

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

Date of decision:4.12.2018

1.

RSA No.980 of 2001(O&M)

Baldev Singh and others

.....Appellants

VERSUS

Jagtar Singh and others

.....Respondents

Present: Mr. Rakesh Chopra, Advocate for the appellant.

Ms. Rakhi Sharma, Advocate for respondent No.1 and 2.

2.

RSA No.981 of 2001(O&M)

Baldev Singh and others

.....Appellants

VERSUS

Jagtar Singh and others

.....Respondents

Present: Mr. Rakesh Chopra, Advocate for the appellant.

Ms. Rakhi Sharma, Advocate for respondent No.1 and 2.

3.

RSA No.2266 of 2001(O&M)

Jagtar Singh and another

.....Appellants

VERSUS

Baldev Singh and others

.....Respondents

Present: Ms. Rakhi Sharma, Advocate for the appellants.

Mr. Rakesh Chopra, Advocate for respondents.

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

REKHA MITTAL, J.

CM No.8131-C of 2018

Prayer in this application is for bringing on record legal representatives (in short 'LRs') of Kulsher Singh (since deceased) – respondent No.3.

Heard.

In view of averments made in the application supported by an affidavit of Harjit Singh, appellant No.2, the application is allowed and persons mentioned in para 3 of the application are allowed to be brought on record as LR's of deceased Kulsher Singh subject to just exceptions and for the purpose of present lis.

Amended memo of parties is taken on record.

Disposed of accordingly.

RSA Nos.980, 981 and 2266 of 2001

This order will dispose of RSA Nos.980, 981 and 2266 of 2001 as these have emerged out of the same judgments and decrees passed by the Courts and involve identical questions of law and fact for adjudication. For facility of reference, facts are taken from RSA No.980 of 2001.

The present litigation pertains to land measuring 135 kanal 4 marlas, detailed in head-note of the plaint and situated in village Hamad which was previously owned by Sh. Jagir Singh (since deceased) who died on 16.01.1992. Sh. Jagir Singh had five sons namely Jagtar Singh (plaintiff No.1), Baldev Singh, Harjit Singh, Kulsher Singh and Ajit Singh – defendants No.1 to 4. Iqbal Kaur is wife/widow of Jagir Singh son of Boota Singh.

Jagtar Singh and his wife Salwinder Kaur (plaintiff No.2) filed civil suit No.259/1 of 22.07.1992 seeking declaration that they are owners of movable and immovable properties including land measuring 135 kanal 4 marlas left behind by Sh. Jagir Singh on the basis of Will dated 23.11.1991. They also sought declaration that the judgment and decree dated 01.02.1992 passed in civil suit No.974-1 titled Baldev Singh Vs. Jagir Singh in respect of land measuring 40 kanal 16 marlas and judgment and decree dated 13.11.1991 passed in civil suit No.744-1 titled Harjit Singh Vs. Jagir Singh in respect of land measuring 35 kanal 11 marlas out of suit land are illegal, null and void and the same are not binding upon the plaintiffs. The plaintiffs also prayed for decree of possession of suit land and permanent injunction restraining the defendants from alienating the suit land.

The plea of the plaintiffs is that Jagir Singh was having landed property in village Malkatora, Ghagga Kotha and Hamad. He sold land in village Malkatora and Ghagga Kotha and with the said proceeds purchased land in village Hamad and Tarmala. Jagir Singh was living with the plaintiffs and they were serving him. Out of love and affection and services rendered by the plaintiffs, Jagir Singh executed Will dated 23.11.1991 in their favour in respect of land of village Hamad. Jagir Singh died on 16.01.1992 and after his death, defendants forcibly occupied the suit land and did not allow them to cultivate the same.

The plaintiffs have challenged decrees dated 01.02.1992 and 13.11.1991 on the following grounds:-

- 1) That Jagir Singh never appeared in the court of Sh. Dhian Singh nor admitted claim of defendant No.2 nor

he filed any written statement nor he made any statement. It is alleged that the defendants No.1 and 2 had managed to produce some other person in the court by impersonation and got the decree in their favour by playing fraud with the plaintiffs.

- 2) That defendants No.1 and 2 had obtained a considerable share in the land as mentioned in the Will and therefore, there was no question for the deceased to give more land to the defendants.
- 3) That the suit land was ancestral in the hands of Jagir Singh and all the sons of Jagir Singh had got equal right in the land. When the other sons of Jagir Singh got their respective share in the land, therefore, the plaintiffs are also entitled to get their share.
- 4) That the defendants had not produced any written family settlement arrived at between the parties. When all the parties were not joined at the time of alleged family settlement therefore, it would not be said to be effective and complete.
- 5) That the suit was filed by Baldev Singh on 20.12.91 and decreed on 1.2.92. If Jagir Singh had made any statement or he would have no intention to give any land to the plaintiffs, then he would not have executed any will in favour of the plaintiffs.

It is further pleaded that the plaintiffs requested the defendants to admit their claim and deliver possession of the

suit land and treat the decrees dated 1.2.92 and 13.11.91 as illegal, null and void, but they refused to do so. Hence the present suit.

The defendants filed written statement taking preliminary objections inter alia that the suit is not maintainable in the present form; the plaintiffs have no locus standi to file the suit and the suit is false and baseless. They have controverted the allegations that Jagir Singh executed Will dated 23.11.1991 in favour of the plaintiffs. It is averred that the property in question was self acquired property of Jagir Singh. Plaintiff No.1 had received his share in cash out of landed property of Jagir Singh and relinquished his right in favour of defendants No.1 to 4 and executed affidavit dated 12.05.1986, duly attested by Executive Magistrate. It is further averred that Jagir Singh was living with Ajit Singh – defendant No.4 and he served the deceased. Jagir Singh died at village Hamad while living with Ajit Singh and he (Ajit Singh) performed all the religious rites on death of Jagir Singh. Jagir Singh had transferred the share of defendants No.1 and 2 by way of impugned decrees. Thereafter, he executed Will dated 15.01.1992 bequeathing his remaining estate to Ajit Singh and Iqbal Kaur, defendants. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The controversy between the parties led to framing of following issues:-

1. Whether Jagir Singh had executed Will dated 23.11.91 in favour of plaintiff, if so its effect? OPP
2. Whether the judgment and decree dated 1.2.1992 passed by Dhian Singh Sub Judge Ist Class, Ferozepur

in respect of land measuring 40 kls 16 mls and the decree dt. 13.11.91 passed by court of Sh. Dhian Singh Sub Judge Ist Class, in respect of land measuring 35 kls 11 mls by filing a suit no.744-1 titled as Harjit Singh Vs. Jagir Singh are wrong, illegal, null and void? OPP

3. Whether the plaintiff has received his share in the landed property of Jagir Singh and has also relinquished his entire rights in favour of defendants No.1 to 4 vide affidavit dt. 12.5.86? OPD
4. Whether Jagir Singh deceased had executed a will dt. 15.1.92 in favour of Ajit Singh and Iqbal Kaur, If so its effect? OPD.
5. Relief.

Salwinder Kaur – plaintiff No.2 appeared in the witness box and the plaintiffs examined Satpal Singh PW-2, Shingara Singh PW-3, Parveen Kumar HRC D.C. Office PW-4, Jaspal Singh Registration Clerk PW-5, John Alfred PW-6/PW-8, R.S. Bal PW-7, Iqbal Singh PW-9 and tendered into evidence certified copy of judgment and decree dated 01.02.1992 Ex.P2 and Ex.P3, respectively, certified copy of plaint dated 20.12.1991 Ex.P4, copy of judgment and decree dated 13.11.1991 Ex.P5 and Ex.P6, respectively, certified copy of plaint dated 13.09.1991 Ex.P7 and copy of jamabandi for the year 1988-89 Ex.P8.

To rebut evidence of the plaintiffs, defendants examined Kulsher Singh DW-1, Baldev Singh DW-2, Iqbal Kaur DW-3, Tribhuwan Kumar Parkash DW-4, Anil Kumar DW-5, S.K. Wadhwa DW-6, Amarjit Singh DW-7, Rajinder Singh DW-8, Harjit Singh DW-9, Surjit Kaur,

Advocate DW-10, B.K. Sharma, Advocate DW-11, Kewal Singh Dhillon DW-12, Anil Kumar Gupta DW-13, Sushil Raheja DW-14.

Having heard counsel for the parties in the light of materials on record, the trial Court answered issue No.1 against the plaintiffs and rejected Will dated 23.11.1991 propounded by them. Similarly, Will dated 15.01.1992 propounded by the defendants was rejected and accordingly issue No.4 was answered against the defendants. However, issue No.2 pertaining to judgments and decrees passed in favour of defendant No.1 and 2 was answered in favour of the plaintiffs whereas issue No.3 was answered against the defendants and their plea with regard to plaintiff No.1 having relinquished his rights in favour of defendants No.1 to 4 vide affidavit dated 12.05.1986 was dismissed. Ultimately the suit filed by the plaintiff was partly decreed to the following effect:-

“In view of the findings returned on the foregoing issues the suit of the plaintiffs for declaration to the effect that they are owners in possession of the suit land as described in the headnote of the plaint on the basis of Will dated 23.11.1991 fails and the same is dismissed. However, the suit of the plaintiffs qua judgment and decree dated 01.02.1992 passed in civil suit No.974-1 of 1991 Baldev Singh Vs. Jagir Singh and judgment and decree dated 13.11.1991 passed in civil suit No.744-1 titled as Harjit Singh Vs. Jagir Singh is decreed and the same are declared illegal, null and void and not binding on the rights of the plaintiffs. As both the parties could not sustain and prove their wills, therefore, plaintiff Jagtar Singh is declared owner to the extent of 1/6 share out of the land

measuring 135 kanal 4 marlas as fully described in the head note of the plaint, by way of natural succession. The defendants are permanently restrained from alienating the land to the extent of 1/6 share belonging to plaintiff No.1 Jagtar Singh out of the suit land measuring 135 kanal 4 marlas in any manner to any person. In the peculiar circumstances of the case, both the parties are left to bear their own costs. Decree sheet be drawn and file be consigned to the record room.”

The judgment and decree passed by the trial Court became subject matter of challenge in civil appeal No.226 of 15.03.1999 filed by Jagtar Singh and Salwinder Kaur wife of Jagtar Singh and civil appeal No.224 of 10.03.1999 filed by Baldev Singh and others, defendants in the case. Both the appeals were decided by a common judgment dated 12.12.2000 passed by the Additional District Judge, Ferozepur whereby findings of the trial Court on issue No.1, 2 and 4 were affirmed but findings on issue No.3 were modified to the effect that affidavit dated 12.05.1986 was executed by Jagtar Singh but the same would not operate to relinquish rights by Jagtar Singh in suit land as the same is not a registered document.

Feeling aggrieved against the judgments and decrees passed by the Courts, RSA No.980 and 981 of 2001 have been filed by the defendants whereas RSA No.2266 of 2001 has been filed by Jagtar Singh – plaintiff No.1.

The parties shall be referred to as plaintiff (s) and defendants as per their status in the original suit, in order to avoid inconvenience and confusion.

Counsel for the defendants has assailed findings of the Courts setting aside the consent decree dated 13.11.1991 passed in favour of Harjit Singh and dated 01.02.1992 in favour of Baldev Singh – defendant No.1 in respect of land measuring 40 kanal 16 marlas in favour of Baldev Singh and land measuring 35 kanal 11 marlas in favour of Harjit Singh, by making manifold submissions. It is argued that in sub paras (i) to (vi) of para 7 of the plaint, the plaintiffs have challenged the aforesaid decrees primarily on two grounds namely that land in question was ancestral property in the hands of Jagir Singh and all the sons of Jagir Singh had equal right in the same. The second ground raised in sub para (i) of para 7 is that defendants No.1 and 2 might have produced some other person in the Court in place of Sh. Jagir Singh and by impersonation, they got their suits decreed, thus, defendants No.1 and 2 played fraud with the plaintiffs, Jagir Singh and also with the Court. It is vehemently argued that the plaintiffs have failed to adduce satisfactory much less cogent and convincing evidence to establish their plea that either the land in the hands of Sh. Jagir Singh was ancestral property or the decrees aforesaid are the result of impersonation, therefore, vitiated by fraud. It is argued that the Courts have wrongly held that in the previous suits filed by Baldev Singh and Harjit Singh, they had raised a plea that land subject matter of the suit was ancestral property in the hands of Jagir Singh. According to counsel, the Appellate Court has even gone astray and misdirected itself by holding that the said land was Joint Hindu Family property, therefore, could not be

transferred by consent decree(s) which is without legal necessity or for benefit of estate. It is argued that since the plaintiffs never raised any such plea that the said land was Joint Hindu Family Property or Sh. Jagir Singh ever constituted Joint Hindu Family of which he was the 'karta', there was no occasion for the Appellate Court to introduce a new case for the plaintiffs that land of which decrees were passed in favour of Baldev Singh and Harjit Singh was Joint Hindu Family property. It is further argued that both the Courts grossly erred by accepting plea of the plaintiffs that land, subject matter of impugned decrees was coparcenary property which is otherwise beyond pleadings and baseless. In addition, it is argued that even admission by a contesting party with regard to nature of property in question would not confer status of coparcenary property in absence of evidence on record that Jagir Singh inherited any land from his father Boota Singh on the basis of natural succession or such land was sold by Jagir Singh and sale proceeds thereof were invested for purchase of land measuring 135 kanals 4 marlas in village Hamad.

Counsel representing the plaintiffs, on the contrary has supported concurrent findings recorded by the Courts on the basis whereof decrees dated 13.11.1991 and 01.02.1992 in favour of Harjit Singh and Baldev Singh, have been set aside by holding the suit land to be Joint Hindu Family and coparcenary property in the hands of Sh. Jagir Singh, therefore, Jagir Singh being incompetent to transfer the land by way of aforesaid decrees without any legal necessity and for benefit of estate. It is further argued that in the suit(s) instituted by Baldev Singh and Harjit Singh in which decrees impugned were passed, a specific plea has been raised by them that Jagir Singh wanted to sell the land without legal

necessity and he was stopped from doing the same which tantamount to an admission by the defendants that land was Joint Hindu Family and coparcenary property in the hands of Sh. Jagir Singh. Counsel would urge that in case judgments and decrees passed in favour of Baldev Singh and Harjit Singh in the year 1991/1992 are allowed to sustain by setting aside consistent findings recorded by the Courts, it would be of serious consequence for the plaintiffs who have been deprived of fruits of their share in suit land for the past about three decades. It is further argued that had it been true that Sh. Jagir Singh suffered statement in the Court admitting claim of Baldev Singh and Harjit Singh resulting in collusive/consent decrees, there was no occasion for Sh. Jagir Singh to execute Will dated 15.01.1992 in favour of Ajit Singh and Iqbal Kaur, propounded by the defendants.

I have heard counsel for the parties, perused the paper-book and records.

The Courts have consistently rejected plea of the plaintiffs that the aforesaid judgments and decrees passed in 1991 and 1992 are the result of impersonation. Counsel for the plaintiffs has not advanced any arguments much less meaningful to assail findings of the Courts rejecting their plea that decrees are the result of impersonation, thus, vitiated by fraud. That being so, findings of the Courts negating plea of the plaintiffs that decrees are the result of impersonation/fraud are liable to be affirmed and ordered accordingly.

Before advertng to the submissions made by counsel for the parties, it is pertinent to note that the trial Court set aside the decrees on two grounds i.e. that land was ancestral in the hands of Sh. Jagir Singh. A

relevant extract from para 14 of the judgment of trial Court on this aspect reads as follows:-

"14.....Regarding nature of the property, it is mentioned in the judgment Ex.P2 in case titled as Baldev Singh Vs. Jagir Singh that it was ancestral property. But now in the instant case the stand of the defendants taken by them in the written statement is that it was the self acquired property of Jagir Singh along with the defendants and plaintiff no.1. Baldev Singh DW2 in his cross examination admitted that the total land in village Hamad was the self acquired property of Jagir Singh. The land which Baldev Singh and Harjit Singh claimed through collusive decrees belonged to village Hamad and definitely a part and parcel of the suit land. The stand of the plaintiffs was that it was ancestral property and therefore, Jagir Singh was not competent to suffer collusive decrees in favour of defendants Baldev Singh and Harjit Singh. In my opinion though in the previous proceedings, the nature of the land has been mentioned as ancestral, but in the written statement they have changed their stand that the suit land was the self acquired property of Jagir Singh and even one of the defendants has described the land as self acquired property. Harjit Singh DW9 also deposed that the land in dispute was not ancestral, rather self acquired. It means that the defendants now are changing their stand according to their own convenience."

Other ground that weighed with the trial Court to set aside the decrees is that decrees are not registered as required under law by relying upon judgment of Hon'ble the Supreme Court **Bhoop Singh Vs. Ram Singh, AIR 1996 SC 196.**

The first Appellate Court in para 33 of the judgment, on the basis of facts elicited in cross examination of DW-9 and property being described as ancestral property in Ex.P2 (judgment dated 01.02.1992 passed in favour of Baldev Singh) has held that admission binds a party and as Baldev Singh in the earlier suit admitted suit property to be ancestral and as such in view of that, statement of PW-1 becomes believable that suit property in fact was ancestral in hands of Jagir Singh. Further in para 35, the Court has held that plea of family settlement taken in the proceedings of the impugned decrees is not genuine particularly when Joint Hindu Family or coparcenary property cannot be given by karta to one or two members of the Joint Hindu Family to the exclusion of other Joint Hindu Family members or coparcener members. Such property can be alienated only for legal necessity or for the welfare of the family or for paying debts or such like legal necessity but in the proceedings of the impugned decrees no such legal necessity is averred. The Court has also affirmed findings of the trial Court that decrees cannot hold the field for want of registration as right in immovable property worth more than Rs.100/- was created for the first time, therefore, registration is necessary as per judgment **Balbir Singh and others Vs. Surinder Kaur and others, 1997 (1) PLJ 104** based on ratio in **Bhoop Singh's case** (supra). The Appellate Court further held in para 37 that the trial Court has not properly worked out shares. On death of Jagir Singh, in view of notional partition;

Jagtar Singh was to get $1/6^{\text{th}}$ share in the suit property as coparcener and $1/6^{\text{th}}$ share of Jagir Singh was to be inherited by all his class I heirs including his widow in accordance with provisions contained in proviso to Section 6 of the Hindu Succession Act, 1956 and accordingly share of Jagtar Singh comes to $1/6 + 1/36 = 7/36$, same share is of respondents No.1 to 4 and respondent No.5 would get $1/36^{\text{th}}$ share.

The two issues that fall for consideration and adjudication are, reads thus:-

- (1) Whether plea of the plaintiffs that suit land was ancestral in the hands of Jagir Singh can be construed to mean that the same was coparcenary property in the hands of Jagir Singh. If so, whether findings of the Courts accepting plea of the plaintiffs that suit land was ancestral coparcenary property in the hands of Sh. Jagir Singh are well founded or suffer from perversity?
- (2) If issue No.1 is answered against the plaintiffs whether the decrees passed in favour of Baldev Singh and Harjit Singh can be set aside on the ground of non-registration thereof?

Before advertng to the aforesaid issue, it is necessary to deal with finding of Appellate Court that suit land was Joint Hindu Family property. No such plea has been raised by the plaintiffs that suit land was Joint Hindu Family property. It is not the case that Jagir Singh constituted Joint Hindu Family with his sons and other family members. On the contrary, plea of the plaintiffs is that Jagir Singh was residing with them. The defendants have controverted this plea by contending that Jagir Singh was residing with Ajit Singh – defendant No.4. In this view of the matter,

findings recorded by the Appellate Court in this regard or that there cannot be any family settlement without associating other members of the family are the result of failure to appreciate that no such plea of Joint Hindu Family has been raised by the plaintiffs. Accordingly, findings of the Appellate Court in this respect are beyond pleadings, thus, suffer from perversity and liable to be set aside.

Indisputably, the plaintiffs have raised a specific plea that suit land was ancestral property in the hands of Jagir Singh. They have not specifically pleaded that it was ancestral coparcenary property of Jagir Singh and his sons. Ordinarily, a view is taken that mofussil pleadings are to be construed liberally. Even if it is treated as such that by pleading 'ancestral property' the plaintiffs wanted to convey that it was ancestral coparcenary property in the hands of Sh. Jagir Singh, plaintiffs have miserably failed to adduce sufficient much less cogent evidence to establish this plea. As a matter of fact, there is no documentary evidence on record that Jagir Singh ever inherited any property from his forefathers on the basis of natural succession or otherwise either before commencement of Hindu Succession Act, 1956 or thereafter. As per the settled position in law, every property is presumed to be self acquired property of its holder unless proved otherwise. Equally settled is that an admission by a contesting party with regard to nature of suit property being coparcenary is not sufficient to record a finding that property is coparcenary. Counsel for the plaintiffs has failed to point out any documentary evidence on record to prove case of the plaintiffs that suit land was ancestral coparcenary property in the hands of Sh. Jagir Singh in which his sons got right by way of birth.

Perusal of the judgments impugned would reveal that the Courts have relied upon document Ex.P2, a copy of judgment dated 01.02.1992 passed in favour of Baldev Singh to hold that Baldev Singh in that suit had alleged land measuring 40 kanal 16 marlas, a part of suit land, to be their ancestral property. The Courts did not bother to examine contents of the plaint of suit filed by Baldev Singh, certified copy whereof is Ex.P4. Perusal of Ex.P4 makes it evident that no such plea had been raised by Baldev Singh. I would hasten to add that counsel for the appellants has sought to draw some mileage from the allegations in the plaint of suits filed by Baldev Singh and Harjit Singh to the effect that Jagir Singh wanted to sell the land without legal necessity, therefore, it can be construed that they had admitted the suit land to be ancestral coparcenary property. Firstly, any admission qua nature of property is of no consequence in view of discussion made hereinbefore. Even otherwise, it would be difficult nay impossible to construe from the aforesaid plea that there is admission by the defendants with regard to land being ancestral coparcenary property.

Counsel for the plaintiffs has failed to advance any arguments much less meaningful to support findings of the Courts with regard to suit land to be ancestral coparcenary property in respect whereof no family settlement could be entered into between Jagir Singh and Baldev Singh or Jagir Singh and Harjit Singh without associating other sons of said Jagir Singh. Actually, the Courts have seriously erred by accepting plea of the plaintiffs that land subject matter of the decrees dated 13.11.1991 passed in favour of Harjit Singh and dated 01.02.1992 in favour of Baldev Singh was

ancestral coparcenary property, therefore, the decrees cannot be allowed to sustain on the plea of alleged family settlement.

The Courts have further set aside the decrees on the premise that the same required registration as rights were created for the first time in immovable property of value of more than Rs.100/-. Before considering, if the decrees required registration, it needs to be noticed that once claim of the plaintiffs with regard to suit land to be ancestral coparcenary property is rejected, they have no independent right to challenge the aforesaid decrees and at best they would be claiming a right through Sh. Jagir Singh, erstwhile owner of the land, therefore, they are estopped to challenge the decrees for want of registration. In this context, reference can be made to judgment of this Court **Amin Chand and others Vs. Sukhbir Singh, 2008(4) RCR (Civil) 894**. Moreover, no person can be allowed to take advantage of his own wrong, therefore, it was not open for Jagir Singh or his successors to challenge the decrees on the premise of non-registration.

This brings the Court to the question, if the decrees, in the given circumstances, require registration. Hon'ble the Supreme Court in **Som Dev and others Vs. Rati Ram and another, 2006(4) RCR (Civil) 303** has held in para 12, quoted thus:-

“ 12. We shall now examine the decision in Bhoop Singh (supra). What was involved therein was a decree based on admission. It is to be noted that in that case it was a decree that created the right. The decree that is quoted in paragraph 2 of that judgment was to the effect:

"It is ordered that a declaratory decree in respect of the property in suit fully detailed in the heading of the plaint to the effect that the plaintiff will be the owner in possession from today in lieu of the defendant after his death and the plaintiff deserves his name to be incorporated as such in the revenue papers, is granted in favour of the plaintiff against the defendant,....."

Therefore, it was a case of the right being created by the decree for the first time unlike in the present case. In paragraph 13 of the Judgment, it is stated that the Court must enquire whether a document has recorded unqualified and unconditional words of present demise of right, title and interest in the property and if the document extinguishes that right of one and seeks to confer it on the other, it requires registration. But with respect, it must be pointed out that a decree or order of a Court does not require registration if it is not based on a compromise on the ground that clauses (b) and (c) of Section 17 of the Registration Act are attracted. Even a decree on a compromise does not require registration if it does not take in property that is not the subject matter of the suit. A decree or order of a Court is normally binding on those who are parties to it unless it is shown by resort to Section 44 of the Evidence Act that the same is one without jurisdiction or is vitiated by fraud or collusion or that it is avoidable on any ground known to law. But otherwise that decree is operative and going by the plain language of Section 17 of the Registration Act, particularly, in the context of sub-clause (vi)

of sub-section (2) in the background of the legislative history, it cannot be said that a decree based on admission requires registration. On the facts of that case, it is seen that their Lordships proceeded on the basis that it was the decree on admission that created the title for the first time. It is obvious that it was treated as a case coming under Section 17(1)(a) of the Act, though the scope of Section 17(2)(vi) of the Act was discussed in detail. But on the facts of this case, as we have indicated and as found by the courts, it is not a case of a decree creating for the first time a right, title or interest in the present plaintiff and his brother. The present is a case where they were putting forward in the suit a right based on an earlier transaction of relinquishment or family arrangement by which they had acquired interest in the property scheduled to that plaint. Clearly, Section 17(1)(a) is not attracted. It is interesting to note that their Lordships who rendered the judgment in Bhoop Singh themselves distinguished the decision therein in **S. Noordeen Vs. V.S. Thiru Venkita Reddiar and Ors. [(1996) 2 S.C.R. 261]** on the basis that in the case of Bhoop Singh there was no pre-existing right to the properties between the parties, but a right was sought to be created for the first time under the compromise. Their Lordships proceeded to hold that in a case where the plaintiff had obtained an attachment before judgment on certain properties, the said properties would become subject matter of the suit and a compromise decree relating to those properties

came within the exception in Section 17(2)(vi) of the Act and such a compromise decree did not require registration. Merely because the defendant in that suit in the written statement admitted the arrangement pleaded by the plaintiff it could not be held that by that pleading a right was being created in the plaintiffs and a decree based on such an admission in pleading would require registration. The Court were satisfied that the decision in Bhoop Singh (supra) is clearly distinguishable on facts and noticed once again that all the courts have found that it was as a part of a family arrangement that the defendant in the earlier suit relinquished his interest in favour of the present plaintiff and his brother and such a family arrangement has been held even in Bhoop Singh (supra) not to require registration.”

Similarly, Hon’ble the Supreme Court in **Bachan Singh Vs. Kartar Singh and others, Civil Appeal No.9991 of 1995, decided on 31.07.2001** has held that a consent decree passed by the Court is not required to be registered under the provisions of Indian Registration Act.

A Division Bench of this Court in **Gurdev Kaur and another Vs. Mehar Singh and others, 1989(2) RRR 499** has held that a compromise or consent decree does not require registration even if it creates title in respect of immovable property of the value of Rs.100/- or more provided that it is subject matter of suit. Further held that a compromise or consent decree can be got set aside on one of the grounds on which a contract can be set aside, namely if obtained by ‘fraud, mis-

representation’ or ‘coercion’ with an additional ground in favour of the minors or persons of unsound mind (not relevant in the present context).

Hon’ble the Supreme Court in **Som Dev and others case** (supra) and **Bachan Singh’s case** (supra) has also considered the earlier judgment of Hon’ble the Apex Court in **Bhoop Singh’s case** (supra) relied upon by the Courts below on the issue of decrees requiring registration. In view of the aforesaid discussion, findings of the Courts that decrees passed in favour of Harjit Singh and Baldev Singh are liable to be set aside for want of registration cannot stand the test of judicial scrutiny, therefore, suffer from illegality and perversity. In this view of the matter, findings recorded by the Courts on issue No.2 cannot sustain and accordingly set aside. As a natural consequence, issue No.2 is decided in favour of the defendants and against the plaintiffs.

As has been noticed hereinbefore, the plaintiffs propounded a Will dated 23.11.1991 in respect whereof issue No.1 was framed by the trial Court. The Courts have recorded consistent findings rejecting claim of the plaintiffs on the basis of testamentary succession. Counsel for the plaintiffs has not advanced any arguments to assail findings of the Courts on the question of Will dated 23.11.1991. Hence, findings of the Courts on issue No.1 are affirmed. Similarly, the defendants have set up Will dated 15.01.1992 purported to be executed by Jagir Singh in favour of Ajit Singh – defendant No.4 and Iqbal Kaur, widow of Jagir Singh. Issue No.4 framed by the trial Court qua the Will set up by the defendants was answered against them and findings on this issue were affirmed by the Appellate Court. Counsel for the defendants is not in a position to assail findings of the Courts on issue No.4 much less successfully. As a matter

of fact, neither counsel for the plaintiffs nor that of defendants advanced any arguments to challenge consistent findings of the Courts rejecting the Wills set up by both the parties. As such findings of the Courts on issue No.1 and 4 are affirmed.

Before parting with this judgment, it is necessary to deal with application filed by the defendants for amendment of the written statement. The defendants filed CM No.8130-C of 2018 for amendment of the written statement and by way of the proposed amendment, they have sought to set up registered Will dated 28.03.1977 with the allegations that the said Will was handed over to them by Sh. Gurbachan Singh, few months before his death in the year 2003. The plaintiffs instituted the suit in July 1992 and the same was decided on 12.02.1999. The appeals filed by the parties were decided by the first Appellate Court on 12.12.2000. The appeals by the defendants before this Court were filed in the year 2001 but the application for amendment has been filed on 18.05.2018. There is no explanation as to why there is inordinate delay in filing the application despite the applicants having gained knowledge of Will dated 28.03.1977 in the year 2003.

This Court is not oblivious of the fact that delay itself may not constitute a ground for rejecting an application for amendment of pleadings particularly that of the written statement. Nevertheless, application filed by the defendants to set up Will of 1977 is liable to be dismissed on the sole ground that such a Will dated 28.03.1977 gets superseded by the Will dated 15.01.1992 set up by the defendants themselves. That being so, the applicants/defendants have failed to make out a case for allowing amendment of the written statement at the highly belated stage. In this

view of the matter, application for amendment of the written statement is dismissed.

Sh. Jagir Singh left behind 135 kanal 4 marlas of land. He suffered decrees in respect of land measuring 40 kanal 16 marlas in favour of Baldev Singh – defendant No.1 and 35 kanal 11 marlas in favour of Harjit Singh – defendant No.2. The decrees passed in favour of Baldev Singh and Harjit Singh have been upheld by this Court by setting aside findings of the Courts on issue No.2. The remaining land (excluding land subject matter of the decrees) shall be inherited by class I heirs of the deceased in accordance with the provisions of the Hindu Succession Act, 1956. That being so, findings of the Courts calculating the shares of the parties are modified accordingly.

In view of what has been discussed hereinbefore, RSA Nos.980 and 981 of 2001 are partly allowed in the aforesaid terms. As a natural corollary, RSA No.2266 of 2001 is dismissed in the terms indicated hereinbefore, leaving the parties to bear their own costs.

DECEMBER 4, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no