

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.4404 of 2011 (O&M)
Date of decision: 28.09.2018

Nirmal Kaur etc.

..... Appellants

Versus

Sukhwant Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.S. Gandhi, Advocate
for the appellants.

Ms. G.K. Turka, Advocate
for respondents No.1, 2 and 4.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while dismissing their suit for declaration with consequential relief of permanent injunction and as also for possession.

In fact, the plaintiffs-appellants are challenging a judgment and decree passed by the competent Court of jurisdiction on 17.01.1992. The judgment and decree passed by the Civil Court has been challenged after a period of more than 9 years.

To understand the dispute between the parties, it would be appropriate to re-produce the pedigree table depicting inter-se relationship between the parties:-

Kundan Singh

I

Udham Singh	Kartar Singh	Rukman Kaur		
I	I	(Husband Gulzar Singh)		
Balwant Singh	Gurdip Singh	Wife Surjit Kaur		
	I			
	I			
I	I	I	I	I
Jaswant Singh	Amrik Singh	Nirmal Kaur	Amarjit Kaur	Surinder Kaur

On the basis of a family settlement which was duly acknowledged in the Court, the Civil Court passed the judgment and decree dated 17.01.1992. The aforesaid suit was filed in the year 1991 by Balwant Singh, Kartar Singh and Gulzar Singh. In the aforesaid suit, the defendants filed written statement admitting the claim made in the suit on the basis of a family settlement. It will be noticed that against minor Amrik Singh son of Gurdip Singh, the claim was given up, hence, there is no decree against Amrik Singh.

Surjit Kaur along with her major children appeared before the Court on 23.12.1991 and suffered a statement admitting the contents of their written statement as also the claim made in the suit. All the parties were represented by counsels who identified them in the Court and therefore, the judgment and decree passed.

Both the Courts have dismissed the suit filed by the plaintiffs after recording a finding that the aforesaid judgment and decree dated 17.01.1992 neither result of fraud nor a decree passed acknowledging the family settlement requires registration.

At the time of admission of the appeal, counsel for the appellants had proposed the following substantial questions of law:-

- “1. Whether the decree obtained by taking unde advantage of fiduciary relations is not null and void?*
- 2. Whether the appellants who as per categoric admissions of the respondents have not been given any benefit for relinquishing their title in the family settlement, whether such settlement is legal and enforceable in law?*
- 3. Whether the family settlement which creates the right for the first time in the immovable property valued more than Rs.100/- is and decree obtained under the garb of such family settlement is not to be registered?*
- 4. Whether the respondents who are neither member of the family and do not constitute coparceners are competent to arrive at family settlement and take benefit of the same especially from the property purchased by the appellants from the Govt.?*
- 5. Whether the judgments and decrees of the Courts below are sustainable in the eyes of law especially when they are outcome of misreading the evidence?*
- 6. Whether the mutation got entered without notice to the appellants is valid and legal?”*

It will be noted that during the pendency of the appeal, some applications have been filed for additional evidence so as to prove that the property in dispute was self-acquired property of Gurdip Singh who had died.

Learned counsel for the appellants submitted that the decree was passed within few days as the suit was instituted on 20.12.1991 whereas the statement of the parties were recorded on 23.12.1991 i.e. within three days and thereafter, the decree was passed on 17.01.1992. Hence, he submitted that the decree cannot be sustained as it is apparent that the decree was passed even without service of proper notice on the defendants. He further submitted that since Kartar Singh was in a dominating position, therefore, the decree has been got passed and hence, it is result of mis-representation and

fraud. He submitted that the parties are in fiduciary relationship.

Learned counsel for the appellants in the alternative submitted that Gulzar Singh was not member of the family as he was only the husband of sister of Kartar Singh. Hence, there cannot be any family settlement between the parties.

On the other hand, learned counsel for the respondents has submitted that before the Courts below, the plaintiffs-appellants never pleaded that the property was self-acquired nor it was subject matter of issue before the Court nor any argument was raised with this regard. She further submitted that no evidence to prove the fraud has been led. She submitted that the decree is based upon an oral family settlement arrived at between the parties which has been acknowledged by the Courts below.

It will be significant to note here that the previous suit was filed by Balwant Singh who was cousin of plaintiff No.1 and uncle of the remaining plaintiffs whereas Kartar Singh was father-in-law of plaintiff No.1 and grand-father of remaining plaintiffs whereas Gulzar Singh is husband of sister of the father-in-law of plaintiff No.1 and husband of sister of the grand-father of the remaining plaintiffs. Therefore, it is apparent that the parties were closely related.

Let us first deal with the questions of law which have been raised. It will be noted that both the Courts have found that the decree was suffered by the plaintiffs with their own wish and volition and therefore, there is neither any undue pressure nor undue influence or fraud. The plaintiffs (defendants in the previous suit) had not only filed the written statement admitting the claim but also appeared in the Court and made a statement to that effect.

In view of the aforesaid, there is no evidence of any undue advantage of fiduciary relationship as the parties were members of a family.

With regard to question No.2, it will be noted that since family settlement which have settled the disputes was being denied by the plaintiffs herein (defendants in the previous suit), therefore, only the suit was filed but the defendants in the previous suit had conceded to the claim made in the previous suit. Under Order 12 Rule 6 of the Code of Civil Procedure, once the parties are not at issue, the Court is required to pass a decree. Signatures on the written statement filed in the previous suit as well as the statement made before the Court by the plaintiffs herein and defendants in the previous suit are not being disputed. In such circumstances, the pleadings of the respondents in the previous suit cannot be used against them.

As regards question No.3, it will be noted that through the decree, no right has been created for the first time in the immovable property. The decree has been passed in acknowledgment of the previous family settlement arrived at between the parties which was not disputed in the previous litigation. Such decrees passed on the basis of family settlement do not require registration.

Next proposed question of law is with regard to members of the family and co-parceners. It will be noticed that here in the previous suit, the parties had claimed that they are members of the Joint Hindu family. Argument of learned counsel for the appellant that at least Gulzar Singh was not member of the family is also without any substance as the word family in the context of family settlement cannot be narrowly construed. Hon'ble Supreme Court while discussing similar question in the judgment reported as Krishna Beharilal Vs. Gulabchand, AIR 1971 SC 1041 has clearly laid down

that the family as used for the purpose of family settlement is to be a broader

family and it is not necessary that the parties to the compromise should all belong to one family. Still further, this Court after following the aforesaid judgment has already deliberated in detail the requirement of registration of consent decrees. Reference in this regard can be made to the judgment passed by this Court in RSA No.2708 of 2005 titled as 'Dhian Singh and others Vs. Mohinder Singh and others', decided on 26.10.2017.

As regards, questions No.4 and 5, it is suffice to observe that learned counsel for the appellant failed to draw attention of the Court to misreading of evidence. As regards sanction of mutation without notice, it is to observe that the mutation does not confer any right, title or interest in the property. The mutation is only entered and sanctioned for updating the revenue record.

Argument of learned counsel for the appellant that the decree was passed within 3 days is factually incorrect. The suit was instituted on 20.12.1991 whereas the decree was passed on 17.01.1992 i.e. after a period of 28 days. Still further, once no fraud has been established and even if the decree was passed by the Court within a short period, that would not make correctness of the judgment and decree doubtful particularly when they are all members of the family. Further, learned counsel for the appellant could not draw attention of the Court to evidence to prove the fraud as alleged. It will be noted that learned counsel no doubt referred to the statement of Buta Singh son of Gulzar Singh who has appeared as DW-1 wherein he admits that Kartar Singh being elder in the family used to decide and family members used to follow the aforesaid decision. In the considered view of this Court, this is normal in the Joint Hindu Families. The elders are given respect and they take decisions in the interest of the family. Buta Singh when appeared has specifically stated that there was neither any fraud nor any

misrepresentation by Kartar Singh while passing the judgment and decree.

As regards argument of learned counsel that the fiduciary relationship and the property being self-acquired, it is suffice that the aforesaid issue has already been dealt with by the Court while deciding the judgment passed in the case of Dhian Singh's (supra). Still further, when Nirmal Kaur, one of the plaintiff appeared, she admitted that the written statement was drafted by their lawyer and on the aforesaid written statement, they had signed or thumb marked. She denies that I do not remember whether all the family members appeared before the Presiding Judge or not. However, she admits that all the family members had come to the Court.

As regards various applications filed for additional evidence, it will be noted that the entire effort of the counsel is to prove that the property was self-acquired property of Gurdip Singh. Even if these documents are taken into consideration, still it does not improve the case of the plaintiffs-appellants. In a Joint Hindu Family, self-acquired property once put in common hotch-potch, it gets blended with the Joint Hindu Family and therefore, the family settlement even with regard to the property which was self-acquired is permissible.

In view of the discussion made above, there is no ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal as well as application for additional evidence are dismissed.

28.09.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No