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

**RSA No. 2309 of 1989(O&M)
Decided on: 22.01.2018**

Dhan Singh and others**.....Appellants**

versus

Maha Singh and others**.....Respondents****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. Keshav Gupta, Advocate
for the appellants.Mr. J.L.Malhotra, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

1. The present appeal has been filed by the plaintiffs in the original suit; challenging the concurrent judgments and decrees passed by the Courts below; whereby the suit was dismissed.
2. For convenience, the parties would be referred herein as the plaintiffs and defendants; as they were referred in the original suit.
3. The brief facts of this case are that the plaintiffs No. 1, 2 & 3 are the sons of defendant No. 6-Sadhu Ram. The plaintiffs filed a suit challenging the decree suffered by defendant No. 6-Sadhu Ram in favour of the defendants No. 1 to 5, the remaining son of Sadhu Ram and further seeking declaration that the plaintiffs and defendants No. 1 to 5 are joint owners in possession of suit land in equal shares.. It was pleaded that the plaintiffs along with the defendants No. 1 to 5 are the sons of defendant No. 6-Sadhu Ram. The parties are Hindus. They constituted a Joint Hindu Family. The suit land was a Joint Hindu Family Property because

the same was purchased from the joint family funds; but in the name of defendant No. 6; who is their father. Therefore, the property being joint; the plaintiffs and the defendants have got equal right of ownership and possession over the suit property. The plaintiffs further pleaded that on 28.08.1982, the family settlement took place between the plaintiffs, defendants No. 1 to 5 and defendant No. 6 and the suit land was divided into eight equal shares; giving equal shares to the plaintiffs and defendants No. 1 to 5. Therefore, defendant No. 6 was not left with any concern, right or title over the suit land. Therefore, he had no right to suffer the impugned decree on 20.01.1984. The decree is liable to be set aside. Consequently, the mutation entered on the basis of the decree; is also liable to be set aside.

4. On notice, defendants No. 1 to 5 contested the suit and filed a written statement claiming, inter alia, that neither the plaintiffs are owners of the property nor they are in possession of the same. The relationship between the parties was denied. Status of the family as a Joint Hindu Family, was also denied. It was further claimed that the suit land was purchased; although in the name of defendant No. 6, their father, however, it was purchased from the funds provided by defendants No. 1 to 5. It was further pleaded that the plaintiffs were separated 14-15 years ago and hence, they had no right or title or concern with the suit property. They did not constitute a Joint Hindu Family. Still further, the claim of the plaintiffs that there was some family settlement in the year 1982; was also denied by the defendants. Hence, it was claimed by the defendants No. 1 to 5 that the decree was rightly suffered by their father in their favour and mutation has rightly been entered.

5. Defendant No. 6, father of the parties, filed separate written statement and followed the line of defendants No. 1 to 5.

6. Parties led their evidence.

7. After hearing the parties, the trial Court recorded that at the time of purchase of the property, the plaintiffs constituted the Joint Hindu Family. Accordingly, the specific issue on the question of status of the family being Joint family was decided in favour of the plaintiffs. However, while further considering the matter, the trial Court held that although PW-1 Dhan Singh, PW-2 Manga and PW-3 Chunni Lal had deposed that property was purchased from joint funds of the joint family, however, the same cannot be accepted keeping in view the economic condition of the family at the time of purchase of the suit property. Since, the plaintiff-Dhan Singh has not specified the exact amounts of the shares contributed by the plaintiffs towards the total sale consideration, therefore, they had failed to prove that they ever contributed to the purchase of the property. Hence, it cannot be said that the purchase was from the joint family funds of the Joint Hindu Family. Still further, it was recorded by the trial Court that had the plaintiff contributed towards purchase of the property then they would have actively participated in the transaction of this purchase and accordingly, they were supposed to know the details of the purchase like the consideration, date of purchase, etc. candidly. However, they have not categorically deposed on these aspects. Still further, the trial Court relied upon the fact that two of the plaintiffs have not appeared in the witness box to support their case. Still further, the trial Court recorded that one of the PWs-Manga could not deny the suggestion that the suit land was purchased by Sadhu Ram from his own earnings. Hence, the trial Court held that the plaintiffs had not contributed towards the purchase of the land.

8. However, at the same time while dealing with the plea raised by the defendants No. 1 to 5 that it were their funds which were utilized to purchase the property, the trial Court also discarded their claim that they contributed anything towards the purchase of the property. The trial Court held that the defendants, as

time when the property was purchased. Hence, the trial Court held that even the defendants have not contributed towards the purchase of the suit property.

9. While considering the aspect further, the trial Court recorded that since neither the plaintiffs have been proved to have been contributed any funds towards the purchase nor have the defendants been able to show any contribution, therefore, the property has to be taken to be self-acquired property of Sadhu Ram, since there was no ancestral property received by the family by any inheritance. Hence, the trial Court recorded the finding that it was self-acquired property of Sadhu Ram from his own funds.

10. Based upon this proposition, the trial Court held that it was self-acquired property of Sadhu Ram and he could dispose of it in the manner he liked. The trial Court further believed and recorded that Sadhu Ram had separated the plaintiffs earlier but after purchase of suit property and, therefore, he suffered a decree in favour of the defendants No. 1 to 5 in 1984. Resultantly, the trial Court had recorded that since the decree is based on family settlement, therefore, the defendants and plaintiffs could not have assailed the same. Hence, their suit was dismissed. Aggrieved against the judgment and decree, the plaintiffs preferred an appeal before the lower Appellate Court.

11. However, the defendants did not file any appeal or any cross objections against the findings recorded by the trial Court that at the time of purchase of property, it was a Joint Hindu Family constituted by the plaintiffs, defendants and their father and the findings that defendants had not contributed towards the purchase of suit property. Therefore, findings had gone unchallenged.

12. After hearing the parties, the lower Appellate Court also dismissed the appeal by upholding the findings of the trial Court. The lower Appellate Court also recorded a finding that, the plaintiffs failed to prove that they contributed

also recorded that the plaintiff-Dhan Singh admitted in cross-examination that he had built his own house in which he was residing. Still further, the other two brothers (plaintiffs) have also constructed their own houses and residing separately. The lower Appellate Court also held that the plaintiffs have failed to prove that the land in dispute was ancestral in the hands of Sadhu Ram qua his sons since it was purchased by Sadhu Ram in 1963. Therefore, the plaintiffs could not have questioned the decree suffered by Sadhu Ram; since he was the sole and exclusive owner of the suit land.

13. Assailing the judgment and decree passed by the lower Appellate Court, learned counsel for the appellants has submitted that both the Courts below totally misread the pleadings presented by the plaintiffs. It is his submission that it is nobody's case that earlier decree was based on any family settlement. It is submitted by him that the positive case of the defendants was that they were the owner of the suit property because it was purchased, though in the name of their father, but by the funds provided by them. Therefore, their father suffered a decree in their favour, since, in effect, they were the owners, having paid the price for the same. Learned counsel further submits that even defendant No.6, the father of the parties, has filed a written statement saying that the property was purchased from the funds provided by defendants No. 1 to 5. Therefore, this pleading also shows that any family settlement was not the basis of the alleged decree. Rather, the decree was claimed on the basis of the title as the owner of the suit property. Learned counsel for the appellants has further submitted that both the Courts below have gone wrong in law in assuming, that it was the plaintiffs who were required to prove the character of the suit property to be the Joint Hindu property purchased from joint funds. It is submitted by him that since, the trial Court itself has recorded a finding that at the time of purchase, the family was a Joint Hindu

in the case of **(2013) 10 Supreme Court Cases 211** titled as **V.K. Surendra Versus V.K. Thimmalah and others**; the onus was upon the person claiming it to be a separate property; to prove that it was not purchased from the joint funds of the Joint Hindu Family. Still further learned counsel submits that even if it is assumed for the sake of arguments that the suit property was the self-acquired property by the father Sadhu Ram, then also, since the decree transferred the property in favour of the defendants No. 1 to 5, as an instrument of transfer of title, extinguishing the rights of Sadhu Ram as owner, therefore, the same required compulsory registration. To buttress his claim, learned counsel for the appellants relied upon the judgments of the Hon'ble Supreme Court rendered in **(2008) 13 Supreme Court Cases 102** titled as **K. Raghunandan and others Versus Ali Hussain Sabir and others** and another judgment of Hon'ble Supreme Court rendered in the case of **(1995) 5 Supreme Court Cases 709** titled as **Bhoop Singh Versus Ram Singh Major and others**. In the present case, since the decree has not been registered, therefore, the same has to be taken as totally nonest and ineffective; so far as the transfer of any title of property to the defendants No. 1 to 5 is concerned.

14. On the other hand, learned counsel for the respondents has submitted that the plaintiffs have miserably failed to prove on record that they ever contributed towards the purchase of the suit property. Still further, it has come on record that the plaintiffs were separated about 15 years back, therefore, they had absolutely no right or title or interest in the suit property. Learned counsel has further submitted that both the Courts below have rightly held that it was the duty of the plaintiffs to prove that they contributed towards the purchase of the suit property. Since they have failed to lead any positive evidence to prove specifically, as to what share they contributed towards this purchase, therefore, they have failed to

prove their case. Learned counsel has supported the concurrent judgments and decrees passed by the Courts below.

15. Having heard learned counsel for the parties, this Court is of the considered view that the arguments raised by the learned counsel for the appellants deserve acceptance. It is a matter of fact that the plaintiffs had claimed that at the time of purchase, the family was a Joint Hindu Family and the suit property was purchased from the funds contributed by the plaintiffs as well. On this point, the specific issue was framed by the trial Court. The specific finding is also recorded by the trial Court that at the time of purchase of the property, it was a Joint Hindu Family constituted by the plaintiffs and the defendants. This finding regarding the jointness of the family at the time of purchase has not been assailed by the defendants by any proceedings. Therefore, this finding has gone totally unchallenged. Hence, it has to be accepted as proved that at the time of purchase of the suit property, the plaintiffs were the part of the Joint Hindu Family. Still further, it has also come on record that the plaintiffs were earning hand and at the time of purchase of the suit property, they used to work with their father; who was a tenant on some other land as well as on the suit land. Therefore, this can be safely concluded that it was their labour also which was contributed towards the generation of the fund which were utilised for purchase of the suit property. The reliance of the learned counsel for the appellants on the judgment of the Hon'ble Supreme Court in case of ***V.K. Surendras' case (supra)*** is well founded. Relevant para No.18 of the judgment of the Hon'ble Supreme Court is reproduced herein below for reference:-

“18. We have noticed that though the appellant examined himself as DW.4 he failed to produce either documentary or oral evidence to show the lands at items Nos.2,3 and 5, situated at Village Kaikere are the self-acquired properties of Kunnaiah. In absence of any division in the family of Kunnaiah and his sons, we hold that the family of Kunnaiah continued

to be the joint family. If a co-parcener of a joint family claims that properties are his self-acquired properties, the burden is on him to prove that the same are the self-acquired properties. In that background the High Court has rightly held that Kunnaiah had no right to change the character of the joint family properties by transferring the same either under a Will or a gift to any party without the consent of the other co-parceners.”

16. In view of the above said proposition of the law laid down by the Hon'ble Supreme Court it was the sole duty of the respondents to lead positive evidence to show that property was purchased by the funds exclusively contributed by Sadhu Ram or by the defendants No. 1 to 5. However, both the Courts below have wrongly tried to shift this burden towards the plaintiffs. Hence, the findings of the Courts below in this regard has to be set aside. It has to be held that it was duty of Sadhu Ram or defendants No. 1 to 5 to prove that the property was purchased exclusively from the funds of Sadhu Ram and that the plaintiffs had not contributed anything towards the purchase consideration of the property; when the same was purchased. However, no evidence whatsoever has been led by the defendants to prove this fact. Probably, that is the reason why both the Courts below have tried to shift the burden of proof towards the plaintiffs. However, this approach of the Courts below is not supported by proposition laid down by the Hon'ble Supreme Court in ***V.K. Surendras' case (supra)***.

17. Another point which goes in favour of the plaintiffs is that, although all the defendants had taken a plea that the land was purchased from the funds contributed by defendants No. 1 to 5, though in the name of defendant No.6, their father, however, it has come on record and has been held by the trial Court also, that some of the defendants were minor at the time when the suit property was purchased. Therefore, by any means, they could not have contributed towards the consideration of the suit property at the time of its purchase. This demolishes the entire case of defendants altogether. This finding had not even been challenged by

the defendants before the lower Appellate Court.

18. Even on the plea of separation of the plaintiffs, by way of partition, it deserves to be noticed that the plaintiffs had taken a positive plea that before the impugned decree was suffered by their father in favour of the defendants No. 1 to 5; father had already partitioned the suit property between his sons, giving 1/8th share to each of the son. However, the defendants had denied any partition of the suit property. Hence, this plea of separation is also not supported, even from their own pleadings. Even if the pleadings taken by the defendants on the aspect that the parties separated some 14-15 years back, is taken on face value, then also it would date back only to 1970; whereas the suit property was purchased in 1963. It is not even the case of the defendants that the plaintiffs were given some other land or property in lieu of the suit land. Merely because the plaintiffs were residing in separate houses is not and cannot be a proof of the fact that they had been given their share in the joint family property. Hence, even this pleading of the defendants has not supported their case. In view of the above factual situation, pleadings and evidence led on file, there is no basis left to support the decree suffered by defendant No. 6 in favour of the defendants No. 1 to 5. Hence, the findings of issue No. 2, 4 and 5 as recorded by the Courts below; has to be reversed and it has to be in favour of the plaintiffs.

19. Another aspect involved in the case is regarding the registration of the decree. By claiming that the property was purchased in the name of defendant No. 6 but with the funds of defendants No. 1 to 5 and by denying the family settlement even as claimed by the plaintiffs, the defendants have excluded any possibility of decree being suffered on the basis of any family settlement or compromise. It becomes, a decree purely claimed and suffered, as a consent decree on the basis of title as claimed by the plaintiffs in that suit where the

the rights and titles by Sadhu Ram in favour of the defendants No. 1 to 5 and created, for the first time right and title in favour of defendants No. 1 to 5. Since, the property which was sought to be transferred in favour of the defendants No. 1 to 5 is more than the value of the Rs.100, therefore, the same required compulsory registration. Although, the defendants tried to claim a pre-existing right; having exclusively contributed towards the funds for purchase of the suit property and thus, claimed the property to be *binami* in favour of the father, however, they have failed to lead any evidence to show that they ever contributed any funds towards the purchase of the property. This is the finding of the trial Court as well, which has not been assailed by the respondents by filing any appeal. Hence, any pre-existing right of the defendants towards the sui property is altogether excluded. It was pure and simpliciter transfer of title by the father, defendant No. 6 in favour of the defendants No. 1 to 5; assuming it is his self-acquired property. Therefore, the reliance of the learned counsel for the appellants on the judgments of the Hon'ble Supreme Court rendered on ***K. Raghunandans' case (supra)*** and in ***Bhoop Singhs' case (supra)*** totally supports the case of the appellants. While dealing with the preposition, the Hon'ble Supreme Court in ***Bhoop Singhs' case (supra)*** as held in para 18:-

“18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised 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 immovable 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."*

20. The judgment categorically laid down that any decree which creates, for the first time, the right or title or interest in the immovable property, would require registration. In the present case, admittedly, the decree has not been registered, therefore, this cannot be deemed to have conferred any right or title or interest upon the defendants .

21. No other arguments was raised by the learned counsel for the parties.

22. In view of the above, the present appeal succeeds. The judgments and decrees passed by the Courts below are set aside. The suit filed by the plaintiffs is ordered to be decreed.

22nd January, 2018
shabha

[RAJBIR SEHRAWAT]
JUDGE

<i>Whether speaking/reasoned</i>	-	<i>Yes/No</i>
<i>Whether reportable</i>	-	<i>Yes/No</i>