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

**RSA No. 1352 of 1990 (O&M)
Decided on: 14.03.2018**

Mohana Ram and another**.....Appellants**

versus

Jiwan Ram and another**.....Respondents****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. S.C.Chhabra, Advocate
for the appellants.

Mr. Bhavnik Mehta, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

1. This is the second appeal filed by the defendants in the suit; against the judgment and decree of reversal passed by the lower Appellate Court; whereby the suit filed by the plaintiffs for declaring the decree dated 23.09.1985 as null and void; has been decreed by setting aside the judgment and decree passed by the Trial Court.

2. For convenience, the parties would be referred herein as the plaintiffs and defendants; as they were described in the original suit.

3. The brief facts of this case are that the plaintiffs/respondents filed a suit for declaration claiming that the plaintiffs and defendants No. 2 and 3 constituted a Joint Hindu family with their father, defendant No. 1. The family owned agricultural land which was jointly owned by all; being ancestral property; which was inherited by their father from his forefathers. However, defendants No. 2 and 3 filed a Civil Suit No. 454-1 dated 26.08.1985 claiming that earlier the property was a Joint Hindu Family Ancestral property; but in January 1980, the family settlement had been made and the suit property claimed in that suit had fallen to be the share of defendants No. 2 and 3 and that since the date of partition, they have

been in cultivating possession of the suit land but defendant No.1 has started denying family settlement. Therefore, the declaration was prayed that they were owner in possession of the suit property. That suit was decreed by the Trial Court vide judgment and decree dated 23.09.1985. The present plaintiffs claimed that the said judgment and decree dated 23.09.1985 is null and void and not binding upon the rights of the present plaintiffs; because their father, defendant No. 1 herein, had never entered in family settlement with defendants No. 2 and 3. The judgment and decree is outcome of fraud and misrepresentation. The plaintiffs were not the party to the suit in which the impugned decree was passed and had there been any family settlement then the plaintiffs herein would also have got some share out of ancestral property, however, they have not got any share. Still further, it was claimed that their father was of the age of 101 years and he was unable to even walk and move around.

4. On being put to notice, all the defendants filed a joint written statement, taking routine preliminary objections. On merit, it was claimed that the plaintiffs had been separated by their father, defendant No. 1-Kalu Ram during his life time by giving them 4 ½ acres of land each. However, formally, the family arrangement was arrived at in 1980 in which the suit land in the present case had come to the share of defendants No. 2 and 3. It was further averred that defendant No. 1 was exclusively owner of the suit land who had validly given the same to defendants No. 2 and 3 in the family settlement. It was further pleaded that at the time of suffering of the decree, defendant No. 1-Kalu Ram was mentally perfect and of sound health.

5. As per the pleadings of the parties, the following issues were framed by the Trial Court:-

1. *"Whether the judgment and decree dated 23.09.1985 in Civil Suit No. 454-1 of 1985 passed by Sh. S.M. Singh Mahil, Sub Judge Ist Class,*

Fazilka is null and void and not binding on the plaintiffs?

2. *Whether the property in dispute is ancestral coparcenary property of the parties?*
3. *Whether the plaintiffs are estopped by their act and conduct from filing the present suit?*
4. *Whether the plaintiffs are entitled to the declaration prayed for?*
5. *Whether the plaintiffs are entitled to the permanent injunction as prayed for?*
6. *Relief?"*

6. Parties led their respective evidence.

7. Having heard the learned counsel for the parties and appreciated the evidence on record, the Trial Court dismissed the suit filed by the plaintiffs. It was held by the Trial Court that the plaintiffs had claimed the impugned decree to be the outcome of fraud and misrepresentation. However, no evidence whatsoever was led by the plaintiffs to prove the ingredients of either fraud or of misrepresentation. Not only this, as per the requirement of Order 6 Rule 6 of Code of Civil Procedure; even the particulars of fraud were not pleaded by the plaintiffs. Hence, the plaintiffs have failed to prove any fraud or misrepresentation in sufferance in the decree by defendant No. 1 in favour of defendants No. 2 and 3. While dealing with the nature of the property, the Trial Court held that the plaintiffs had claimed the property to be an ancestral property. However, they have not led any evidence on record to prove that the property in question was ancestral property in the hands of their father. The Trial Court held that the argument of the plaintiffs that defendants No. 2 and 3 themselves had described the suit property to be a Joint Hindu Family property in their earlier Civil Suit No. 454-1 of 1985; cannot be a ground to presume the nature of the property to be ancestral in the present case. It was held by the Trial Court that the pleadings in the earlier suit cannot be a basis to decide the nature of the property in the present suit. The plaintiffs were required to prove the same independently by leading conclusive

evidence that the suit land came into the hands of their father from their forefathers. However, no such evidence has been led. On the other hand, the documents Ex. D-A to Ex.D-Q which has been led by the defendants shows that the suit land was exclusive ownership of their father-Kalu Ram. The Trial Court further held that it has come in the statement of PW-1 Sunder Ram that Kalu Ram had affected the family settlement and had given 5-6 Killas to each of his sons. Therefore, the Trial Court held that there was a family settlement between the parties and the decree was rightly passed as per the family settlement. The Trial Court further held that mere allegations of decree being collusive is of no significance because such a decree is a good decree unless set aside by the Court. Hence, the Trial Court dismissed the suit. Aggrieved against this judgment and decree, the plaintiffs preferred an appeal before the lower Appellate Court.

8. Accepting the arguments of the plaintiffs, the lower Appellate Court decreed the suit filed by the plaintiffs. While decreeing the suit, the lower Appellate Court held that in the plaint of their earlier suit, Ex. P6, the property was claimed to be the Joint Hindu Family Property by the present defendants No. 2 & 3 and the same was admitted by defendant No. 1 vide Ex. P7; while filing the written statement. Therefore, the lower Appellate Court held that since the defendants themselves had claimed the suit property to be a Joint Hindu Family property in the earlier suit, therefore, the same would be binding upon the defendants in the present suit and, therefore, the property is liable to be held as ancestral property. Since the plaintiffs and defendants No. 2 and 3 are real brothers. Therefore, all the brothers shall be the coparceners in the property, hence, they are partner in the Joint Hindu family property. On this premise, the lower Appellate Court reversed the findings of the Trial Court regarding the nature of the property being self-acquired property of defendant No. 1.

9. However, so far as the plea of the present plaintiff regarding obtaining the impugned decree by defendants through fraud and misrepresentation is concerned, the lower Appellate Court also upheld the findings recorded by the Trial Court and held that the plaintiffs had failed to prove any fraud in obtaining the decree by defendants No. 2 and 3 against defendant No. 1. Hence, the impugned decree was held to be validly passed in the earlier suit. The lower Appellate Court further held that the family settlement of January, 1980 has not been proved on record. The lower Appellate Court also held that there is no evidence that there is any other property of the parties other than the property involved in the present suit. Further, that there is no evidence that the plaintiffs have been given any share in the joint family property or have been compensated in any manner qua the joint family properties. Therefore, the present plaintiffs continued to hold the interest and right in the Joint Hindu Family property i.e. the suit land. Accordingly, the findings of the Trial Court were reversed and the suit filed by the plaintiffs was ordered to be decreed; declaring that the plaintiffs are the owner to the extent of their share and they are joint owner of the suit land. Aggrieved against the judgment and decree of reversal passed by the lower Appellate Court, the present appeal has been preferred by the defendants in the suit.

10. While arguing the appeal, learned counsel for the appellants has submitted that the lower Appellate Court has gone wrong in fact, as well as in law; both. Learned counsel for the appellants has submitted that the lower Appellate Court has wrongly relied upon the pleadings of the defendants in the earlier suit to arrive at a conclusion regarding the Joint Hindu family property. It is his submission that in view of the positive evidence lead on the file of the present case, the mere pleadings in the earlier plaint, cannot be made a ground to decide the nature of the property in the present case. The Trial Court has rightly held that the plaintiffs

Learned counsel has further submitted that the lower Appellate Court is factually incorrect in recording that there is no evidence that there is any other property of the parties except the suit property. Still further, learned counsel argued that the lower Appellate Court is also factually incorrect in holding that the plaintiffs have not been given any share in the Joint Hindu Family property. It is submitted by the learned counsel that the plaintiff-Jiwan Ram, while appearing as PW3 himself, has admitted that he got 5 acres of land in family partition. Still further, he has referred to the statement made by PW1-Sunder Ram to contend that this witness has also admitted that the father had affected a partition between his sons and in that family partition, the plaintiffs and defendants No. 2 and 3 have got 5-6 acres each.

11. On the other hand, learned counsel for the respondents while arguing the case as repeated the conclusion arrived at by the lower Appellate Court to say that in the earlier suit, defendants No. 2 and 3 themselves have described the property to be the Joint Hindu Family property. Therefore, the suit property is a Joint Hindu Family property in which the plaintiffs had equal share. Still further, to denude the decree of any legal value, learned counsel has submitted that the impugned decree was not got registered; by defendants No. 2 and 3. Therefore, this decree cannot be deemed to be a valid document of transfer of title in favour of the defendants No. 2 and 3. It is his submission that the decree being a compromise decree was required to be compulsorily registered; to effectively transfer the title in favour of defendants No. 2 and 3. To support his contention learned counsel for the respondents has relied upon the judgment of the Hon'ble Supreme Court rendered in the case *AIR 1996 (SC) 196* titled as *Bhoop Singh Versus Ram Singh Magar* and another judgment of Hon'ble Supreme Court rendered in *2008(13) SCC 102* titled as *K. Raghu Nandan and others Versus Ali Hussain Sabir and others*.

Therefore, it is contended by the learned counsel for the respondents that even if

document of transfer of title.

12. Having heard the learned counsel for the parties and perused the record with their able assistance, this Court is of the considered opinion that the argument raised by the learned counsel for the appellants deserve to succeed. Though, in the earlier suit filed by the defendants No. 2 and 3, they had pleaded that the family property was a Joint Hindu Family property. However, in the same suit, it is also pleaded by them that such Joint Hindu Family property stood partition by way of family settlement in January, 1980. Accordingly, the decree in the earlier suit was passed. The lower Appellate Court herein has committed a perversity by reading only one part of the pleading by ignoring the other part of the pleading of the same plaint. Moreover, the trial Court was legally correct in recording that any pleading in earlier plaint cannot be made a basis for deciding the status of suit property in the present case; in view of the positive evidence led by the defendants in the form of documents, Ex. DA to Ex. DQ, which show that the suit land was in exclusive ownership of the defendant No. 1, the father of the parties. Moreover, it is positive assertion of the plaintiffs that the suit property was an ancestral property and therefore, they had a right in the suit property. In view of the positive assertion, it was incumbent upon the plaintiffs to lead positive evidence to prove the nature of the property to be ancestral property to succeed in the present suit. However, no such evidence has been led by them. Hence, the conclusion arrived at by the lower Appellate Court is liable to be set aside, thereby, upholding the conclusion arrived at by the Trial Court.

13. Otherwise also, the evidence on the file of the present case shows that the plaintiffs themselves have admitted the family settlement between the members of the family. The plaintiff-Jiwan Ram, while appearing as PW3, has categorically admitted that he had got 5 acres of land out of the Joint Hindu Family property in

any land. This witness had further admitted that the father of the plaintiffs and defendants No. 2 and 3, i.e. defendant No. 1, was residing with defendant No. 3 for the past several years. This leads to an imperative conclusion that, in fact, there was a family settlement in which the father had given their respective shares to the sons. The impugned decree was got only as a declaration of an existing fact qua the title of defendants No. 2 and 3. This aspect is further supported by the testimony of PW1-Sunder Ram who has admitted that the property owned by the father of the parties was purchased by their father only and further admitted that he has partitioned the suit property between his sons some time earlier. Hence, when the plaintiffs and the witnesses examined by the plaintiffs themselves are admitting that the family settlement leading to giving the respective shares to plaintiffs and defendants No. 2 and 3 then no separate proof of family settlement is required to be led by the defendants. Admission by the plaintiffs is the best evidence of the factum of the partition. Therefore, it is established that at the time of passing of the impugned decree, the property was no more a joint property. The decree was rightly passed in the year 1985 recognising the title of defendants No. 2 and 3 as based on the earlier family settlement of the year 1980.

14. So far as the non-registration of the impugned decree is concerned, this Court does not find the argument raised by the learned counsel for the respondents/plaintiffs to be sustainable. The judgments of Hon'ble Supreme Court passed in ***Bhoop Singhs' case (supra)*** and ***K. Raghu Nandans' case (supra)*** are distinguishable on the facts of the present case. Rather in ***Bhoop Singhs' case (supra)***, the Hon'ble Supreme Court had approved the family settlement between the parties by laying down that if the family settlement is bonafide one and not intended to avoid stamp duty then the decreed based on family settlement would not require any registration. So far as, the judgment of the Hon'ble Supreme Court

in *K. Raghu Nandans' case (supra)* is concerned that judgment is a precedent on a different point and it says that if a compromise decree involves the property other than the properties involved in the suit in which decree is passed then the decree would require registration. However, that is not the situation in the present case. In the present case, it is not a compromise decree emerging from any compromise arrived at between the parties during the pendency of that suit. Rather the decree in the present case can, at the best, be described as a consent decree; admitting to an already existent family settlement. The compromise decree and consent decree are altogether two different things contemplated and governed by two different provisions of the Code of Civil Procedure. Hence, the decree impugned in the present case is based upon an already existing family settlement and therefore, only declared the pre-existing rights of the defendants No. 2 and 3. The case of the appellants is; rather; fully covered by the judgment of the Hon'ble Supreme Court rendered in *2006 (4) RCR (Civil) 303* titled as *Som Dev and others Versus Rati Ram and others* wherein the Hon'ble Supreme Court has held that if a decree is based on a family settlement then such a decree does not require any registration. Accordingly, the argument of the learned counsel for the respondents, qua requirement of the registration of the impugned decree, is also liable to be rejected; and is rejected, accordingly.

15. No other argument was raised by the learned counsel for the parties.

16. In view of the above finding the judgment and decree passed by the lower Appellate Court to be perverse; the same are reversed. The judgment and decree passed by the Trial Court are upheld. The present appeal is allowed.

14th March, 2018

shabha

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned - Yes
Whether reportable - Yes