

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

RSA No.3136 of 2013 (O&M)

Date of Decision.04.05.2018

Maya Devi (since deceased) through LRs

.....Appellant

Vs

Amrjit Kaur and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ishan Bhalla, Advocate for
Mr. Kuldip Sanwal, Advocate
for the appellants.

Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjit Singh, Advocate
for respondent No.1 to 6.

Mr. Gunjan Gera, Advocate for
Mr. Arvind Rajotia, Advocate
for respondent No.21.

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AMIT RAWAL J.(ORAL)

C.M. No.12419-C of 2016

The application for bringing on record the legal representatives of deceased-Appellant, Maya Devi is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

The amended memo of parties is taken on record and registry is directed to put the amended memo of parties at appropriate place.

RSA No.3136 of 2013

The regular second appeal is directed at the instance of the appellant-defendant No.1 against the judgment and decree dated 25.04.2013 rendered by the lower Appellate Court whereby the judgment and decree passed by the trial Court dismissing the suit of the plaintiffs has been reversed, in essence, suit of the plaintiff has been allowed.

The respondents-plaintiffs instituted the suit seeking declaration that the plaintiffs and defendant Nos.1 to 6 had been joint owners in equal shares and remaining one share owned by heirs of Lachhman Dass i.e. defendant No.7 to 12 in respect of the suit property described therein situated at village Bhadson, Tehsil Nabha by laying challenge to the judgment and decree dated 09.02.1994 rendered in Civil Suit bearing No.540 of 1993 titled as “Maya Devi Vs. Gauran Devi” being illegal and void with consequential relief of permanent injunction restraining the defendants from interfering into peaceful possession and forcible dispossession and further declaration to the effect that they are exclusive owners in possession of the above mentioned land measuring 15 bighas along with kotha and 3 HP motor.

It was averred in the plaint that Gauran Devi was mother of the plaintiffs and defendant No.1 to 6 and was mother-in-law of defendant No.7 and grand mother of defendant Nos.8 to 12. She was owner of the suit property. She died intestate and owing to her death on 22.10.1997, the property was inherited by all the legal heirs in equal shares and one share out of the suit property was succeeded by defendants No.7 to 12, being widow of son of Gauran Devi, grand sons and grand daughters. The factum of decree dated 9.2.1994 came to their knowledge when they approached for effecting the mutation by way of natural succession. It is in that background, the aforementioned decree was challenged, for, Gauran Devi did not transfer the suit property in favour of defendant No.1 i.e. her daughter nor any possession was delivered to defendant No.1. There was no settlement or compromise between Gauran Devi and defendant No.1. The suit property had a value of more than Rs.100/- and the relinquishment deed

by way of decree required registration. The decree was obtained by playing fraud and mis-representation from Gauran Devi, who was illiterate and old lady. When defendant No.1 was requested to correct the revenue entries, she flatly refused and therefore, cause of action arose to file the suit in the year 1999 i.e. Civil Suit No.358/R of 13.3.1999.

In the aforementioned suit, defendant No.2, 4, 6 to 12 filed separate written statement. However, after filing written statement defendant No.2, 4, 7 to 12 were proceeded ex parte.

As per the stand taken in the written filed by defendant No.1, 3 and 5, the relationship between the parties was admitted but it was denied that on demise of Gauran Devi, plaintiffs and defendants succeeded her estate. In fact, the story in the suit had allegedly been concocted as they had knowledge of the judgment and decree dated 9.2.1994. The factum of oral settlement and compromise between Gauran Devi and defendant No.1 was emphatically denied, much less, obtaining of judgment and decree on mis-representation and alleged fraud. The factum of the mortgage of the suit property in favour of defendant No.13 was also not disclosed by the plaintiffs. The objection qua maintainability and suit being barred by law of limitation was taken.

Defendant No.13-Canara Bank, Nabha in the written statement contested the suit by raising all the pleas and admitted that defendant No.1 in pursuance of the judgment and decree dated 09.02.1994 was declared owner in possession of the suit land and thereafter, she had been put into possession. This fact was in the knowledge of the plaintiffs. The aforementioned suit property was mortgaged in favour of defendant No.13-Bank being a bona fide mortgagee and before executing mortgage and

collateral security, enquiries were made and title was found without any demur or any encumbrances.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether plaintiffs and defendant No.1 to 6 are joint owners in equal shares and the remaining one share is owned by LR of Lachhman Dass i.e. defendants No.7 to 12? OPP*
- 2. Whether the judgment and decree in civil suit No.540 dated 5.12.1993 decided on 9.2.94 in case titled Maya Devi Vs. Gouran Devi is null and void, in-operative against law and public policy and is liable to be set aside? OPP*
- 3. Whether entry regarding mortgage by defendant in favour of defendant No.13 is not binding qua the rights of the plaintiffs and defendants No.2 to 12? OPP*
- 4. Whether the plaintiff is entitled to the relief of injunction? OPP*
- 5. Whether the suit is not maintainable in the present form? OPD*
- 6. Whether the suit is within time? OPP*
- 7. Whether the plaintiffs have no locus-standi and cause of action? OPD*
- 8. Relief.”*

The plaintiffs examined followed witnesses:-

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| PW1 | : | M.G. Arora, Advocate |
| PW2 | : | Plaintiff himself. |
| PW3 | : | Jaswant Singh |
| PW4 | : | Shiv Lal |

The plaintiffs tendered into evidence documents Ex.P9 to P15.

On the other hand, defendants examined Maya Devi as DW1, Tarlok Singh as DW2, Hans Raj as DW3 and tendered into evidence documents Ex.D6 to Ex.D18.

The case propounded by the plaintiffs was that it was an ancestral property and therefore, Gauran Devi, who was 80 years of age, could not have alienated and transferred the property by virtue of decree dated 09.02.1994. Amarjit Singh, husband of Maya Devi, wielded influence upon Gauran Devi for suffering aforementioned decree and obtained the same surreptitiously, for, none of the legal heirs were impleaded as defendants. The contention of the plaintiffs vis-à-vis settlement arrived at by Gauran Devi was rejected and the suit was dismissed. The lower Appellate Court in appeal preferred by the respondents-plaintiffs reversed the finding of the trial Court by holding that decree required registration as the right was created for the first time by way of decree. It is in these circumstances, the defendants preferred second appeal before this Court.

Mr. Ishan Bhalla for Mr. Kuldeep Sanwal, learned counsel appearing on behalf of the appellants-defendants submitted that as per the judgment of Hon'ble Supreme Court rendered in **Kale and others Vs. Deputy Director of Consolidation and others AIR 1976 SC 807** of the parties to the settlement had no apparent antecedent title but under the arrangement, the other party relinquished the title, the same does not require registration. The compromise suffered by Gauran Devi cannot be reopened at the instance of a person, who was not party to the compromise. The suit was ex facie barred by limitation as it could not be brought within the parameters of Article 59 of the Limitation Act but in fact, would have to be

within the parameters to set aside the decree by alleging to have acquired knowledge only in the year 1999 that too after two years of death of Gauran Devi whereas Article 58 provides limitation of three years when the right to sue accrued.

Maya Devi in pursuance of the decree had been put into possession and created mortgage in favour of defendant No.13 by taking the loan. All these factors were in the knowledge of the plaintiffs but they remained silent and even Gauran Devi for all the years she remained alive. The ingredients of fraud and mis-representation had not been proved, in essence, Order 6 Rule 4 and 10, thus, urges this Court for setting aside the judgment and decree passed by the lower Appellate Court and prayed for restoration of the judgment and decree rendered by the trial Court.

Mr. Sanjay Majithia, Ld. Senior Counsel assisted by Mr. Inderjit Singh representing respondent No.1 to 6 and Mr. Gunjan Gera for Mr. Arvind Rajotia representing respondent No.21 submitted that Maya Devi was daughter of Gauran Devi and she had no pre-existing right in the aforesaid property and therefore, the alleged compromise was arrived at the back of the plaintiffs and the suit filed without impleading the plaintiffs was nothing but an outcome of fraud, thus, the impugned decree dated 09.02.1994 required registration. In support of his contention, he relied upon the judgment rendered by Hon'ble Supreme Court in **Bhoop Singh Vs. Ram Singh Major and others AIR 1996 SC 196** The lower Appellate Court being the last court of fact and law has rightly exercised the jurisdiction vested in it by formulating the question under Order 41 Rule 31 CPC by noticing the legal proposition with regard to the decree being illegal and void for want of registration, therefore, correctly set aside the judgment

and decree rendered by the trial Court.

Maya Devi concededly was daughter of Gauran Devi and therefore, there was some pre-existing right assuming for the argument's sake, no question arose qua family settlement between the parties and therefore, the decree dated 09.02.1994 at the back of the plaintiffs was not sustainable, thus, urges this Court for upholding the judgment and decree under challenge by dismissing the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Bhalla, for, concededly Gauran Devi wife of Lekh Ram, owner of the suit property, expired on 22.10.1997. During all the period when she remained alive, she did not allege any fraud or mis-representation. Even the suit aforementioned has been filed in March, 1999 but the real fact which has not been noticed by the lower Appellate Court is that the plaintiffs failed to prove that property at the hands of Gauran Devi was ancestral in nature. Aksh sijra, Ex.P10, did not prove the lineage of three generations at the hands of Gauran Devi for seeking claim in the property on the aforementioned premise.

The plaintiffs have not been able to discharge onus whether thumb impression of Maya Devi on the written statement suffered before the Court was an outcome of fraud and mis-representation as no assistance of any expert had been taken, thus, for all intents and purposes the plaintiffs miserably failed to prove that defendant No.1 exerted any pressure upon Gauran Devi. Vague and general allegations of fraud are not sufficient to bring the case within the realm of fraud and mis-representation under Order 6 Rule 4 CPC.

judgment and decree of the lower Appellate Court on the premise that the decree required registration is sustainable or not. The law with regard to registration of the decree that in case a person who had no pre-existing right required registration is no longer *res integra*. Since the plaintiffs miserably failed to prove the property at the hands of Gauran Devi to be ancestral, it was her self-acquired property and being absolute owner, she could alienate the property to any one in any manner either by Will, Relinquishment Deed, Family Settlement or by a decree. The decree dated 09.02.1994 used to be got through the Court so that it bears the stamp of the Court and cannot be challenged. As it is a common practice that if a person executes a registered Will on the demise, the aggrieved party i.e. non-beneficiaries raise dispute in this regard by bringing the matter in the Civil Court. Maya Devi was none else but daughter of Gauran Devi. In the absence of any Will or testamentary document, the property would have to be inherited by way of natural succession, therefore, she had pre-existing right and therefore, right was not created for the first time. The proposition of law on this point is no longer *res integra* in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Kale's case** (supra). Para 10 of the same reads 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 s. 17(2) (sic) (Section 17 (1) (b) ?) 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 owners, 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.

The lower Appellate Court in my view abdicated in not noticing the ratio of the judgment rendered in **Kale's case** (supra) while holding that the decree required registration.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be

of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 - 29]”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by

the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

As an upshot of my finding, the judgment and decree rendered by the lower Appellate Court is illegal and perverse, therefore, not sustainable in the eyes of law. The same is hereby set aside and the judgment and decree of the trial Court is restored.

The appeal is allowed. Decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

May 04, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No