

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**(1) RSA No.2708 of 2005(O&M)
Date of Order:26th October,2017**

Dhian Singh and others
...Appellants
Versus
Mohinder Singh and others
...Respondents

(2) Civil Revision No.1754 of 2014

Charan Singh and others
..Petitioners
Versus
Mohan Singh and others
...Respondents

(3) Civil Revision No.3105 of 2017

Charan Singh and others
..Petitioners
Versus
Mohan Singh and others
...Respondents

CORAM: HON'BLE MR. JSUTICE ANIL KSHETARPAL

**Present: Ms. Aparna Singhla, Advocate, for
Mr. Avnish Mittal, Advocate,
for the appellants (in RSA No.2708 of 2005)
for respondent nos.2 to 9 (in CR No.1754 of 2014)
for respondent nos.2 to 9 (in CR No.3105 of 2017)**

**Mr. Rai Singh Chauhan, Advocate,
for the petitioners (in CR No.1754 of 2014)
for the petitioners (in CR No.3105 of 2017)
for respondent Nos.1 to 5 (in RSA No.2708 of 2005)**

**Mr. S.K.Jain, Advocate,
Mr. Aasheem Jain, Advocate,**

for respondent no.1 (in CR No.1754 of 2014).
for respondent no.1 (in CR No.3105 of 2017 of 2014).

ANIL KSHETARPAL, J.

By this common judgment, I shall be disposing of RSA No.2708 of 2005, Civil Revision No.1754 of 2014 and Civil Revision No.3105 of 2017.

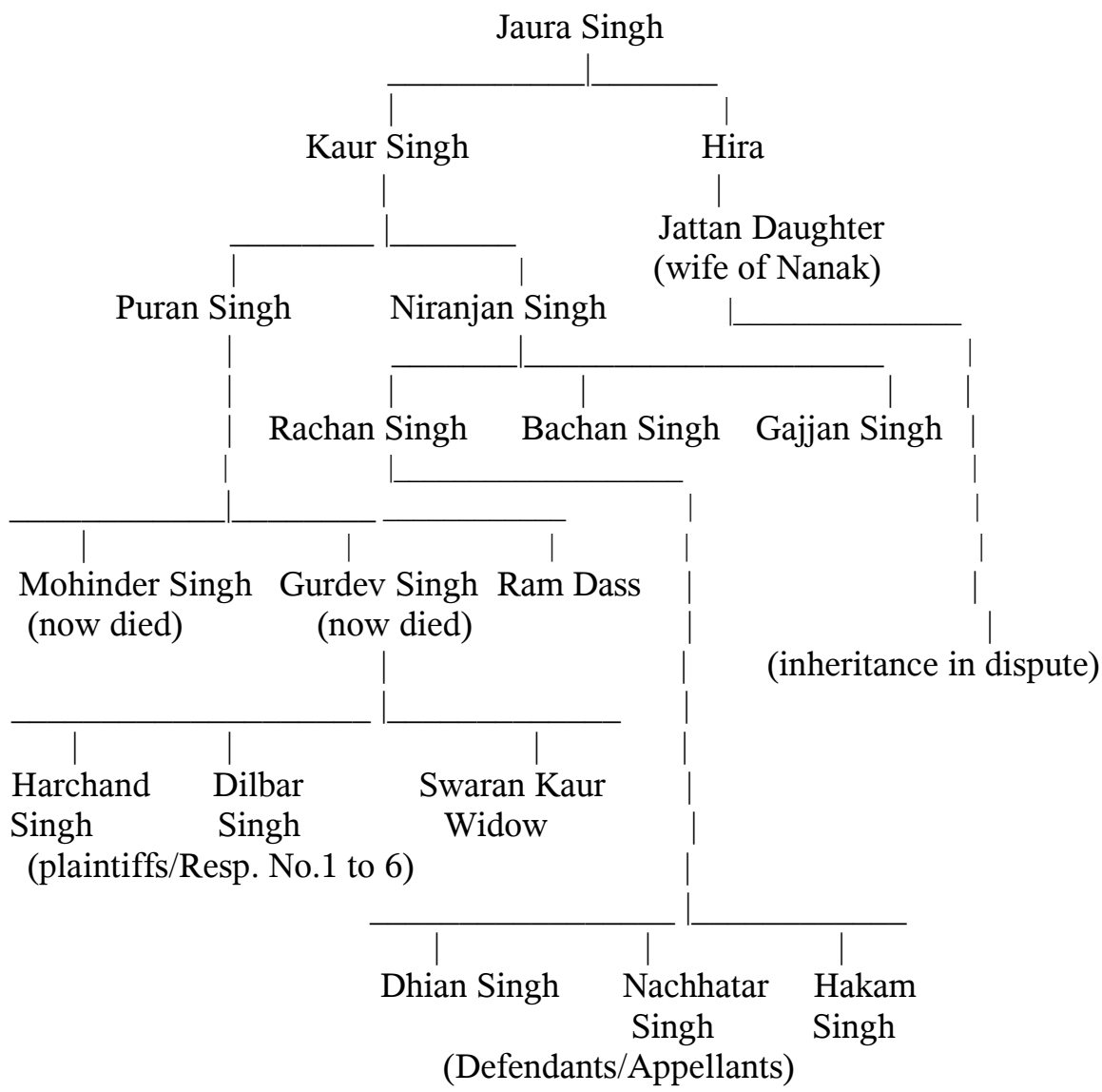
The following substantial questions of law arise for consideration in the present case:-

- (i) Whether a decree passed by the Court under Order 12 Rule 6 CPC (consent decree) acknowledging earlier oral family settlement is required to be registered or not?
- (ii) Whether in a family settlement, the word family includes the persons who are having right of succession only or the word family is to be given a wider meaning so as to include even those persons who are related and may not have direct right of inheritance/succession?
- (iii) What is the period of limitation for challenging a decree passed by the Court?

Defendants-appellants are in regular second appeal against judgments and decrees passed by the Courts below.

Plaintiffs-respondents had filed a suit challenging Civil Court decree dated 22.02.1984, passed in Civil Suit No.75, dated 15.02.1984.

Late Smt. Jattan was owner of land measuring 107 bighas and 2 biswas. She had received the property from her husbnad Nanak. She was issueless. A small genealogy tree of the family is as under:-



Late Smt. Jattan, admittedly, executed a registered Will dated 24.10.1983 bequeathing her property in favour of great grand sons of Jaura Singh, her grandfather.

Thereafter, pursuant to a family settlement she admitted that defendants-appellants, namely, Dhian Singh, Nachhatar Singh and Hakam Singh are owners in possession of land measuring 57 bighas and 6 biswas. This family settlement was acknowledged in the Civil Court decree by Late Smt. Jattan, dated 22.02.1984.

Late Smt. Jattan died on 18.08.1989. Plaintiffs, who are grand sons and great grand sons filed a suit for declaration with consequential relief of joint possession, challenging decree dated 22.02.1984.

The Courts below have set aside the Civil Court decree dated

22.02.1984 on the ground that Late Smt. Jattan was exclusive owner of the property and, therefore, transfer of the property through a Civil Court decree requires registration. Hence, it has been held that decree dated 22.02.984 is null and void.

It may be significant to mention here that the defendants-appellants had filed a suit claiming themselves to be owners in possession of the property i.e. 57 bighas and 6 biswas on the basis of a previous family settlement. Late Smt. Jattan filed the written statement admitting the claim of the appellants. Thus, the Civil Court after finding that the parties are not at issue, passed a decree on the basis of admission under Order 12 Rule 6 CPC. In common language, such decree is called consent decree.

Now the stage is set for discussing the questions of law framed above.

Question No.(i)

Whether a decree passed by the Court under Order 12 Rule 6 CPC (consent decree) acknowledging earlier oral family settlement is required to be registered?

The Courts in India have always being lean in favour of Family Settlement and against disturbing it. There are catena of judgments passed by the Hon'ble Supreme Court of India, wherein the Court had held that an oral family settlement subsequently acknowledged by a memorandum of family settlement or a Civil Court decree would not require registration. The first judgment on this aspect is AIR 1955 SC 481 **Sahu Madho Dass v. Mukund Ram.** In this case, the Court held that a family settlement is to be honoured by the Court and the Court would always make an endeavour to uphold a family settlement.

AIR 1966 SC 292 (Larger Bench) Tek Bahadur Bhuji vs. Debi

Singh Bhujil. In this judgment, Hon'ble Supreme Court examined the concept of family settlement and held that the word 'Family' cannot be interpreted in a narrow sense and it is not necessary that the person entering into a family arrangement must have some antecedent title. It is to be assumed that parties to the arrangement had an antecedent title of some sort and the agreement clinches and defines what that title is. It was further held that family arrangement can be arrived orally. Its terms may be recorded in writing in the form of a Memorandum as to what had been agreed upon by the parties. In such a situation, it is not required to be registered.

AIR 1966 SC 323 Ram Charan Dass vs. Girija Nandini Das, it was held that every beneficiary under the arrangement shall not necessarily have a share in the property-

***“The word ‘Family’ in the context is not to be understood in a narrow sense of being a group of persons who are recognized in law as having a right of succession or having a claim to a share in the property in dispute. In Ramagouda Annagouda case of the three parties to the Settlement of a dispute concerning the property of a deceased person one was his widow, other her brother and the third her son-in-law. The two latter could not, under the Hindu Law, be regarded as the heirs of the deceased. Yet, bearing in mind their near relationship to the widow, the settlement of the dispute was very properly regarded as a settlement of a family dispute. The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another. That consideration having passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter.*”**

In the judgment reported as (1971)1 SCC 837, it was held that the term family cannot be defined/construed in narrow terms:-

“The Compromise, a family arrangement, is binding on the parties to it. It is not necessary that parties to a family settlement should all belong to one family. It is enough if they are near relatives. A family arrangement is intended to bring about harmony in the family and the court should lean strongly in favour of such a family arrangement.”

Once again the law on the family settlement was analyzed and evaluated in the judgment reported as AIR 1976 SC 807”=(1976)3 SCC 119 Kale Vs. Deputy Director, Consolidation. It was held that fraud must be clearly pleaded and proved. Family arrangement can be inferred from the conduct spread over several years. This judgment further evolved that a family arrangement being binding upon the parties clearly operates as an estoppel. It was further held that family arrangement may be even oral in that case no registration is necessary. The Court further held that even if one of the parties to the settlement has no title under the arrangement and other party relinquishes all their claims and title in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and family arrangement will be upheld and the courts will find no difficulty in giving assent to the same.

Thereafter, Division Bench of this Hon’ble Court in the judgment reported as 1989 PLJ 182 Gurdev Kaur and others Vs. Mehar Singh and others held that the compromise or consent decree even if it creates title, does not require registration. It was further held that grounds on which the

compromise decree can be set aside are the same on which a contract can be set aside, namely fraud, misrepresentation, coercion or unsound mind. The same Division Bench, in another judgment reported as 1989 PLJ 38 reiterated this very view.

Hon'ble Supreme Court, in a judgment reported as (1995) 5 SCC 709 Bhoop Singh Vs. Ram Singh Major, (1996) SCC 196 summarized the position and upheld the judgment of this Hon'ble Court in Gurdev Kaur & others Vs. Mehar Singh and others:-

“11. The sheet-anchor of Shri Sehgal's submission is a bench decision of the Punjab and Haryana High Court in Gurdev Kaur v. Mehar Singh. Reference to that decision shows that the Bench opined that the view taken by learned Single Judges of the High Court in some earlier cases that a decree based on compromise conferring title required registration, even though it related to the property in suit, was not correct. One such view had been taken in Ranbir Singh v. Shri Chand on the reasoning that a compromise is basically a contract and decree founded on it, if the same created right for the first time, would be treated as an instrument of gift and so would require registration. The Bench, however, held that a compromise decree creating right even for the first time would not require registration. This decision is thus rightly pressed into service by Shri Sehgal. Its perusal, however, shows that it distinguished the case of Sumintabai Ramkrishna Jadhav v.

Rakhmabai Ramkrishna Jadhav because in that case the compromise itself was not regarded as bona fide by the court, as it was described as sham compromise brought about for the purposes of practicing fraud upon the law relating to stamp duty and registration.

12. The aforesaid decisions do not cover the whole ground, according to us. They meet our approval as far as they go.”

However, Hon’ble Supreme Court of India, drew a difference that if a property is being transferred through a court decree, it is compulsorily required to be registered. In para 18, Hon’ble Supreme Court summarized as under:-

“18. The legal position qua clause (vi) 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 duty 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 immoveable property of the value of Rs.100 or 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 the 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."

Counsel for the respondents has argued that since late Smt. Jattan was exclusive owner of the property, therefore, it was her self acquired property. He submitted that such self acquired property cannot be transferred by way of a consent decree unless the consent decree is registered. He has cited judgment passed by the Hon'ble Supreme Court in the case of **Phoolpati vs. Ram Singh** (2015) 3 SCC 164, in support of his submission.

It may be noticed that consent decree or the decree passed under Order 12 Rule 6 CPC is not an instrument of transfer of the property. It has

been recognised by the Court that family members can settle their dispute by entering into a oral family settlement. In such case, there is no requirement of registration. However, if the family settlement is reduced into writing and such family settlement deals with the immovable property, valuing more than Rs.100/- then such family settlement is required to be registered. The memorandum of family settlement recording or acknowledging the previous family settlement orally arrived at between the parties, is also not required to be registered because such memorandum of family settlement records a past transaction.

The decree passed under Order 12 Rule 6 CPC (consent decree) on the basis of a oral family settlement, is only acknowledging a family settlement, which had been arrived at in past. Through a consent decree, the property is not being transferred. Therefore, it has been consistently held by the Courts that such consent decree does not require registration.

The judgment referred to by the learned counsel for the respondents in the case of **Phoolpati** vs. **Ram Singh** (supra), Hon'ble Supreme Court drew a distinction between self acquired property and joint Hindu Family property. However, the Hon'ble Supreme Court in that case had found that Ram Singh had admitted that the property was given to him by Bhagwana through a Civil Court decree. The Court also referred to some gift. It was in these circumstances, the Hon'ble Supreme Court held that qua self acquired property, the civil Court decree was required to be registered. This judgment passed by the Hon'ble Supreme Court of India is in the peculiar facts of that case.

In these circumstances, the findings of the Courts below that Civil Court decree dated 22.02.1984 required registration is wholly erroneous. In

the present case, a reading of the plaint filed by the defendants-appellants would prove that a previous oral family settlement was pleaded which was admitted by late Smt. Jatta. Hence, the decree dated 22.02.984 did not require registration.

Question No.(ii)

Whether in a family settlement, the word family includes the persons who are having right of succession only or the word family is to be given a wider meaning so as to include even those persons who are related and may not have direct right of inheritance?

The concept of family settlement, who are members of family settlement, has already been discussed in detail by the Hon'ble Supreme Court of India in various judgments. In the case of **Tek Bahadur Bhujji v. Debi Singh Bhujil** (supra), the Hon'ble Supreme Court held that person entering into a family settlement, is not required to be necessarily having some antecedents title in the property. It was held that the Courts must assume that parties to the arrangement had an antecedent title of some sort.

Still further in the case of **Ram Charan Dass vs. Girija Nandini Das** (supra), the Court went on to hold that the word "Family" in the context is not to be understood in a narrow sense being a group of persons who are recognized in law as having a right of succession or having a claim to a share in the property in dispute. Further in the judgment reported as **(1971) 1 SCC 837**, the Court went on to hold that all the parties to a family settlement/arrangement are not required to be belonging to one family. It is enough if they are in near relations.

In these circumstances, defendants-appellants are in near relations of late Smt. Jattan. Late Smt. Jattan was issueless. She was not having any

brother or sister. Therefore, her close relatives were defendants-appellants who were great grand sons of Jaura Singh, the grand father of late Smt. Jattan. In fact, the plaintiffs and defendants were only the relatives of late Smt. Jattan.

Hence, defendant-appellants were rightly given land measuring 57 bighas and 6 biswas through a family arrangement.

Question No.(iii)

What is the period of limitation for challenging a decree passed by the Court?

In this case the Civil Court decree was passed on 22.02.1984. The civil suit was filed by the plaintiffs on 22.02.1990 i.e., after a period of almost 6 years. Defendants objected that the suit is barred by limitation. Learned trial Court framed Issue no.3, which is extracted as under:-

“Whether the suit is not within time?OPD”

However, the Courts did not advert to the issue of limitation on the ground that the decree was void-ab-initio. As per the discussion made above, the decree has been held to be legal and binding. The limitation for challenging such decree is three years as per Articles 58 and 59 of the Limitation Act, 1963. Plaintiffs in their suit have pleaded that cause of action had accrued to the plaintiffs on the date of death of Jattan i.e., 18.08.1989. In fact the limitation would start running from the date of decree. Hence, the suit filed by the plaintiffs was barred by limitation.

Civil Revision No.1754 of 2014 and Civil Revision No.3105 of 2017 have become infructuous as both the revision petitions arise out of execution of some different decree which is a part of the suit property. In view of the reversal of the decree passed by the Court below, the Executing

Court would re-examine the issue afresh.

NOTE:- All the miscellaneous applications shall stand disposed of in terms
of the judgment passed above.

26th October, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO