

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

RSA No.3724 of 2012 (O&M)
Date of Decision: July 03, 2018

Naveen and another

---Appellants

Versus

Narender Kumar and others

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.S.K.Jain , Advocate for the appellants.

Mr.R.S.Sharma, Advocate for respondents No.1 and 2.

HARINDER SINGH SIDHU, J.

The plaintiffs have filed this regular second appeal against the judgments of the Courts below whereby their suit has been dismissed.

The plaintiffs had filed the suit for declaration to the effect that they were in possession in equal shares of land measuring 9 Kanals 12 Marlas i.e. 192/2050 share of land measuring 102 Kanals 10 Marlas fully detailed in the head note of the plaint and the judgment and decree dated 18.09.1996 passed in Civil Suit No.1421 of 1996 titled as 'Narinder Kumar etc. Vs. Dharam Pal' whereby defendant No.3 Dharam Pal transferred the aforesaid land measuring 9 Kanal, 12 Marla in favour of defendants No.1 and 2 is illegal, null and void and not binding on their rights. It was also prayed that defendants No.1 and 2 be permanently restrained from interfering in the peaceful possession of the plaintiffs over the suit land.

The plaintiffs are the sons of defendant No.3 who is their father. The case of the plaintiffs was that defendant No.3, their father, was owner of 448/2050 share in total land measuring 102 Kanal 10 Marla comprised in Khewat No.935/859, Khatauni No.1280 situated at Village Dhanger, Tehsil and District Fatehabad. It was pleaded that the plaintiffs were in possession of the suit land. The plaintiffs being Brahmin by caste were governed by Hindu Law. It was pleaded that defendant No.3 had got 1/16 share in the land i.e., 6 kanal 11 Marlas by the inheritance from his father. He had got the remaining 5/32 share i.e. land measuring 16 Kanal, 7 Marla by way of Civil Court decree suffered in his favour by his sister and mother. Thus, it was pleaded that the suit land was ancestral property in the hands of defendant No.3 in which the plaintiffs being sons had right by birth. Defendants No.1 and 2 are the sons of cousin of defendant No.3 and they had no pre-existing right in the suit land. Defendant No.3 suffered judgment and decree dated 18.09.1996, in Civil Suit No.1421 of 1996 titled as 'Narinder Kumar and others Vs. Dharam Pal' vide which he transferred 192/2050 shares i.e. land measuring 9 Kanal, 12 Marla in favour of defendants No.1 and 2. It was pleaded that no mutation on the basis of that judgment and decree had been sanctioned till the filing of the suit. The said judgment and decree was challenged inter alia on the grounds that defendants No.1 and 2 had no pre-existing right in the suit land and that the suit land could have been transferred only by a registered instrument as the market value of the suit land was more than Rs.3,00,000/-. They further pleaded that the impugned judgment and decree were obtained by fraud as defendants No.1 and 2 had obtained the signatures of defendant No.3 on blank paper.

Only defendants No. 1 and 2 contested the suit. Defendant was proceeded against ex-parte as he did not appear despite service. In their written statement defendants No.1 and 2 pleaded that defendant No.3 was owner in possession of land measuring 22 Kanal 8 Marlas being 448/2050 shares in the total land measuring 102 Kanals 10 Marlas as per jamabandi for the year 1990-91. It was further pleaded that on the basis of a family and mutual settlement which took place between defendants No.1 and 2 and defendant No.3 in January 1996, defendant No.3 had transferred land measuring 9 Kanals 12 Marlas being 192/2050 shares in the suit land in favour of defendant No. 1 and 2 by way of the impugned judgment and decree and since then, they were coming owners of the same. It was further pleaded that defendant No.3 had put in appearance and filed written statement admitting the claim. He had also appeared in person before the Court and his statement was recorded on 18.09.1996 and it was then that the impugned judgment and decree were passed. It was further pleaded that defendant No.3 had not challenged the impugned judgment and decree till date and thus, there was no question of any fraud. It was further pleaded that the impugned judgment and decree did not require registration as defendant No.3 had admitted the pre-existing right of defendants No.1 and 2 in the land transferred in their favour by way of the impugned judgment and decree. It was denied that the suit land was ancestral in the hands of defendant No.3 and it was pleaded that he was absolute owner in possession thereof. It was further pleaded that defendant No.3 was also having 1/4th share in land measuring 64 Kanals comprised in Khasra Nos. 249///6,15,250//1,2,9,10,11, 12 situated in village Dhangar. It was further pleaded that even if, it is presumed that the suit land was ancestral in the hands of

defendant No.3, then also, out of the total land measuring 38 Kanals 8 Marlas owned by him, he had transferred only land measuring 9 Kanals 12 Marlas in favour of defendants No.1 and 2 which is within his share and on this count also, the impugned judgment and decree are legal and valid.

From the pleadings of the parties, the Learned Trial court framed the following issues:

- “1. Whether judgment and decree dated 18.09.1996 passed in Civil Suit No.1421 of 1996 without legal necessity and liable to be set aside on the grounds as alleged?OPP*
- 2. Whether the property is ancestral as alleged?OPP*
- 3. Whether the plaintiffs are entitled for permanent injunction on the grounds as alleged?OPP*
- 4. Whether the plaintiffs have no locus standi to file the present suit?OPD*
- 5. Whether the suit filed by the plaintiffs is time barred?OPD*
- 6. Whether the suit filed by the plaintiff is bad on the principle of res judicata?OPD*
- 7. Relief.”*

On consideration of the evidence, the Ld. Trial Court held that plaintiffs have not been able to prove any of their pleas. It was held that at the time of suffering the decree in favour of defendants 1 and 2, defendant No.3 was owner in possession of land measuring 22 Kanals, 8 Marlas. There was no evidence that he had inherited the entire land from his forefathers by way of survivorship. As per mutation No.1627 Ex. P-5, he had inherited 1/8th share of land measuring 52 Bigha, 2 Biswas i.e., 6 Kanal 11 Marlas from his father Hazari son of Ganga Dutt. The remaining 7/8th being inherited by other sons and daughters of Hazari. Defendant No.3 had inherited 1/2 share in land measuring 32

Kanals 14 Marlas i.e., 16 Kanal 7 Marlas by virtue of decree suffered by his sister in a Civil Suit. Admittedly, the property inherited from his sister could not be considered as ancestral property. Even the property received from his father could not be considered ancestral in view of Section 8 of the Hindu Succession Act, 1956. The Trial Court further held that the plaintiffs had only 1/2 share (1/4th each) along with their father and mother in the total land measuring 22 Kanals 8 Marlas. So even after the decree of 9 Kanals 12 Marlas in favour of defendants No.1 and 2, defendant No.3 still had land measuring 12 Kanals 16 Marlas with him. The plaintiffs could claim their share from this land. Further as defendant No.3 was still alive and had not challenged the impugned judgment and decree, the suit filed by the plaintiffs was not maintainable.

Regarding the contentions of the plaintiffs about the family settlement being not valid or bona fide as defendants No.1 and 2 in whose favour the decree was passed had no antecedent title, Ld.Trial Court relied on a decision of this Court in **Jagdish Vs. Rajwanti, 2007 (2) PLJ, 691** where it has been held that even if one of the parties to the settlement had no title but under the arrangement the other relinquishes all its claim in favour of such a person and acknowledges him to be the sole owner then the antecedent title must be assumed and the arrangement will be upheld. Reliance was further placed on decision of Hon'ble Supreme Court in **Kale v. Dy. Director of Consolidation, 1976 (3) SCC 119**.

The challenge to the decree on the ground of non-registration was also negated. The Trial Court referred to the relevant provisions of the Registration Act, 1908 and noted that the exception in Clause (vi) of Section 17 (2) is meant to cover that decree or order of a Court, including a decree or order

expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in present in immovable property of the value of Rs.100/- or upwards. The Trial Court noted that the impugned decree itself did not create any right in favour of the defendants No.1 and 2. Rather the family settlement already arrived between them and the defendant No.3 about six months back was affirmed by virtue of the decree. So, it was held that it does not require registration. Decisions of this Court in **Jagdish Vs. Ram Karan 2003(1) PLJ 343** and **Som Dev Vs. Rati Ram 2006(4) RCR (Civil) 303**, wherein, it has been held that a decree based on admission of a party does not require registration if it does not create any title for the first time in favour of a party were relied on.

The Court also held that the plaintiffs had failed to prove that defendants No.1 and 2 had got the decree from the defendant No.3 by playing fraud upon him or by misrepresentation. It was noted that in the Civil Suit No.1421 of 1996 defendant No.3 had appeared through his counsel Shri A.C. Taneja, Advocate on 18.09.1996 and filed written statement Ex.D3 admitting the claim of the plaintiffs. On the same day, he also gave statement Ex.D4 in the Court admitting the claim of the plaintiffs in the presence of his counsel Shri Rakesh Kharbas, who appearing as DW 4 has testified that defendant No.3 gave his statement in the Court voluntarily. The contents thereof were read over and explained to him and then he signed the same in token of correctness. In view of these findings the suit was dismissed.

The learned lower Appellate Court has affirmed the findings of learned lower Court.

Sh. Jain, Ld. Counsel for the appellant contended that there could not be any family settlement between defendants No.1 & 2 and defendant No.3 as defendants No.1 and 2 had no pre-existing right and hence the decree would require registration as there was no pre-existing right.

The Ld. Trial Court has referred to the judgment of Hon'ble Supreme Court in **Kale v. Dy. Director of Consolidation, 1976 (3) SCC 119**. In this case the Supreme Court had spelt out the essentials of family settlement in the form of propositions as under:

“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

- “(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;*
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;*
- (3) The family arrangement may be even oral in which case no registration is necessary;*
- (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;*
- (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;*

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”

Proposition No.5 answers the contention of the Ld. Counsel for the appellant.

Paras 17 and 18 of this judgment are also relevant:

17. In Krishna Beharilal v. Gulabchand it was pointed out that the word “family” had a very wide connotation and could not be confined only to a group of persons who were recognised by law as having a right of succession or claiming to have a share. The Court then observed: [SCC p. 843, paras 7-8]

“To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in Ram Charan Das v. Girjanandini Devi the word “family” in the context of a family arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement — see Ram Charan Das case.

The courts lean strongly in favour of family arrangements to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes which might ruin them all.”

18. In the recent decision of this Court in S. Shanmugam Pillai v. K. Shanmugam Pillai the entire case law was discussed and this Court observed as follows: [pp. 319, 321-322, paras 12, 24-25]

“If in the interest of the family properties or family peace the close relations had settled their disputes amicably, this Court will be reluctant to disturb the same. The courts generally lean in favour of family arrangements.”

On the issue of registration, the Ld. Trial Court has already noted that the impugned decree itself did not create any right in favour of the defendants No.1 and 2. Rather the family settlement already arrived between them and the defendant No.3 about six months back was affirmed by virtue of the decree. So, it

was held that it does not require registration in view of provisions of Section 17(2)(vi) of the Registration Act, 1908. No fault can be found with this.

Accordingly, there is no merit in the appeal. Hence, the same is hereby dismissed.

July 03, 2018
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No