

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

RSA No.3468 of 1987 (O&M)

Date of Decision: February 26, 2018

Chamela (since deceased) through LRs and others ...Appellants

Versus

Barkha Ram and others ...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Rajesh Narang, Advocate
for the appellants.

Mr. R.S. Budhwar, Advocate
for the respondents.

FATEH DEEP SINGH, J.

The brief facts that need to be underlined before advertizing on to the merits in this regular second appeal by unsuccessful appellants, then plaintiffs, some of them have succeeded the interest of their predecessor Chamela and Phool Singh, original plaintiffs are to the effect: Bishna (also referred to as Bishna Ram) had one sister Bishani Devi, who admittedly happened to be mother of plaintiffs and defendant No.4. Admittedly, Bishna died around the year October, 1980, a bachelor and, thus, issueless and who owned properties comprising of a house and land measuring 152 kanals and 11 marlas duly depicted and detailed in the head note of the plaint in village Sanghipur, Tehsil Thanesar, District Kurukshetra. It is claimed that a civil suit No.749 of 1976 was filed by Barkha Ram and others against Bishna for declaration to the effect that the plaintiffs were the owners in possession in equal share of the land and

tubewell installed therein and that Bishna executed Will dated 6.8.1975 registered on 8.8.1975. In the said suit defendant admitted the claim of the plaintiffs in the written statement (Ex.P4) which through judgment dated 15.6.1976 (Ex.P1) was decreed and the plaintiffs were declared to be owners in possession of the property in question regarding which decree sheet Ex.P2 was drawn. It is subsequent thereto passing of the consent decree, a second suit bearing No.743 of 1976 was filed by present plaintiffs Chamela and Phool Singh against Bishna and others for declaration in which written statement Ex.D8 was filed by defendants and after framing of issues and recording of part evidence Ex.D11 and Ex.D12 and framing of issues Ex.D10 the suit stood dismissed in default under Order 9 Rule 3 CPC through orders dated 20.10.1977 Ex.D7. It is subsequent thereto, the present third suit has come about.

Upon hearing learned counsel for the two sides and perusing the record, it is admitted stand of the two sides that Bishna happened to be great maternal uncle of the parties to this *lis* who happens to be sons of *bhanjas* of Bishna. From the arguments advanced by the two sides, two material points have come about whether judgment and decree Ex.P1 and Ex.P2 were compulsory registrable being consent decree and locus standi of the plaintiffs to challenge this judgment and decree on the grounds of collusion and fraud. Though, plaintiffs have set up a Will dated 02.06.1972 in their favour but as is there and so is it and, therefore, question as to which of the Will dated 2.6.1972 or 8.8.1975 was legal or valid. The trial Court on the basis of pleadings of the parties framed the following issues:-

1. Whether the impugned decree is null and void as alleged in para No.8 of the plaint? OPP
2. Whether Will dated 2.7.1972 is valid and if so its effect? OPP
3. Whether Will dated 8.8.1975 is valid and if so its effect? OPD
4. Whether the suit is barred by res-judicata?
5. Relief.

The plaintiffs examined four witnesses and proved documents Ex.P1 to Ex.P8. On the other hand, defendants examined four witnesses and proved documents Ex.D1 to Ex.D12. Learned trial Court decided issues No.1 and 2 against the plaintiffs and issue No.3 against defendants in favour of plaintiffs and issue No.4 was decided in favour of defendants and as a consequence of this findings the suit of the plaintiffs was dismissed with costs by the Court of learned Sub Judge, IInd Class Kurukshetra. Upon appeal, the Court of learned Additional District Judge, Kurukshetra through judgment dated 28.7.1987 dismissed the appeal with costs upholding the findings returned by the trial Court, hence, the present regular second appeal.

The two-fold submissions of the appellants side that being a compromise decree creating right, interest and title in the property for the first time was compulsory registrable and that it was the defendants who had committed a fraud upon deceased Bishna and procured decree in question and the same being unregistered document did not carry any value and placed reliance on **Phool Patti and another vs. Ram Singh (dead) through Lrs and another 2015(1) RCR (Civil) 606; K. Raghunandan and others vs. Ali Hussain Sabir and others 2008(3) RCR (Civil) 699; Girdwari and others vs. Reshmi (since deceased) through her LRs and another 2014(3) Civil 543; Smt Badami (deceased) by her LRS vs. Bhali**

2013(1) RCR (Civil) 821; Malkiat Singh vs. Surjit Kaur and others 1999(3) Civil 512; Harichand (dead) through Lrs vs. Dharampal Singh Baba and others 2008(1) RCR (Civil) 604; Santosh vs. Jagat Ram and another 2010(2) RCR (Civil) 206; Biru vs. Nanhi 2007(3) RCR (Civil) 811; Hardevi vs. Hukam and others 2007(1) L.A.R. 618; Mam Chand Vs. Sahib Devi 2002(2) RCR (Civil) 707; Bhooop Singh vs. Ram Singh Major 1995(2) HLR 432; Gurdev Singh vs. Nachhattar Singh 2002(1) RCR (Civil) 42 and Sampat Singh vs. Bhagwanti and others 2010(5) RCR (Civil) 74. Learned counsel for the respondents has sought to assail that being compromise decree does not requires registration and besides the fact it was not inherited property of the deceased, who on his own voluntarily through decree in question have bequeathed the estate in favour of the defendants and has taken support from Kale and others vs. Deputy Director of Consolidation and others 1976 AIR SC 807; Hari Singh vs. Gurcharan Singh and others 2003(3) RCR (Civil) 632; Jagtar Singh and others vs. Ind Kaur 2011 (2) PLR 535; Sukhdeep Kaur and others vs. Tej Kaur and others RSA No.947 of 2012; Bhoop Singh vs. Ram Singh Major 1996 AIR 196 (SC); Bachan Singh vs. Kartar Singh and others 2003(3) RCR (Civil) 495; Pritam Singh and others vs. Bhoti 2014(4) RCR (Civil) 382; Smt Parmeshwari and othes vs. Smt Hans Kaur and others 2007(4) RCR (Civil) 250; Jagdish vs. Ram Karan 2003 (1) RCR (Civil) 657.

Appreciating the arguments of the two sides, reliance on Phool Patti and another vs. Ram Singh (dead) through Lrs and another 2015(1) RCR (Civil) 606 placed by learned counsel for the appellant does not comes to the aid of the appellant on account of factual disparity, firstly that it was a family settlement and that the decree related to ancestral

property and gift of self acquired property and, thus, poles apart from the case in hand. Learned counsel for the appellant could not show by what means it is sought to be proved on records the very nature of the property in the hands of deceased Bishna. The present decree suffered by Bishna does not come within the ambit of compromise decree and to the mind of this Court needs to be termed as consent decree and it is on the strength of this very judgment and decree Ex.P1 and Ex.P2 the trial Court of learned Sub Judge, IInd Class, Kuruskhetra had passed judgment dated 15.6.1976 decreeing the suit and declaring the plaintiffs Barkha Ram (Major), Naib Singh, Rishi Pal sons of Surjan to be the owners in possession of the property in equal shares and which has sought to be assailed in the present suit. Decree has been passed on 15.6.1976, whereas, admittedly, the deceased Bishna died around October, 1980 after more than 04 years and did not during this period of time ever challenged the same claiming that fraud was played upon him and in view of the law laid down in ratio **Hari Singh vs. Gurcharan Singh and others 2003(3) RCR (Civil) 632** only Bishna could have any right to make any grievance against such judgement and decree and no grievance lies from the mouth of other legatees and the same ratio was considered in **Jagtar Singh and others vs. Ind Kaur 2011 (2) PLR 535.** that right to challenge a decree on the ground of fraud is available only to the person against whom fraud has been played and not by any third party. Similarly reliance placed on **Bhoop Singh vs. Ram Singh Major 1996 AIR (SC)196** which laid down the legal proposition on the basis of which provisions of Section 17 of the Registration Act were not applicable. It can by no means to be termed as a decree to defeat the rights

of other legatees as in the present situation at the time of Ex.P1 and Ex.P2 the plaintiffs have set up Will executed by Bishna in their favour. Even in the other view laid down in **Bachan Singh vs. Kartar Singh and others 2003(3) RCR (Civil) 495** similar was the proposition that a consent decree passed by the Court is not required to be registered under the provisions of Registration Act, 1908. As is so even in the present case claim of the plaintiffs has been admitted by defendant Bishna and on the basis of said admission the suit was decreed. Since on the basis of Will a pre-existing right has crystallized and therefore, even by other means such a decree and judgment certainly does not require registration and rather appears to be a settlement by way of consent between the maternal uncle and nephews. In the light of settled propositions, the ratios relied upon by the learned counsel for the appellants do not hold good. Especially, when it is the own stand of the appellants that they have failed to prove the nature of property in the hands of deceased Bishna and the fact that the very elements of deceit and fraud could have been challenged by Bishna himself which he never did during his lifetime and which plea is not available to his legatees nor learned counsel for the appellant could show to this Court what evidence has been led in the testimonies of the plaintiffs onus of which lays upon the plaintiffs to establish it to the hilt by what means there has been fraud certainly frustrates the endeavour of the appellants to have the said decree set aside. Neither any fraud is pleaded in details nor proved by any means or the fact that decree was nullity in the eyes of law. Such a decree by no means as has sought to be pleaded by learned counsel for the appellants could be termed to be a compromise decree and the Court

acknowledging the Will and the consent given by the defendant/deceased Bishna to the passing of the decree had passed the decree. The principal issue No.1 has been dealt into details by the two Courts below holding that in the light of such an admission it does not lie in the mouth of the appellants that this decree has not been suffered by Bishna out of his free will as he himself admitted the same before the Court of law in his written statement and stand before the Court he has done so removes even an iota of doubt that there was lack of consent on behalf of the Bishna to the passing of the decree. Thus, findings returned on issue No.1 are upheld and it has rightly been observed by the Court below while returning the findings on issue No.2 that there is ample evidence to the cancellation of Will dated 2.6.1972 vide Will dated 6.8.1975/8.8.1975 and, therefore, has rightly returned the findings that such a Will does not vests any right, title or interest in the property.

No other argument was raised by any of the side.

In the light of what has been detailed and discussed above, no illegality or perversity could be found in the findings returned by the two Courts below. Thus, the appeal being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 26, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No