

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

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Date of decision: 08.01.2018

1. RSA No.3330 of 2015 (O&M)

Kamaljit Singh Nagra

..... Appellant

Versus

Paramjit Singh

..... Respondent

2. RSA No.885 of 2016 (O&M)

Kamaljit Singh

..... Appellant

Versus

Paramjit Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

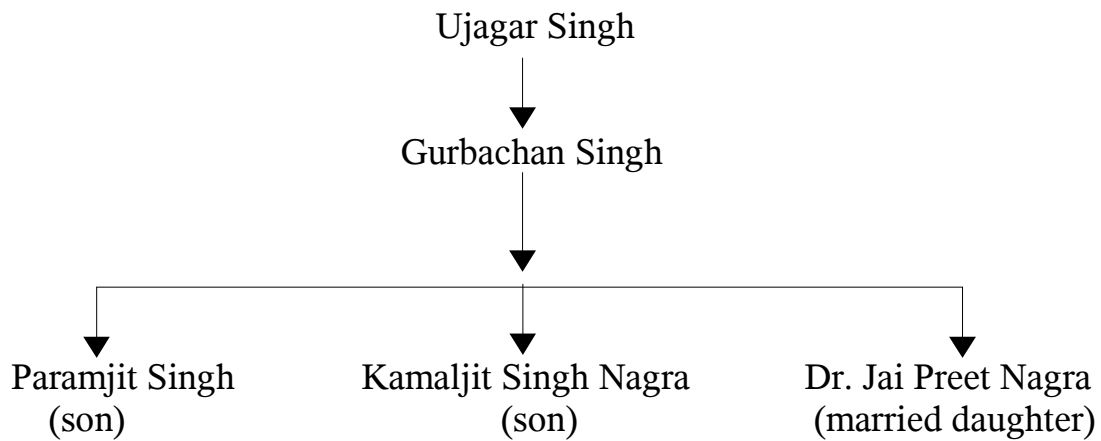
Present:- Mr. Amit Jain, Advocate
for the appellant (in both the appeals).

Mr. Divanshu Jain, Advocate
for the respondent.

ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of two regular second appeals bearing RSA No.3330 of 2015 titled 'Kamaljit Singh Nagra Vs. Paramjit Singh' and RSA No.885 of 2016 titled 'Kamaljit Singh Vs. Paramjit Singh and others' which are connected and arise out of the same dispute between the parties.

A small pedigree table would facilitate the Court to understand the relationship between the parties.



Plaintiff-Paramjit Singh filed a suit for joint possession, exclusive possession, declaration and permanent injunction.

Gurbachan Singh was recorded as owner of the property i.e. 158 kanals and 16 marlas of land situated in village Akalgarh, Tehsil Sunam apart from house No.217, Sector 9-C, Chandigarh.

Paramjit Singh filed a civil suit against his father Gurbachan Singh claiming that five years before the filing of the suit, parties had entered into a family settlement and as per family settlement, half share of land measuring 158 kanals and 16 marlas as also house No.217, Sector 9-C, Chandigarh had fallen to his share but now Gurbachan Singh is disputing this fact. Gurbachan Singh filed a written statement admitting the claim of the plaintiff. Gurbachan Singh appeared in Court and suffered a statement which resulted into a judgment and decree dated 29.08.1985 in favour of Paramjit Singh.

Dr. Jai Preet Kaur Nagra, married daughter and Kamaljit Singh Nagra filed a suit for declaration challenging mortgage deeds dated 16.04.2005, 30.11.2005 and 15.12.2005 and sought declaration that plaintiffs in that suit i.e. Dr. Jai Preet Kaur Nagra and Kamaljit Singh Nagra are entitled to common use and enjoyment of half share of the aforesaid land. Head note of the plaint which is Ex. P-13 on the file reads as under:-

“Suit for declaration to the effect that the mortgage deed No.101 dated 16.04.2004 alleged to be executed by defendant No.1 in favour of defendant No.1 with regard to land measuring 48 kanals bearing Khasra No.36//16 (8-0), 17 (8-0), 18 (8-0), 19 (8-0), 37//21 (8-0), 22 (8-0) situated at village Akalgarh Tehsil Sunam and the mortgage deed No.3918 dated 30.11.2005 alleged to be executed by defendant No.1 in favour of defendant No.3 with respect to land measuring 64 kanals bearing Khasra Nos. 36//20 (2-12), 21 (2-14), 22 (8-0), 23 (8-0), 24 (8-0), 25 (8-0), 40//1/1(5-2), 2/1 (5-2), 41//2 (8-0), 9(8-0), 10 Min (0-10) situated at Akalgarh Tehsil Sunam and the mortgage deed No.4227 dated 15.12.2005 alleged to be executed by defendant No.1 in favour of defendant No.4 with regard to land measuring 32 kanals bearing Khasra Nos.37//19(8-0) 20 (8-0), 41//1(2-16), 3(8-0), 4/1 (5-2), 10/1 Min (0-2) situated at village Akalgarh Tehsil Sunam are illegal, null and void, against law and facts, without any right and authority, without consideration and are the result of undue advantage which the defendants No.2 to 4 had taken of a helpless old person and made him to sign some documents/papers with ulterior motive of usurping his property and by taking undue advantage of feeble mind of defendant No.1 and the defendants No.2 to 4 are guilty of abuse of faith and the defendant No.1 never transferred the suit land mentioned above and the said mortgage deeds do not confer any right on defendants No.2 to 4 and have no effect on the rights of the plaintiffs and the same are liable to be set aside and the mutations No.731, 762 and 764 sanctioned in favour of defendants No.2 to 4 on the basis of above said illegal, null and void mortgage deeds respectively are also illegal, null and void and are liable to be set aside and the plaintiffs are entitled to common use and enjoyment of ½ share of the above said land and out of land bearing Khasra Nos.41//10 Min (1-14), 41//5/2 (5-2) and 41//8 (8-0) situated at village Akalgarh Tehsil Sunam.

Suit for permanent injunction to the effect that the defendants No.1 to 4 be restrained from transferring or alienating in any way to any other person any portion out of the

land in dispute detailed in the heading (A) of the plaint.”

It was pleaded in the plaint that defendant No.1 i.e. Gurbachan Singh, in the aforesaid suit, is an old man of feeble mind and unable to understand what is good or bad for him.

During the pendency of the aforesaid suit, Kamaljit Singh Nagra got a transfer deed executed by Gurbachan Singh with respect to the entire land measuring 158 kanals and 16 marlas on 07.02.2008.

Plaintiff Paramjit Singh filed a suit for joint possession, exclusive possession, declaration and permanent injunction claiming property on the basis of decree dated 29.08.1985. Kamaljit Singh Nagra was defendant No.1 and Gurbachan Singh was defendant No.2. Defendant No.2-Gurbachan Singh died before he could file written statement. However, Jai Preet Kaur Nagra filed written statement being legally representative of Gurbachan Singh on the basis of registered Will and admitted the claim of the plaintiff-Paramjit Singh. On the other hand, Kamaljit Singh Nagra filed written statement assailing the legitimacy of judgment and decree dated 29.08.1985 in Civil Suit No.100 dated 05.03.1985 on the ground of fraud, decede, misrepresentation and decree being un-registered and as such, having no legal effect.

As noticed above, during the pendency of the suit, Kamaljit Singh got transferred the entire agricultural land measuring 158 kanals and 16 marlas in his favour. The validity of the aforesaid transfer deed was also challenged by the plaintiff claiming that such transfer deed would not effect his rights.

Both the Courts after appreciating the evidence available on the file decreed the suit filed by the plaintiff by declaring that the plaintiff is

owner of half share in the agricultural land measuring 158 kanals and 16 marlas and a residential house No.217, Sector 9-C, Chandigarh. The Courts have rejected the claim of Kamaljit Singh Nagra that the decree dated 29.08.1985 is result of fraud, decede, misrepresentation or liable to be ignored on the ground of non-registration.

Kamaljit Singh Nagra also filed a separate suit challenging the decree dated 29.08.1985 on 07.10.2008. The aforesaid plaint was rejected on the ground that such decree is already being challenged by Kamaljit Singh Nagra while contesting the suit filed by the plaintiff-Paramjit Singh at Sunam. Appeal against the rejection of the plaint has also been dismissed and both these orders are subject matter of connected appeal i.e. RSA No.885 of 2016.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below. I have also gone through the photocopy of the record produced by learned counsel for the parties.

Learned counsel for the appellant-Kamaljit Singh has submitted that his client was not party to the decree dated 29.08.1985. He has further submitted that there could not be any family settlement in the absence of Kamaljit Singh who was a member of the family. He has further submitted that the plaint filed by Kamaljit Singh Nagra could not be rejected on account of pendency of earlier suit.

On the other hand, learned counsel for the respondent has submitted that the entire land and house was recorded in the revenue records in the name of Gurbachan Singh. In a family settlement, Paramjit Singh was given half share of the agricultural land and the residential house in the year

1985. Gurbachan Singh thereafter remained alive for more than 23 years. But he never challenged the decree passed by the Civil Court in 1985. Even Kamaljit Singh Nagra never challenged the decree before contesting the decree by filing the written statement in the present suit.

Learned counsel for the respondent has further submitted that the family settlement was known to everyone and the prayer made in the suit filed by Kamaljit Singh Nagra and Dr. Jai Preet Kaur Nagra in 2006 which has been extracted above would itself prove that Kamaljit Singh Nagra and Dr. Jai Preet Kaur Nagra were restricting their claim only to half share in the agriculture land measuring 158 kanals and 16 marlas.

As far as first submission of learned counsel for the appellant that Kamaljit Singh Nagra was not party to the decree is correct. However, Kamaljit Singh Nagra was not recorded as an owner of the property. The property was recorded in the name of Gurbachan Singh who had suffered the decree in favour of Paramjit Singh. The decree was passed acknowledging a family settlement arrived at between the parties whereby the properties were divided five years before the filing of the suit in 1985. Gurbachan Singh had appeared in the Court and admitted the claim put forth by Paramjit Singh.

Second argument of learned counsel for the appellant is that in absence of Kamaljit Singh Nagra, there could not be any family settlement and therefore, the family settlement which ultimately resulted into a decree is nonest in the eyes of law. Although, on first blush, the argument appears to be attractive, however on close scrutiny, this Court does not find any substance therein. It is not in dispute that Kamaljit Singh Nagra has been given 50% of the agriculture land which is not being disputed by any family

member. While filing the suit in 2006, Dr. Jai Preet Kaur Nagra and Kamaljit Singh Nagra staked their claim only with respect to half share of the agriculture land. Such being the position, Kamaljit Singh Nagra cannot claim that the family settlement and the decree passed by the Court in his absence is void ab initio. The parties claim that the property was joint hindu family property. They were three male members namely Gurbachan Singh, Paramjit Singh, Kamaljit Singh Nagra. Dr. Jai Preet Kaur Nagra is the daughter. Half share of the agriculture land has been given exclusively to Kamaljit Singh Nagra. Dr. Jai Preet Kaur Nagra is not disputing the correctness of family settlement and the consent decree. Gurbachan Singh never disputed the correctness of the family settlement and the judgment and decree passed in the year 1985. It is only Kamaljit Singh Nagra who is disputing the correctness thereof and that also after lapse of substantial time. In a family settlement, the members of the family adjust their share and part ways. It is permissible that the family members can orally settle their dispute and distribute the properties. Kamaljit Singh Nagra is living in India staying in house No.217, Sector 9-C, Chandigarh whereas Paramjit Singh is settled in Australia. Gurbachan Singh remained alive for more than 23 years after the date of decree. Kamaljit Singh Nagra for the first time challenged the decree only while contesting this suit. In the considered opinion of this Court, the claim challenged to the Civil Court decree by Kamaljit Singh Nagra is clearly barred by time.

Learned counsel for the appellant has further submitted that the decree does not have any legal force in view of the fact that the decree is not registered. That with regard to registration it is suffice to mention that the decree passed by the Civil Court acknowledging the family settlement

previously arrived does not require registration. This issue has already been decided by the Hon'ble Supreme Court of India in the case of Som Dev and others Vs. Rati Ram and another, AIR 2006, SC, 3292 wherein Supreme Court held that where a decree does not create right for the first time, such decree would not require registration. In the present case also, the decree was passed only acknowledging a prior family settlement arrived at between the family members. Therefore, the decree itself would not creating any right, title or interest in present time.

Last submission of learned counsel is that plaint of the suit filed by Kamaljit Singh Nagra could not be rejected on the ground that the earlier suit was pending between the parties. Although, technically there is some substance in the argument of learned counsel, however, since the validity of the decree which is sought to be challenged in the subsequent suit has been upheld.

In view of the discussion made above, this Court does not find any justification to now permit the appellant to continue with the suit as the finding in the suit filed by Paramjit Singh which is also being decided would operate as res judicata.

In view thereof, both the appeals are dismissed.

08.01.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No