

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.844 of 2012 (O&M)
Date of Order:28.02.2018

Harwinder Singh and another

..Appellants

Versus

Sukhwinder Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Rana, Advocate,
for the appellants.

Mr. Amarjit Markan, Advocate and
Mr. Kanwal Goyal, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

C.M.No.2249-C-2012

Allowed as prayed for.

Annexures A-1 to A-6 are taken on record.

C.M.No.2250-C-2012

Allowed as prayed for.

MAIN

Defendants-appellants are in regular second appeal against the judgment passed by the learned first appellate court.

Plaintiff filed a suit for declaration claiming that he is owner in possession of the properties left by Jagat Singh son of Ran Singh. He is owner to the extent of 1/3rd share on the basis of Will dated 30.04.1992. Pursuant to a family settlement, a declaratory decree dated 20.10.1995 was passed in Civil Suit No.253 of 1995, which is result of fraud and misrepresentation.

Defendant, who is great grand son of Jagat Singh, the original owner, contested the suit.

Learned trial court after appreciation of the evidence available on the file, dismissed the suit filed by the plaintiff. Learned first appellate court reversed the judgment passed by the learned trial court.

In the considered opinion of this Court, following questions of law require consideration:-

- (i) Whether a consent civil court decree passed while acknowledging a family settlement is required to be compulsorily registered to make it enforceable?
- (ii) Whether a consent civil court decree can be set aside on the ground that all the family members are not party to the aforesaid civil suit specially when the consent decree is based upon family settlement?

With respect to question no.(i), this Court has already considered this aspect in detail and have answered in favour of the defendant-appellant. Reference in this regard can be made to the judgment passed by this Court in the case of **Dhian Singh and others v. Mohinder Singh and others, 2017 PLR (4) 729.**

Learned first appellate court has relied upon a judgment passed by this Court in the case of **Rajni Bajaj and others v. Ram Piari, 2006(1) Civil Court Cases, 0711**, to hold that the consent decree is liable to be set aside.

This Court has carefully read the judgment, delivered by this Court in the case of **Rajni Bajaj** (supra). In the aforesaid case, only copy of the consent civil court decree was produced. Neither the original suit was

summoned nor the statement of the person who had suffered the decree was produced. Still further, it was admitted by the party while appearing in the witness box that there was a written family settlement, however, that family settlement was not produced on the file. In these circumstances, the Court held that no cogent reason has been produced to prove the family settlement.

In the present case, defendant-appellant has produced on file certified copy of the statement given by Jagat Singh in the Court on 14.06.1995 in the previous suit. In the statement, Ex.DW3/2, Jagat Singh, who appeared in the Court has specifically stated that a family settlement had been arrived at between the parties three months before the suit was filed and it was settled that in a family settlement, the property would fall to the share of defendant-appellant. The written statement filed by Jagat Singh was also produced.

Still further, the case was referred to the Lok Adalat and the Presiding Officer of the Lok Adalat recorded in the order dated 07.10.1995 that he had made enquiry from Jagat Singh, defendant, in the previous suit and Jagat Singh has stated that he does not have any objection in case the decree is passed in favour of the plaintiff.

The original file of the Court was summoned to prove these documents. The judgment in the case of **Rajni Bajaj** (supra) would have no application in the facts and circumstances of the case.

Hence, question no.(i) is answered in favour of the defendant-appellant.

QUESTION NO.(ii)

Whether a consent civil court decree can be set aside on the ground that all the family members are not

party to the aforesaid civil suit specially when the consent decree is based upon family settlement?

The argument of learned counsel for the respondent-plaintiff is that in the civil suit which resulted into a decree, plaintiff was not a party. He submits that in the absence of all the family members, there could not be any civil court decree acknowledging the family settlement.

While elaborating, learned counsel for the respondent-plaintiff has submitted that the plaintiff-respondent was also a member of the family and in his absence, there could not be any family settlement. The argument in first brush appears to be very attractive, however, on close scrutiny, this Court does not find any substance.

As per the record, Jagat Singh was exclusive owner of the property. Jagat Singh wanted to give all property to Harwinder Singh, defendant no.1-appellant, his great grand son as Surinder Singh, father of Harwinder Singh and Ajit Singh (grand father of Harwinder Singh), both had died. A careful reading of the statement of Jagat Singh, who appeared in the Court in previous suit, clearly records that Harwinder Singh is living with him and serving him. A great grand father wished to give his property to defendant no.1-appellant Harwinder Singh.

It has been held by the Hon'ble Division Bench of this Court that a civil court decree can only be set aside on the grounds on which a contract can be set aside. Reference in this regard can be made from the judgment passed in **Gurdev Kaur and Anr. vs Mehar Singh And Ors., 1989 PLJ, 182** .

In the present case, none of the courts have found that any such grounds exists .

Still further there was an oral family settlement. The courts always lean in favour of upholding a family settlement, which has been

arrived at to resolve the disputes between the family members. Plaintiff was not necessary party in the previous suit, which resulted into decree dated 20.10.1995. Plaintiff was not recorded as owner. Plaintiff had no right, title or interest in the property except that he was a member of the family. Jagat singh had four sons, namely, Ajit Singh, Gian Singh, Nirmal Singh and Sukhwinder Singh, the plaintiff. No other legal heirs of Jagat Singh has ever disputed or challenged the civil court decree, acknowledging the family settlement.

Hence, question no.(ii) is also answered in favour of the defendant-appellant.

In view of the discussion made hereinabove, the judgment and decree passed by the learned first appellate court is set aside and that passed by the learned trial Court is restored.

The regular second appeal is allowed.

February 28, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No