to PW 4-Mohar Singh, Lambardar, relationship between the defendants was 3-4 tables apart. By quoting the aforesaid testimonies, learned counsel for the respondents tried to project that defendant No.1 was having remote chance of succession in the property of Ganeshi.

[27]. It was further argued that Section 15(2) of the Hindu Succession Act would come only after the death of Moharli. Civil Suit was filed on 03.08.1995, therefore, position was to be seen on that day only. Moharli was alive. Plaintiffs had no right to file suit on the said day. Trial Court and the lower Appellate Court had returned findings under issues No.3 and 4 against the plaintiffs. Those findings have not been challenged in the regular second appeal, therefore, other issues would not come for consideration particularly when *locus standi* was not found in favour of the plaintiffs.

Moreover, in terms of Section 34 of the Specific Relief Act, simplicitor suit for declaration was not maintainable in terms of proviso to Section 34 of the Act as possession was not claimed by the plaintiffs. Learned counsel also emphasized that since no issue was claimed by the plaintiffs, therefore, in view of waiver, no such issue can be claimed at this stage.

[28]. In sum and substance, learned counsel for the respondents submitted that except the aspect of registration as observed by the Hon'ble Apex Court, this Court cannot go into other questions which were decided by the Courts below. Defendant No.2 was absolute owner in terms of Section 14(1) of the Hindu Succession Act. She was held to be absolute owner under issues No.1 and 2 by the Courts below. The concept of family was considered in **Kale and others case (supra)** and was given wide connotation. The ratio of **Bhoop Singh case (supra)** was confined to Civil Court decree passed on compromise and not on account of any pre-existing right. On the aforesaid premise, the contention raised by learned counsel for the appellants were opposed and rebutted.

[29]. I have considered the arguments made by learned counsel for the parties in the light of evidence and observations made by Hon'ble Apex Court.

[30]. Evidently, the Hon'ble Apex Court has found as a matter of fact that the Courts below have fell into error in not appreciating the fact in issue viz-a-viz the ratio laid down in **Smt. Asha Rani Vs.**

The Controller of Estate Duty, 1997 (4) RCR (Civil) 210, Shakutala Yadav and others case (supra) and Lal Singh Vs. Jaswant Singh, 2002 (2) RCR (Civil) 219. The fact situation was observed to be totally different in the present case. Hon'ble Apex Court in the remand order has observed that the decree passed in favour of defendant No.1 on the basis of family settlement was required to be compulsorily registrable in terms of Section 17(2) (vi) of the Registration Act and that was admittedly not done.

[31]. As per legal position, the Hon'ble Apex Court in **Bhoop Singh case (supra)** summarized the position in the following manner:-

“18. The legal position qua Clause (vi) of Section 17(2) can, on the basis of the aforesaid discussion, be summarized as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100/- upwards in favour of any party to the suit, the decree or order would require registration.

(3) If the decree were not to attract any of the Clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of compromise in question.

(5) If the property dealt with by the decree be not the "subject matter of the suit or proceeding", Clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated.

19. Now, let us see whether on the strength of the decree passed in Suit No.215 of 1973, the petitioner could sustain his case, as put up in his written statement in the present suit, despite the decree not having been registered. According to us, it cannot for two reasons:

(1) The decree having purported to create right or title in the plaintiff for the first time that is not being declaration or pre-existing right, did require registration. It may also be pointed out that the first suit cannot really be said to have been decreed on the basis of compromise, as the suit was decree "in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct." Decreeing of suit in such a situation is covered by Order 12 Rule 6, and not by Order 23 Rule 3, which deals with compromise of suit, whereas the former is on the subject of judgment on admission.

(2) A perusal of the impugned judgment shows that the first appellate Court held the decree in question as "collusive" as it was

with a view to defeat the right of others who had bona fide claim over the property of Ganpat. Learned Judge of the High Court also took the same view.”

[32]. Question No.1 has to be answered in favour of the plaintiffs in view of observations made by Hon'ble Apex Court in remand order coupled with observations made in **Bhoop Singh case (supra)**. The ratio of **Ram Charan Das Vs. Girja Nandini Devi and others, 1966 AIR (SC) 323** as referred to by learned counsel for the respondents was explained in **Kale and others case (supra)** which was further relied upon by this Court in **Jagdish Vs. Rajwanti case (supra)** to explain the concept of family settlement and the connectivity of defendant No.1 viz-a-viz defendant No.2 being sister's son having no such remote chance of succession in the property left by defendant No.2. The ratio of **Shakuntala Yadav and others case (supra)** was also having meaningful explanation in the aforesaid context to answer substantial question of law No.2 in favour of the plaintiffs.

[33]. Since defendant No.1 having no pre-existing right in the property, therefore, right was allegedly conferred upon defendant No.1 by way of decree dated 13.06.1995. Any right created for the first time in respect of property worth more than Rs.100/- was legally required to be registered. An effort was made by learned counsel for the respondents to segregate the analogy of **Bhoop Singh case (supra)** in the light of observations made in **S. Noordeen Vs. V.S.**

Thiru Venkita Reddiar, 1996(1) RRR 750 and Som Dev and others Vs. Rati Ram and another, 2006(4) RCR (Civil) 303. It was contended that a compromise decree does not require registration unless decree involves any immovable property valued above Rs.100/-. Having considered the aforesaid submission in the light of facts of the present case, particularly observations made by the Hon’ble Apex Court in remand order, this Court deems it appropriate to answer third substantial question of law in favour of the plaintiffs-appellants.

[34]. Since the appeal can be adjudicated without there being any framing of specific issue with regard to ancestral and non-ancestral nature of the property, therefore, the arguments raised by learned counsel for the appellants with regard to framing of issue is inconsequential.

[35]. In view of discussions having been made above, I find that there are substantial questions of law involved for acceptance of this appeal. Resultantly, impugned judgments and decrees passed by the Courts below are set aside. Appeal is accordingly allowed, decreeing the suit of the plaintiffs.

(RAJ MOHAN SINGH)
JUDGE

11.01.2017
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No