

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1671 of 1991 (O&M)

Date of Decision: February 19th, 2018

Kartara (since deceased) through L.Rs

...Appellants

Versus

Kesar Singh (since deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.H.S.Brar, Advocate,
for the appellants.

Mr.G.S.Punia, Senior Advocate with
Ms.Armaan Saggar, Advocate,
for the respondents.

AMIT RAWAL, J.

Appellant-plaintiff is in Regular Second Appeal against the judgment and decree of the Lower Appellate Court, whereby the judgment and decree of the trial Court dated 27.7.1989 granting declaration that the judgment and decree dated 26.7.1984 passed in Civil Suit No.169 of 26.5.1984 captioned as “Kesar Singh Gurmukh Singh Versus Kartara” being null & void, ineffective holding the appellant-plaintiff to be owner to the extent of ½ share in the land measuring 40 bighas 10 biswas as per the description given in the plaint and against defendants No.1 and 2 along with the decree of joint possession to the extent of ½ share of the said land, has been set-aside.

Before adverting to the arguments of the respective counsel representing the parties to the lis, it would be apt to give brief preface of the controversy involved.

One Kartara son of Ditta (since deceased) being represented through legal heirs, instituted the aforementioned suit against Kesar Singh, Gurmukh Singh both sons of Gurdev Singh, Gurdev Singh son of Sahabu, Kaku son of Ditta, Balbir Singh and Som Singh both sons of Sarwan Singh claimed the aforementioned relief, on the premise that, he along with defendants No.3 and 4 were joint owners of land bearing Khewat No.75 measuring 100 bighas 15 biswas fully described in the heading of the plaint. Plaintiff and defendant No.4 being real brothers had 7661/19904 share, while Gurdev Singh defendant No.3 had 12243/19904 shares.

In the year 1978, plaintiff and defendants No.3 and 4 entered into a family settlement whereunder land mentioned in Para No.1 of the plaint was partitioned and land comprising of Khewat No.66/118, Khasra No.2min (6-19), 16min (7-0), 205/1 (1-3), Khata No.66/119, 121, Khasra Nos.16min/9-15, 15min/4-0, Khatoni No.118, Khasra Nos.121 min/5-11, 122/5-16 and Khasra No.55/0-6 measuring 40 bighas 10 biswas fell to his share and defendant No.4 in equal shares and the land comprising of Khata No.66, Khatoni No.117, Khasra No.370/0-7, Khatoni No.118, Khasra No.121 min/0-14, 205/2/7-13, Khatoni No.119, Khasra No.2 min/6-19, 15min/4-3, 199/5-1, 204/15-14, Khatoni No.120, Khasra No.120/10-13 measuring 61 bighas 5 biswas along with right in well located in Khasra No.s198/0-18, and 200/0-7 fell to the share of defendant No.3.

On 18.3.1978, a memorandum of partition was reduced into writing which was scribed by Som Nath, Deed Writer, Amloh at the instance of the plaintiff and defendants No.3 and 4. They admitted the same to be correct and thumb marked in the presence of the witnesses. Later on, plaintiff and defendant No.4 sold Khasra No.2 min, 6-19 to Balbir Singh

and Som Singh (defendants No.5 and 6). Resultantly, they had become co-sharers with the plaintiff and defendant No.3. The said family settlement was acted upon and the plaintiff and defendants No.3 and 4 came into exclusive possession of the land, described above.

Plaintiff used to live with his brother Kaku (defendant No.4), who was married and had children. Plaintiff was un-married and issueless. He got annoyed on some trivial issue with his brother Kaku and started taking his meals in the house of defendant No.3, i.e., Gurdev Singh, his uncle. Plaintiff gave his share of the land for cultivation to defendant No.3. Defendant No.3 wanted some documents to be reduced into writing regarding cultivation of the land by them in order to safeguard and strengthen their hands. In this process, he was taken to Amloh and told to thumb mark some documents regarding the cultivation of the land by defendants No.1 to 3, but it was revealed that defendants No.1 to 3 had got fraudulently thumb impressions of the plaintiff on a settlement purporting to transfer the land comprising of ½ share in 7661/19904 share in the land mentioned at letter 'C' of the heading of the plaint. Consequently, a decree dated 26.7.1984 in Civil Suit No.169 of 26.5.1984, as noticed above, was passed. The decree, according to the averments in the plaint, was result of fraud being played upon the plaintiff by defendants No.1 to 3 as he never remained the member of the family of defendants No.1 to 3. Defendant No.3 was his uncle and defendant No.2 was his nephew. The plaintiff had real brother and nephews also and, therefore, it was not expected that he would give entire property to defendants No.1 and 2. He had also a sister, who had a legitimate claim over his estate. He was hardly 55 years of age and having good physique, therefore, no occasion arose for transferring the property in

favour of defendants No.1 to 3.

The suit aforementioned was contested by defendants No.1 and 2 by filing joint written statement. All the allegations in the plaint were denied. It was stated that plaintiff and defendants No.3 and 4 were joint owners of land comprised of Khewat No.75 measuring 100 bighas 15 biswas as fully described in the heading of the plaint and defendant No.4 being real brother had 7661/19904 share while Gurdev Singh defendant No.3 had 12243/19904 share in the said land. They had also given the pedigree table showing the relationship. The plaintiff and defendants No.3 and 4 had made arrangement only to cultivate the land and no partition was effected between them, thus, their status remained as that of the co-sharer. Whole of the specific khasra numbers amount to sub share adjustable at the time of partition. The factum of plaintiff having lived with his brother and being unmarried, was admitted. However, it was denied that plaintiff never lived with Kaku or their father Gurdev Singh. He was never asked by defendants No.1 and 2 to thumb mark some documents. The plaintiff voluntarily suffered the decree in favour of defendants No.1 and 2. It was stated that on many occasions, he also made admissions in various documents, thus, the decree was not passed a result of fraud, coercion or misrepresentation. Plaintiff was bachelor. There was some dispute raised by Kaku. As such a necessity of family arrangement by the family of the plaintiff arose, which was consequently effected by the plaintiff and the land standing in his name was allotted to the defendants by handing over the possession.

It was also stated that Kaku and Kartara (plaintiff) effected exchange of land by writing the exchange deed dated 20.11.1980 with Som

Singh and Balbir Singh. Kartara suffered a decree n 26.5.1984 on the basis of family arrangement and Kesar and Gurmukh Singh defendants got the said exchange cancelled and for the cancellation of the same, an agreement of exchange, was exchanged by the plaintiff, Kaku, Som Singh, Balbir Singh, Kesar Singh and Gurmukh Singh on 19.5.1985 and the said document was thumb marked by the said persons. Som Singh signed the same after admitting the same to be correct. The defendants had also paid a sum of ₹7,500/- as damages and compensation to Som Singh and Balbir Singh for getting the exchange cancelled. The allegations of 1978 partition being not incorporated in the regular record, were also denied. However, it was stated that if there was any such partition in 1978, the decree could not be said to be nullity as alleged by the plaintiff. Regarding the exchange dated 21.11.1980, it was stated that Som Singh and Faqir Singh filed a suit in the Court against Gurdev Singh, father of defendant No.4 Kaku and Kartara plaintiff, which was compromised and exchange was cancelled vide cancellation deed dated 19.5.1985. The family settlement was given effect by way of decree in between the plaintiff and defendants No.1 and 2.

Defendant No.4 filed a separate written statement admitting the claim of the plaintiff. Replication was filed denying all the allegations in the written statement by reiterating the averments made in the plaint. Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the land in suit were allotted to defendant No.1 and 2 by the plaintiff by way of oral family arrangement dated 14.4.84?*
- 2. Whether the decree dated 26.7.84 is illegal and void and is the result of fraud and misrepresentation as alleged?*
- 3. Whether the plaintiff is estopped to file the suit by way of act and conduct?*

4. *Whether the suit is properly valued for the purpose of Court fee?*
5. *Whether the plaintiff has got cause of action?*
6. *Relief.*

The trial Court on the preponderance of evidence, decreed the suit. However, in appeal, the Lower Appellate Court dismissed the suit. It is in this backdrop of the matter, the present Regular Second Appeal has been filed.

Mr.H.S.Brar, learned counsel representing the appellants submitted that the plaintiff had proved the ingredients of fraud as envisaged under Order 6 Rule 4 of the CPC. There was no occasion for the plaintiff to suffer the decree dated 26.7.1984 in favour of defendants No.1 and 2 owing to the fact that he had a living brother and sister. The decree was also without any consideration. It also required registration as defendants No.1 and 2 did not have any pre-existing right or antecedent title, much less semblance. The alleged family settlement was unnatural and nothing has been left for the appellants. The Lower Appellate Court did not appreciate that plaintiff Kartara had throughout been living with his real brother Kaku, who has got sons and used to serve the appellant-plaintiff. It was only for a brief period when the appellant got annoyed with his brother, decided to live separately and came into contact with the respondents, who offered to cultivate the land of the appellant against rent and for the purpose writing was required to be effected, brought the appellant to Amloh Courts, which resulted into passing of the fraudulent decree.

On demise of Panjaba, the property devolved upon Dit Singh and Sahabu Singh in equal shares. Kesar Singh and Gurmukh Singh were the sons of Gurdev Singh son of Sahabu Singh son of Punjaba. Dit Singh

left behind Kartara and Kaku, who inherited the property, whereas from the line of Sahabu Gurdev Singh, who had two sons, Kesar Singh and Gurmukh Singh, therefore, it was a sham transaction, i.e., there was no transaction in the eyes of law and the suit was rightly decreed.

Per contra, Mr.G.S.Punia, learned Senior Counsel assisted by Ms.Armaan Saggar, learned counsel representing the respondent-defendants submitted that the trial Court abdicated in not assigning any reasons to the documents Ex.D1, Ex.D2, Ex.D6 and Ex.D7. The ingredients of Order 6 Rule 4 CPC have not been proved. It is settled law that the fraud is not to be pleaded but has to be proved. No evidence has been led to prove the same. Ex.D1 was dated 19.5.1985, whereas the suit for setting-aside the decree dated 26.7.1984 was filed on 26.2.1986, i.e., after one year and seven months of the aforementioned decree and much water had flown during the said period inasmuch as that Ex.D1, a settlement dated 19.5.1985 was entered into, which was signed by Kaku, Kesar Singh, Som Singh and Gurdev Singh, wherein there was a reference of the decree of passing of the consideration of ₹7,500/-.

Settlement/Ikrarnama Ex.D2 having reference to decree (under challenge) was also entered on 20.5.1985, which was signed by Kartara. Som Singh and Balbir Singh sons of Sarwan Singh instituted the suit against Gurdev Singh, Kartar Singh, Kaku Singh, Kesar Singh and Gurmukh Singh claimed declaration that the plaintiffs be owners in possession of the suit land and during the pendency of that suit which was filed on 9.4.1985, Ex.D1 was executed and vide order Ex.D7 dated 20.7.1985, the Civil Suit No.163 of 9.4.1985 was withdrawn, therefore, there was an abdication and the Lower Appellate Court, being the last Court of fact and law, after

appreciating the evidence rightly reversed the findings of the trial Court by dismissing the suit.

As regards the registration of the decree, he relied upon the ratio decidendi culled out by this Court in **Khushi Ram and others Versus Nawal Singh and others**, 2010 (5) R.C.R. (Civil) 705 to contend that the settlement, which is recognised to be a Court decree, does not require any registration, particularly when the relationship entitling the party to assert right of succession and on similar lines, **Bachan Singh Versus Kartar Singh and others**, 2002 (3) R.C.R. (Civil) 495 by stating that the consent decree passed by the Court declaring a party owner of land does not require registration. The aforementioned findings were arrived at as per the provisions of Order 23. He has also relied upon **Kale and others Versus Deputy Director of Consolidation and others**, 1976 AIR (SC) 807 to contend that the registration would be necessary only if the terms of family arrangement are reduced into writing, particularly when the parties to the family arrangement have antecedent title, claim or interest.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr.Brar. The reason is not one but many. The aforementioned documents Ex.D1 and Ex.D2 have not been denied or controverted by the plaintiff in rebuttal evidence. Both the documents came into existence before filing of the suit challenging the decree. It is clear case of an act of aggrandizement as after having taken the benefit of the property, much less payment of ₹7,500/-, plaintiff volte-faced.

The Order 6 Rule 4 of CPC envisage the following compliance:-

“4. Particulars to be given where necessary.- In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with date and items if necessary) shall be stated in the pleading.”

No evidence has come forward or referred to enable me to form an opinion that ingredients of fraud, misrepresentation and coercion have been proved. In fact, the compliance is lacking. The trial Court was required to go into each and every document. Though while dealing with the documentary evidence, had referred to few documents, but while rendering findings did not even advert to the aforementioned documents, whereas on the contrary, the Lower Appellate Court, being the last Court of fact and law, enjoined upon an obligation as per Section 96 of CPC, adverted to the same and, in my view, rightly dismissed the suit.

In fact, the decree suffered by Kartara, i.e., the plaintiff (since deceased) was not fraudulent, as a conceded written statement and the statement on oath bore his thumb impressions. If at all, there was some pressure upon Kartara, he would have definitely told the Judicial Officer regarding the alleged fraud.

There is another startling factor. Kartara himself appeared before the revenue authorities after passing of the judgment and decree dated 26.7.1984 (Ex.PX) and got the mutation sanctioned in favour of the respondent-defendants. It could be understood that some fraud had been played at that time, but the mutation was affected after three months of the passing of the decree.

A specific averment had been made in the written statement

that Kartara had a dispute with his brother and he started living with Gurdev Singh, where his sons (defendants No.1 and 2), i.e., Kesar Singh and Gurmukh Singh were living. Documents Ex.D1 and Ex.D2 have been proved through the testimony of Dharam Singh DW-2. Jang Singh DW-3 also proved the cancellation deed. All these factors, in my view, do not come to the rescue of the appellant-plaintiff for forming a different opinion than the one arrived at by the Lower Appellate Court. I concur with the judgment and decree of the Lower Appellate Court.

As regards the registration of the decree, I am of the view that since the parties were the family members and related to each other and the decree was passed on the basis of consent, it did not require any registration. This is what the import of the judgments referred by Mr.Punia is.

For the reasons stated above, no ground for interference is made out. I concur with the judgment and decree of the Lower Appellate Court. No substantial question of law arises for determination by this Court. Resultantly, the appeal is dismissed.

February 19th, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No