

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

**RSA No.5681 of 2016 (O&M)
Date of Decision: February 06, 2017**

Veena Rani (deceased through LR's) and others

..Appellant(s)

Versus

Santosh Dhand and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Satinder Khanna, Advocate
for the appellants.

ANITA CHAUDHRY, J.

This appeal is by the plaintiffs against the reversal of the decree passed by the 1st Appellate Court.

It would be necessary to give the necessary facts. The plaintiffs filed a suit asserting their title over the suit property. It was claimed that they were declared owners vide judgment and decree dated 13.02.1990, passed by the Sub-Judge 1st Class, Ludhiana. It was claimed that Dharampal husband of defendant no.1 was a tenant on a portion of this property and was in arrears of rent. After his death, the defendants inherited the tenancy rights but refused to clear the arrears and started asserting her title that she and her husband had purchased portion of the building from defendant no.2, vide three sale deeds executed in 1996 and 1998. The plaintiff claimed that defendant no.1 refused to show her those documents and they contacted the office of

the Sub-Registrar and came to know that there were three sale deeds in favour of Dharampal and it included the tenanted premises. The plaintiff claimed that the sale deed was null & void and defendant no.2 was not competent to execute the sale deed. Defendant no.1 took the preliminary objections pleading that the plaintiffs had not come with clean hands and the suit had been filed in connivance with defendant no.2. It was pleaded that Veena Rani was an attesting witness in both the sale deeds executed by defendant no.2 in favour of defendant no.1. It was pleaded that the decree alleged by the plaintiff had no legal value in the eyes of law and the plaintiff had no pre-existing right in the property and could not be declared owner by virtue of the decree. It was pleaded that it might have been created to defraud her. It was pleaded that the defendant had purchased the property for valuable consideration and without notice of the decree and the decree had no legal value since it was not implemented nor registered.

On the pleadings of the parties following issues were framed:-

1. Whether plaintiffs are entitled for declaration as alleged? OPP
2. Whether sale deeds dated 11.8.98 and 24.9.96 and 23.10.96 executed by defendant no.2 are illegal, null and void? OPP
3. Whether sale deeds are result of fraud and coercion and does not create any right, title or interest in favour of defendants? OPP
4. Whether plaintiffs are entitled for permanent injunction as prayed for? OPP
5. Whether suit is not valued for the purpose of court fee and jurisdiction? OPD
6. Relief.

The trial Court noted the averments made by both the sides and recorded a finding that the plaintiffs had failed to prove that any fraud had been played qua the property and the sale deed had been proved. A finding was recorded that the sale was effected by defendant no.2 and the sale deed did not bear the signatures of the other beneficiaries of the decree and plaintiff no.1 alone could not forego the interest of the other parties, therefore, issue nos.1, 2 & 4 were decided in favour of the plaintiff and issue no.3 was decided partly in favour of the plaintiff and against the defendants.

Aggrieved by the judgment, Santosh Dhand-respondent no.1 filed an appeal. Meantime, Veena Rani died and her legal heirs were brought on record. The appellate Court noted the following:-

15. All these points for determination are taken up together being interconnected and in order to avoid repetition. Plaintiffs filed the present civil suit in the Ld. Trial Court claiming that vide judgment and decree dated 13.2.1990 passed by the Court of Sh. M.S. Walia, Sub Judge, First Class Ludhiana, plaintiffs were declared as owner of the property bearing municipal no.B-XXI-122 (Plot no.810) Industrial Area Ludhiana. It is pertinent to mention here that plaintiffs filed a civil suit no.275 of 1988 in the Court of Sub Judge Ist Class, Ludhiana on the averment that property no. 810 Industrial Area Ludhiana came to share of Hindu Undivided family headed by the defendant no 2 Satish Chander. It is further averred in the aforesaid suit that the parties to the suit are members of Hindu Undivided Family. The property in suit had been partitioned between the parties vide partition on 16.1.1988. The defendant no.2 Satish Chander in the aforesaid suit gave statement that he had no objection if the suit of the plaintiff be decreed. In view of the consenting statement of defendant, Ld Sub Judge Ist Class, Ludhiana, passed the judgment and decree dated 13.2.1990. The operative para of the judgment goes as under:-

“4. In view of the admission made by the defendant and his statement in the court parties are not at issue on any matter property in dispute. The suit of the plaintiff is decreed as prayed for, in view of the admission of the defendant. As the transfer of property is subject matter of suit, decree as such shall be enforceable only when it is got registered in accordance with law. Decree Sheet be prepared. File be consigned to the record room.”

16. Admittedly the aforesaid decree dated 13.2.1990 has not been got registered by the plaintiffs. Now the question arises what is the effect of non registration of aforesaid decree dated 13.2.1990. Ld. Counsel for the respondent has placed heavy reliance upon the legal proposition that family settlement is not a transfer of property and therefore, a decree of civil court in pursuance of family settlement could not be interfered with. Ld. Counsel further argued that in order to sustain a family settlement it is not necessary that there must be evidence of antecedent title of the parties. It is the case of the plaintiffs/respondent that non registration of a decree passed on the basis of family settlement is not compulsorily registrable and therefore, non registration of the decree does not render the same as in operative one. There is no dispute to the legal proposition as laid down by Hon'ble Supreme Court of India in case titled Ganeshi(D) through Lrs (Supra), Kale and others (Supra) to the effect that a compromise decree on the basis of family settlement is not compulsorily registrable. However, the question involved in the present appeal is regarding the effect of non registration of a decree, when the court has specifically given directions for its registration. As indicated earlier, Ld. Sub Judge Ist Class, in its judgment dated 13.2.1990 made the observation that decree shall be enforceable only when it is got registered. The beneficiary of the aforesaid decree did not challenge the aforesaid directions of the Ld. Sub Judge, before any appellate Authority. No efforts were made by the beneficiary for the registration of the aforesaid decree dated 13.2.1990. In this situation, the beneficiary of the decree can not be allowed to split up the contents of decree and judgment dated 13.02.1990 by accepting the benefits awarded to them by the decree and ignoring the condition of registration of decree imposed upon them. As such, the decree dated 13.2.1990 remains inoperative as it was not registered by the plaintiff. Moreover, the act and conduct of plaintiff no.1 further, shows that plaintiffs were not interested to take the benefit of

the aforesaid decree and it remained a paper transaction only. Plaintiff no.1 Veena Rani stood marginal witness of sale deed Ex.DW1/A, Ex.DW1/B of the suit property by her husband Satish Chander defendant no.2 in favour of Santosh Dhand defendant no.1. Had plaintiff no1 was aware of the fact that decree dated 13.2.1990 was fully operative then she would not have allowed her husband to sell the property in question in favour of Santosh Dhand. The act and conduct of plaintiffs is clearly suggestive of the fact that decree dated 13.2.1990 was in inoperative condition, therefore, they allowed Satish Chander to dispose of the suit property in the presence of plaintiff no.1 by way of execution of sale deed in favour of Santosh Dhand defendant no.1. Therefore, plaintiffs are estopped by their act and conduct to challenge the competency of defendant no.1 to execute the sale deed of suit property in favour of defendant no.1 Santosh Dhand. It has been argued that the suit is a collusive suit at the instance of plaintiffs and defendant no.2. In the present case defendant no.2 Satish Chander husband of plaintiff no.1 and father of remaining plaintiffs was proceeded against exparte before the Ld. Trial Court. However, defendant no.2 Satish Kumar filed a civil suit no.CS/36041/2013 titled Satish Kumar Vs. Santosh Dhand for declaring the sale deed executed by the plaintiff in favour of defendant Santosh Dhand as illegal null and void as he was not competent to execute the sale deed in favour of the defendant. Ld. Civil Judge (Jr. Division) Ludhiana vide order dated 19.2.2015 dismissed the suit of the plaintiff with special costs with Rs.5000/-. The conduct of the defendant no.2 and plaintiffs is clearly indicative of the fact that their common intent is to get the sale deed in question set aside by one way or other. It has not been disputed that defendant no.2 executed the sale deed in favour of defendant no1/appellant. The legal competency of defendant no.2 has been challenged on the ground that plaintiffs were owner of the suit property on the basis of decree dated 13.2.1990. As earlier stated the aforesaid decree was inoperative at the time of execution of the sale deed, therefore, there was no legal bar for defendant no.2 Satish Chander to execute the sale deeds in question. It is evident from the sequence of events that defendant no.2 was competent to execute the sale deed in favour of the appellants. Therefore, plaintiffs have no right or concern with the suit property.”

The appellate Court found that the property had been sold by the husband of defendant no.1 and to get the property back they had tried to get the sale deed set aside. It noted that the decree obtained by the plaintiffs was a mere paper transaction and they had no intention to get the decree incorporated in the records. It was also noted that plaintiff no.1 Veena Rani was an attesting witness to the sale deed executed by her husband and she was aware of the fact that the decree had been passed but still allowed her husband to sell the property. The appellate Court rightly noted that the suit filed earlier was collusive and the issue had been raised with a view to get the property back. It noted that earlier Satish Kumar-defendant no.2 had filed a suit to get the sale deed in favour of Santosh declared null & void on the basis of the same decree and that suit was dismissed with special cost of Rs.5,000/- and the second suit had been got filed through the wife and the children only to raise the same issue again. I find no infirmity in the findings recorded by the Court below.

The finding recorded by the appellate Court are affirmed.

The appeal is dismissed.

February 06, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No