

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.2895 of 2015
Date of Decision:6.9.2017**

Smt.Lali

...Appellant

Versus

Smt.Sartli and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.J.P.Sharma, Advocate for he appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the concurrent findings of facts recorded by both the learned courts below, whereby her suit for declaration was dismissed by the learned trial Court, vide its impugned judgment and decree dated 20.7.2011 and her first appeal was also dismissed by the learned first appellate court, vide impugned judgment and decree dated 16.12.2014, upholding the judgment and decree of the learned trial Court, unsuccessful plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of the impugned judgment, are that Tula had three daughters namely Lali (plaintiff), Sarti (defendant No.1) and Kamla (defendant No.2) and had wife Ram Dei. Tula was owner in possession of the suit property in his life time. All sisters and both the parties were married. Plaintiff used to reside alongwith her husband in village Kanwarpura, Tehsil Kotputli whereas proforma defendant had been residing in village Kanwarpura but defendant No.1 had been residing in village Bachod for the last 10-12 years.

It was further averred that contesting defendant No.1 got impugned

judgment, decree in her favour qua the suit property on the basis of family settlement and impugned mutation was got sanctioned on the basis of impugned judgment and decree, therefore impugned judgment, decree was wrong, illegal, null and void, result of fraud and misrepresentation, therefore, impugned judgment, decree and impugned mutation were liable to be set aside on the following grounds:-

(a) That the impugned judgment and decree was based on family settlement which was wrong and illegal. It was further averred that no family settlement took place between defendant No.1 and Tula, father of plaintiff and defendants. Plaintiff and defendant No.2 used to come in village Bachod to meet her parents and Tula Village Bachod to meet her parents and Tula always used to say that he would distribute suit property in favour of both the parties in equal share before his death.

(b) No family settlement could take place between defendant no.1 and Tula (since deceased) as defendant no.1 was a married daughter and married daughter was not the family member of family of her father at the time of alleged family settlement took place. Ram Dei mother of both the parties and all sisters were alive but they were not included in the family settlement.

(c) Tula since deceased used to cultivate the suit property during his lifetime and after his death on 21.05.2004 plaintiff and defendants became co-sharers in the suit property. Ram Dei died before the death of Tula

in the year 2002. In this manner if there was any family settlement that was wrong, illegal, null and void and not binding on the right of plaintiff and proforma defendant.

(d) In the impugned judgment and decree, Tula never appeared before the court and impugned judgment and decree was obtained by way of impersonation and was a result of fraud.

(e) Tula was very old man and he had no knowledge about the courts. Defendant no.1 was very clever person and got suffered decree by way of playing fraud after getting thumb impressions on the document, therefore, impugned judgment and decree was wrong, illegal, null and void.

(f) There was no pre-existing right, title and interest in the suit property of defendant No.1 without registration, family settlement could not come into existence, therefore, no decree could be passed on the basis of such type of family settlement.

(g) Impugned judgment and decree was not got registered as the value of the suit property was more than Rs.100/-, therefore, impugned judgment and decree was liable to be set aside on the ground of registration.

(h) Defendant No.1 got entered mutation on the basis of impugned judgment and decree in collusion with the revenue officers, which was wrong and illegal, therefore, liable to be set aside.

Tula Ram died on 21.05.2004 when both sisters came on her parental house on account of death of their father, then talk took place in respect of partition of the suit property. At that time it came in the notice of plaintiff that defendant No.1 got suffered impugned judgment and decree and got mutation on the basis of judgment and decree.

As defendant no.1 on the basis of impugned judgment, decree and mutation intended to alienate the suit property, therefore, it was prayed that defendant No.1 may kindly be restrained to alienate suit property. Plaintiff and proforma defendant requested to defendant No.1 to get partitioned the suit property in equal shares between both the parties again and again, but to no effect.

Having been put to notice, defendant No.1 appeared and filed her contesting written statement, raising more than one preliminary objections. However, defendant No.2 filed her separate written statement, admitting the claim of the plaintiff. Plaintiff filed her replication to the contesting written statement. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether impugned mutation no.1544 dated 30.04.1996 and 1022 dated 24.09.1998 are illegal and liable to be set aside? OPP
2. Whether the plaintiff is owner in possession to the extent of 1/3 share in the suit land? OPP
3. Whether plaintiff deserve for the relief of injunction as prayed for? OPD
4. Whether suit is not maintainable ?OPD
5. Whether plaintiff has no locus standi to file the present

suit ?OPD

6. Whether the plaintiff has no cause of action to file the present suit ?OPD

7. Whether plaintiff is stopped from filing the suit by his own act and conduct? OPD

8. Whether plaintiff has concealed material facts to the Court, if so , to what effect? OPD

9. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. Voluminous evidence was brought on record by the defendant No.1. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has failed to prove her pleaded case. There was hardly any evidence brought on record which may prove the plea of fraud raised by the plaintiff. Accordingly, suit of the plaintiff was dismissed by the learned trial Court, vide its impugned judgment and decree dated 20.7.2011. Feeling aggrieved, plaintiff filed her first appeal, which also came to be dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 16.12.2014. Hence this second appeal, at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

Suit of the plaintiff-appellant was based on two basic issues. First was that the decree suffered by late Shri Tula, father of the parties, vide Civil Suit No.608 of 1994 was based on fraud and misrepresentation. Second equally important issue was that since the suit property was

ancestral in the hands of Tula, he was not competent to suffer the civil court decree dated 4.8.1994 in favour of defendant No.1 and all the subsequent rights, devolved upon defendant No.1 by way of Mutation Nos.1544 and 1022, on the basis of above-said judgment and decree, were null and void. However, when the evidence brought on record by the plaintiff was carefully examined, it leaves no room for doubt that the plaintiff has miserably failed to prove her case by bringing on record cogent and convincing evidence. She failed to prove the plea of fraud and also could not establish that the suit property was ancestral in the hands of late Shri Tula. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It goes without saying that plea of fraud and misrepresentation raised by the plaintiff-appellant was required to be proved like a criminal charge. However, plaintiff did not bring on record any relevant and cogent evidence in this regard for the reasons best known to her. In such a situation, plaintiff was bound to fail. That is what has been held by both the learned courts below, while recording their concurrent findings of facts. Similarly, plaintiff-appellant did not think it appropriate to bring on record the relevant revenue record, while leading her evidence in affirmative so as to prove the property in the hands of Tula as ancestral property. Under these peculiar facts and circumstances of the case, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in **Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others**, 2015 (2) SCC (civil) 350 (SC), **Punjab Urban Planning and Dev. Authority Vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills**, 1998 AIR (SC) 2352 (SC), **Gautam Sarup Vs. Leela Jetly and others**, 2008 (7) SCC 85 (SC), **Zarina Siddiqui VS. A.Ramalingam alias R.Amarnathan**, 2015 (1) SCC 705 (SC), **Swarn Singh Vs. Swarn Kaur and others**, 2004 (2) RCR (civil) 505 (P&H), **Santa Singh Vs. Tarsem Singh**, 2010 (67) RCR (civil) 520 (P&H) and **M/s Machhi Ram Kishan Singh Sidhana, Rice Mills Vs. Sham Singh and others**, 2015 (9) RCR (civil) 506.

Before arriving at its judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 18 to 21 of its impugned judgment, which deserve to be noticed here, read as under:-

“As per decree was suffered on the basis of oral family settlement, as mentioned in Ex.P15, which came into existence prior to passing of the decree and on that basis decree was passed in favour of defendant no.1 Tula Ram made a statement in the court after filing admitted written statement in civil suit no. 608 of 1994. If the sufferer of the decree had filed written statement in the court and mutation was sanctioned without any objection and he did not challenge the same during his lifetime then it is not open for the other persons to allege that fraud was played upon him. Tula Ram himself got demarcated the land by filing application dated 27.11.1997 as clear from

Ex. PW22/A i.e. The list of persons present at the time of demarcation of land of Smt. Sarti daughter of Tula Ram.

But in the present case defendant no.1 had successfully proved that she along with her husband and children were residing with Tula Ram as ration card Ex.D3 and Ex. D4 have been produced on record and defendant no.1 has also proved admission form and admission register Ex.DW19/A to Ex.DW19/F from year 1988 to 1999 which clearly shows that children of Smt. Sarti were got admitted by maternal grandfather Tula Ram.”

As per settled law, compromise decree or consent decree, vide which share was relinquished in favour of close relationship being part of the family settlement, validity of such a decree cannot be questioned on the ground of want of registration. In the case of Bija Ram @ Bija (Supra) it has been held that consent decree passed on the basis of admission, does not require registration. Similarly in the case of Bachan Singh (Supra) it has been held that consent decree passed by the Court declaring a party owner of the land, does not require to be registered, Similarly, Hon'ble Supreme Court in the case of Somdev (Supra) held that consent decree based on admission does not require registration.

Keeping in the view the discussion above, this court is of the view that all the arguments raised by the counsel for the appellant/plaintiff are devoid of merit. The judgment relied upon by learned counsel for the appellant-plaintiff are not applicable on the facts of the present case.

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non*

for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179*.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

6.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No