

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

**RSA No.1550 of 2006 (O&M)
Date of Order:07.12.2018**

Dalip Singh and another

..Appellants

Versus

Sukhwinder Singh and others

..Respondents

RSA No.1746 of 2006 (O&M)

Sukhwinder Singh and others

...Appellants

Versus

Dalip Singh and another

...Respondents

CWP No.19994 of 2017 (O&M)

Manjinder Singh and others

...Petitioners

Versus

Financial Commissioner, Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Aggarwal, Senior Advocate, with
Mr. Rajender Goyal, Advocate, and
Mr. C.B.Goel, Advocate,
for the appellants

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kartik Gupta, Advocate,
for the respondents.

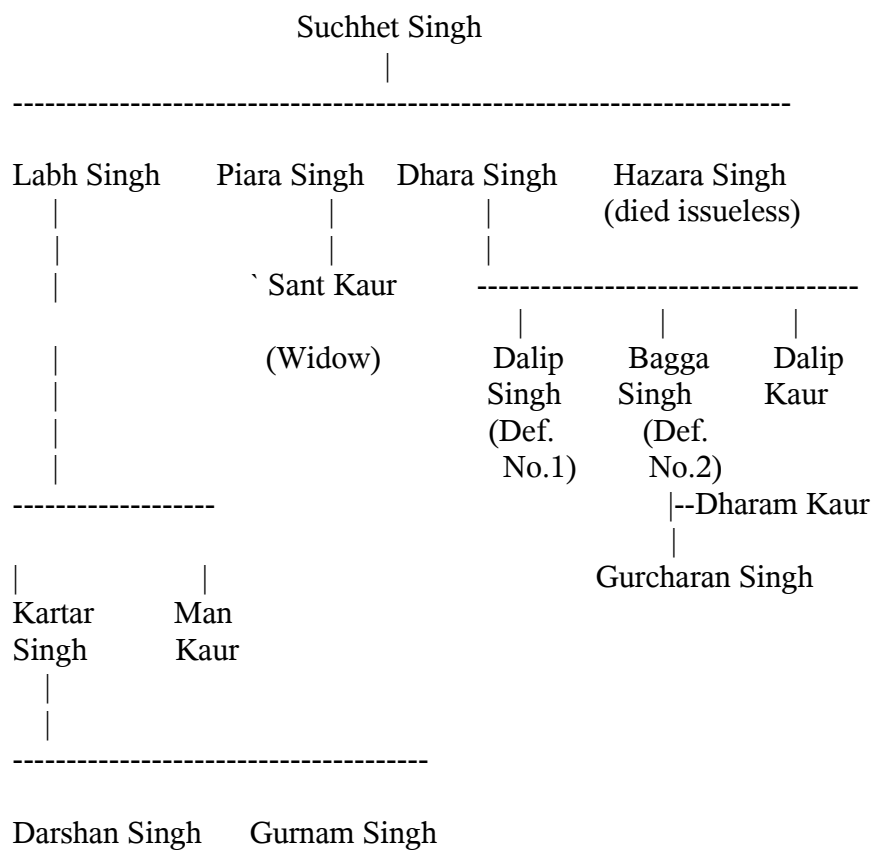
ANIL KSHETARPAL, J.

By this judgment, two appeals i.e. RSA No.1550 of 2006, 1746
of 2006 and a Civil Writ Petition No.19994 of 2017 shall stand disposed of
as counsels for the parties agree that these three cases can conveniently be

disposed of by a common single judgment. In fact, parties are also common and dispute between the parties is inter-linked.

RSA No.1550 of 2006 has been filed by defendant nos.1 and 2, whereas RSA No.1746 of 2006 has been filed by the plaintiffs in one of the suit. Two suits were filed, one by Mann Kaur etc. and other by Smt. Jasbir Kaur claimed to be adopted daughter but failed to prove before the courts below and she has not come up in appeal.

Dispute in the present case is with regard to the estate of late Smt. Sant Kaur, who died issueless. She inherited the property from her husband Piara Singh. It would be appropriate to draw a pedigree table in order to understand inter-see relationship between the parties.



Defendant nos.1 and 2 had got a civil court decree passed in their favour allegedly from Smt. Sant Kaur on the basis of family settlement under Order 12 Rule 6 CPC dated 05.08.1991. Validity of the aforesaid decree is in question. Plaintiffs in both the suits claim that Smt. Sant Kaur

never suffered the decree and Dharam Kaur wife of Bagga Singh, defendant no.2 had impersonated as Smt. Sant Kaur had got a decree passed. It may be noticed there that the plaintiffs have also alleged that defendant nos.1 and 2 had murdered Smt. Sant Kaur. However, it is not in dispute that in the criminal case, defendants no.1 and 2 have been acquitted.

Plaintiff Jasbir Kaur, who is not before this court had lodged a complaint with the police while asserting that the decree is result of impersonation. During the pendency of criminal investigation before the Judicial Magistrate twice thumb impressions of Dharam Kaur, wife of defendant no.2 were taken and sent to Forensic Science Laboratory, Madhuban (a government run laboratory) for comparison. Three members board was constituted to examine the thumb impressions on the written statement and the statement before the court which resulted into decree dated 05.08.1991 affixed by Smt. Sant Kaur and the standard thumb impressions given by Smt. Dharam Kaur before the Judicial Magistrate. The board as constituted also examined the thumb impressions of Smt. Sant Kaur from the bank record. On first occasion, when thumb impressions were sent, the Forensic Science Laboratory raised certain objections, therefore, on second occasion, thumb impressions were taken. The Board concluded that it is Dharam Kaur wife of Bagga Singh who had impersonated as late Smt. Sant Kaur. The aforesaid report is part of the record in this litigation and one member of the Board namely Jai Narain has been examined in evidence in the civil court.

So the basic question arises is whether the Smt. Sant Kaur in fact suffered a decree or it was a result of impersonation.

Learned senior counsel appearing for the appellants in RSA

No.1550 of 2006 has also challenged maintainability of the suit which shall be dealt with in the later part of the judgment.

As regards genuineness of the decree dated 05.08.1991, learned first appellate court has very ably discussed entire evidence and held that Smt. Sant Kaur has never suffered that decree and the decree was result of impersonation. It may be noted that it is the case of defendant nos.1 and 2 that Smt. Sant Kaur who was a illiterate old women of course related to defendant nos.1 and 2 as also to other parties but used to live with defendant nos.1 and 2. Thus, the court held that the onus to prove that the decree was in fact suffered by Smt. Sant Kaur was equally upon defendant nos.1 and 2 as well as on the plaintiffs to prove that fact.

In the present case, private fingerprint and handwriting expert has been produced by the defendant nos.1 and 2 and major effort of defendant nos.1 and 2 is only to establish that thumb impressions of allegedly Smt. Sant Kaur in the statement before the court on 05.08.1991 does not match with that of the Dharam Kaur. No concerted effort was made by defendant nos.1 and 2 to prove that in fact Smt. Sant Kaur had appeared and had filed written statement which resulted into a decree dated 05.08.1991. Before the trial court, an application was filed for directing Bagga Singh to give standard thumb impressions of his wife Dharam Kaur enabling the plaintiffs to get that thumb impressions of Dharam Kaur be compared with the written statement and the statement before the court which resulted into decree dated 05.08.1991. However, defendants opposed the application and did not come forward to give thumb impressions before the civil court of Dharam Kaur.

Still further, plaintiffs have also examined a fingerprint and

handwriting expert who has not only compared the thumb impressions of Dharam Kaur from the criminal case as also the written statement and the statement allegedly suffered by Smt. Sant Kaur and opined that it is in fact Dharam Kaur who had impersonated Smt. Sant Kaur, he further examined the thumb impressions on the account opening form of Smt. Sant Kaur submitted in a bank when she applied for a tractor loan after passing of the alleged decree with thumb impressions affixed on the written statement and the statement before the court dated 05.08.1991 and gave a firm opinion that the thumb impressions do not match. Although, learned counsel for the appellants addressed lengthy arguments but could not convince the court with any substantive arguments which may establish that the findings of fact arrived at by the first appellate court are erroneous.

The learned first appellate court has also further drawn adverse inference against defendant nos.1 and 2 as after taking a plea that Smt. Sant Kaur used to reside with them for a very long time but still they did not come forward to produce her thumb impressions and compare with the alleged thumb impressions of Smt. Sant Kaur on the written statement and the statement before the court, which resulted into a decree dated 05.08.1991. Still further decree is dated 05.08.1991. Whereas, thereafter Smt. Sant Kaur submits an application before the bank to sanction loan for purchase of tractor that itself shows that Smt. Sant Kaur never suffered the decree.

Second argument of learned counsel for the appellants that suit filed by the plaintiffs was not maintainable in view of bar as provided under Order 23 Rule 3A of the Code of Civil Procedure is also without substance because Order 23 Rule 3A CPC bars maintainability of a suit challenging a

compromise decree. Compromise decree is governed by Order 23 Rule 3A of the Code of Civil Procedure. The decree passed on the basis of compromise cannot be equated with decree passed under Order 12 Rule 6 CPC which provide that if the parties are not at issue, the court would pass a decree to that extent. Still further, the decree which is result of impersonation is in fact a fraud played on the court and such decree is nullity and can be ignored in any proceedings. Such decree does not declare defendant nos.1 and 2 to be an owner. Once the decree is result of fraud played with the court, any proceedings are maintainable. It may be noticed that this issue has been examined by two Division Benches of this Court. This court has taken a consistent view that compromise decree and consent decree are not one and the same thing but different and there is a basic difference between a compromise decree and a consent decree. Reference in this regard can be made to the judgments passed by the two Division Benches in *Kashmira Singh (died) vs. Gram Panchayat of Village Budha Khera, 1999(2) PLJ 470* and *Wassan Singh and others v. Lakha Singh and another, 2005(2) R.C.R(Civil)791*.

Still further, bar to maintainability of the suit as provided under Order 23 Rule 3A of the Code of Civil Procedure has to be strictly construed. If the legislature wanted to bar maintainability of the separate suit against a consent decree, the words consent decree under Order 12 Rule 6 of the Code of Civil Procedure would have been incorporated. Although, learned senior counsel appearing while reading the provision of Order 23 Rule 3 of the Code of Civil Procedure has submitted that language of Order 23 Rule 3 of the Code of Civil Procedure is wide enough to include even a decree passed under Order 12 Rule 6 of the Code of Civil Procedure,

however, this court does not find any substance therein. Order 23 Rule 3 and Order 23 Rule 3A of the Code of Civil Procedure are extracted as under:

ORDER XXIII- Withdrawal of suit or abandonment of part of claim.-

Rule (1) *XX* *XX* *XX*

(2) *XX* *XX* *XX*

Rule 3. Compromise of suit

Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise ¹[in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise satisfaction to be recorded, and shall pass a decree in accordance therewith ²[so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

²[Explanation-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]

3A. Bar to suit. *No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”*

Learned senior counsel while referring to the words “agreement, compromise or satisfaction has submitted that Order 23 Rule 3, thus, take within its sweep even the decree passed under Order 12 Rule 6 of the Code of Civil Procedure. Bar to the maintainability of separate suit is

provided under Order 23 Rule 3A of the Code of Civil Procedure which provides that no separate suit shall be maintainable to set aside a decree passed on the basis of a compromise on which the decree is based was not lawful. In fact, the language of Order 23 Rule 3A of the Code of Civil Procedure does not suggest that in case of fraud also, such bars would apply.

Learned senior counsel has relied upon two judgments passed by the Hon'ble Supreme Court in support of his submissions. One is **Pushpa Devi Bhagat v. Rajinder Singh and others, (2006) 5 SCC, 566**. It may be noted that in the aforesaid case, the Hon'ble Supreme Court was dealing with a maintainability of a suit against a compromise decree. Learned senior counsel wanted to read the judgment as a statute, which is not the correct method. No doubt, the Hon'ble Supreme Court in the aforesaid judgment at one or two places have used the word 'consent' decree but that itself cannot be taken to be a ratio decidendi. The Hon'ble Supreme Court in the aforesaid judgment culled out 2 issues and decide the same. Issues culled out are extracted as under:-

- “(i) *Whether the appeal filed by Pushpa Devi under Section 96 of the Civil Procedure Code, against the consent decree was maintainable.*
- (ii) *Whether the compromise on 23.5.2001 resulting in a consent decree dated 18.7.2001 was not a valid compromise under Order 23 Rule 3 CPC.”*

Learned senior counsel further relied upon another judgment passed by the Hon'ble Supreme Court in the case of **Banwari Lal vs. Smt. Chando Devi (Through L.R.), AIR 1993 SC, 1139**. In the aforesaid case,

the order passed by the Civil Judge on the basis of compromise was recalled after recording a finding that parties had not signed the compromise and restored the suit. However, High Court reversed the judgment subordinate Judge. Hon'ble Supreme Court after examining the provisions of Order 23 Rule 3A held that no separate suit was maintainable and the order passed by the subordinate judge recalling was correct.

In the considered opinion of this court the judgment passed by the Hon'ble Supreme Court in the case of **Banwari Lal (supra)** does not advance the case set up by the defendant nos. 1 and 2 (appellants herein). A judgment passed by the Hon'ble Supreme Court is to be read in the context it has been delivered and only ratio decidendi is binding on the courts. Every word in the judgment cannot be read as a statute.

Learned counsel for the appellant in RSA No.1746 of 2006 which has been filed by the plaintiffs has submitted that the judgment of the first appellate court dividing the property amongst heirs is not correct. He further submitted that defendant nos. 1 and 2 stand debarred from succession in view of Section 25 of the Hindu Succession Act, 1956 as they had murdered Smt. Sant Kaur.

This court has considered the submissions and however, find no substance therein. Succession of a female is governed by Section 15 of the Hindu Succession Act. It is undisputed that Smt. Sant Kaur had got the property from her husband Piara Singh. Therefore, the heirs of Piara Singh have to be seen on the day the succession opened. It is to be assumed that Piara Singh died immediately after the death of Smt. Sant Kaur by legal fiction as per Section 16. This is the scheme of Section 15 of the Hindu Succession Act. In such circumstances, the first appellate court has

correctly held that the plaintiffs-appellants in Regular Second Appeal No.1746 of 2006 would be entitled to only a share in the property. Piara Singh had 3 other brothers, therefore, property would accordingly be divided as correctly held by the learned first appellate court.

As regards second argument of learned counsel for the appellants that defendant nos. 1 and 2 stand debarred from succeeding the property is also to be noticed and rejected because in the criminal case Dalip Singh and Bagga Singh have been acquitted, whereas before the civil court no cogent evidence has been led to prove that fact.

In view of the aforesaid, this court does not find any substance in both the appeals filed by the parties to the litigation.

Now there is a writ petition which has been filed against the order passed by the revenue authorities in the mutation proceedings. Once the civil court has decided the case determining title, the revenue authorities are bound to implement the judgment passed by the civil court. Hence, no further deliberations on the aforesaid writ petition are required. The writ petition shall stand disposed of in view of the conclusion drawn in the foregoing part of the judgment.

Hence, both the regular second appeals are dismissed, whereas the writ petition is disposed of in terms of the judgment passed in the appeals.

07th December, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No