

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.5105 of 2016 (O&M)

Date of decision: 13.08.2018

Sushil Kumar

..... Appellant

Versus

Darshan Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate
for the appellant.

Mr. C.B. Goel, Advocate
for respondents No.1 to 4.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment and decree passed by the learned trial Court.

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

1. Whether a Civil Court decree passed acknowledging a family settlement between the family members requires registration?
2. Whether a Civil Court decree can be challenged after a period of 20 years?

Some facts would be required to be noticed.

Originally, the property in question was owned by Smt. Kasran

Devi, grand-mother of the plaintiffs and the defendants. She died on 08.02.1975 and on the basis of a testament, Hans Raj, father of the parties to the litigation became owner. Hans Raj while acknowledging a family settlement in the year 1987 suffered a decree in favour of defendant-appellant Sushil Kumar on 04.02.1988. In this decree, Hans Raj filed written statement conceding to the claim in the suit and suffered a statement admitting the claim of Sushil Kumar.

This decree passed by the competent Court of jurisdiction has been now challenged by filing a suit on 11.04.2008 by remaining brothers of Sushil Kumar. The defendant-appellant contested the suit and the learned trial Court after appreciating the evidence available on the record dismissed the suit after recording a finding that no fraud on passing of the decree has been proved. However, the learned First Appellate Court has reversed the judgment and decree passed by the learned trial Court on following reasons:-

1. Since Hans Raj was exclusive owner, therefore, Sushil Kumar had no pre-existing right and hence, decree required registration and in absence of the registration, the decree does not have effect of transferring the property.

2. The decree is result of fraud.

3. The story of family settlement as pleaded in the previous plaint filed in the year 1988 and the stand taken by the defendant No.1-appellant is different.

4. The plaintiffs had no right to challenge the decree during the life time of Hans Raj, hence, there is no delay in filing the suit.

It may be significant to note that Hans Raj remained alive for a

period of six years after passing of the decree but he neither disputed nor challenged the Civil Court decree passed on 04.02.1988.

Now the stage is set for considering the questions of law.

- (i) *Whether a Civil Court decree passed acknowledging a family settlement between the family members requires registration?*

Hans Raj has five sons and a daughter. Four sons are the plaintiffs in the present litigation. Hans Raj and his children were part of a joint Hindu family. It is normal that the properties are divided amongst the family members by way of family settlement. The Courts always lean in favour of upholding family settlement. In the present case, when the defendant-appellant filed the suit, he pleaded in the previous plaint as under:-

“That keeping in view his old age and respect and kind treatment of the plaintiff towards the defendant and to keep peace and cordial relations among the family, the defendant in Assadh 1987 called the relations of the family and respectables of the village and made a family settlement. In that family settlement, the defendant gave the land in suit to the plaintiff. The defendant surrendered the possession of the land to the plaintiff and admitted him to be the owner in possession of the land in suit. The defendant also promised to get the revenue entries transferred in the name of the plaintiff in accordance with the terms of the family settlement.”

The defendant Hans Raj filed a written statement admitting the claim in the suit. Hans Raj also appeared before the Court and suffered a statement that he admits the contents of the plaint. The statement of Hans Raj is Ex.P-3. On the basis thereof, the judgment and decree was passed Ex.D-4 and D-5. On the basis of the judgment and decree, mutation of the land was sanctioned on 12.12.1988 Ex.D-7 on the file. Learned First

Appellate Court has reversed the judgment on the ground that since Hans Raj was the absolute owner, therefore, the defendant-appellant had no pre-existing right. In the considered opinion of this Court, the entire approach of the learned First Appellate Court was erroneous. The property held by head of family is in a Hindu family normally held at the behest of members of the family and it is normal for the Hindu family to adjust the shares and divide the property through an oral family settlement. This issue has already been examined by this Court in a detailed judgment passed in the case of Dhian Singh Vs. Mohinder Singh PLR 2017(3) 729.

In view of the aforesaid judgment, the findings of the learned First Appellate Court that the judgment and decree requires registration cannot be upheld and therefore, set aside. Hence, question No.1 is answered in favour of the appellant.

(ii) *Whether a civil Court decree can be challenged after a period of 20 years?*

In the present case, judgment and decree was passed on 04.02.1988. In the revenue record, the judgment and decree was incorporated vide mutation sanctioned on 12.12.1988. The present suit was filed on 11.04.2008 after a period of more than 19 years. The plea of the plaintiffs that they did not come to know of the decree cannot be accepted particularly when in the revenue record, defendant No.1 was being depicted as absolute owner of the property. Still further, Hans Raj was died in the year 1994. On his death, even if the plaintiffs were not in knowledge of the decree prior to the death of Hans Raj, at least they would have made endeavour to get the mutation sanctioned in their favour and consulted revenue officials. Therefore, the case set up by the plaintiffs is also not believable.

The Courts below were also not correct in holding that the plaintiffs had no right to challenge the consent decree during the life time of father Hans Raj. The plaintiffs were entitled to file a suit and the limitation for filing the suit does not stand extended in any manner till the death of Hans Raj.

In view of the aforesaid, question No.2 is also answered in favour of the appellant.

Let us now deal with the various reasons given by the learned First Appellate Court while reversing the judgment passed by the learned trial Court.

Learned First Appellate Court has held that the family settlement as pleaded in the previous plaint and as pleaded in the written statement filed by the defendant-appellant is different. This Court has examined the written statement filed by the defendant-appellant. It has been pleaded in the written statement that a family settlement had taken place in the presence of all sons of Hans Raj and their family members. In the considered opinion of this Court, there is no difference in the family settlement as pleaded in the previous plaint and the written statement. The remaining assertions are only with a view to support the reasons for arriving at a family settlement. Learned First Appellate Court has also wrongly held that a fraud has been played with the Court vide passing decree dated 04.02.1988 on the ground that there was some acquisition of the land to the extent of 3 kanals and 4 marlas and compensation thereof was paid to all the legal heirs. It will be noted that acquisition of the land took place in the year 1982 when the decree had not been passed. The proceedings were pending for determination of compensation. Ultimately, the execution

petition was pending when Hans Raj died. The execution petition was filed on 04.12.1993. Hans Raj himself filed the same. After the death of Hans Raj in 1994, all class-I heirs were impleaded as legal heirs. Learned First Appellate Court has held that since out of total land measuring 58 kanals 11 marlas, since 3 kanals and 4 marlas had been acquired, therefore, in the decree dated 04.02.1988, this fact was concealed from the Court. It will be noted that in 1988 when the decree was passed, no evidence has come on record that the acquisition proceedings had become final or not. In any case, such fact would not invalidate a decree passed by the Court. At the most decree would be operative only with respect to the land minus the land, which had been compulsorily acquired.

Learned First Appellate Court has also adversely commented upon the statement of counsel who represented Hans Raj in the previous litigation. It may be noted that Sh. Madan Lal who was earlier practicing as an Advocate and later on selected as an Inspector, has specifically stated that he knew Hans Raj because Hans Raj was posted in Tehsil Office as a peon and he as an Advocate used to go to Tehsil. In such circumstances, statement of Madan Lal, who was earlier Advocate could not be doubted. It will be further noted here that no effort has been made by the plaintiffs to prove that Hans Raj had not suffered the decree dated 04.02.1988 with his free will and volition or he did not appear in the Court.

Learned counsel for the respondents submitted that since in the previous plaint, it has been mentioned that in a family settlement, the defendant gave the land, therefore, it should be assumed that it was a gift. In the considered opinion of this Court, the word gave cannot be interpreted to mean gift. The pleadings in the previous suit have to be read in the

context they have been put forth. It is clearly pleaded that in a family settlement which happened in Assadh 1987, the property fell to the share of defendant-appellant. Learned counsel has further submitted that the decree passed on 04.02.1988 was in fact a collusive decree as no summons was issued to Hans Raj. It is not in dispute that Hans Raj did file a written statement and suffered a statement. Hans Raj remained alive for a period of six years after the passing of the decree. Hans Raj never challenged the correctness of the decree. Under Order 12 Rule 6, CPC, once the parties are not at issue, the Court can pass a decree on the basis of the pleadings of the parties and the statement made. No doubt, Hans Raj had appeared without receipt of notice but that itself cannot be treated as a ground to doubt the correctness of a decree passed by a competent Court of jurisdiction. A Division Bench of this Court has already held that the decree passed by a competent Court of jurisdiction can only be set aside on the ground on which contract can be set aside. The judgment passed by the Division Bench has already been approved by the Hon'ble Supreme Court in the case of Bhoop Singh Vs. Ram Singh Major and others, AIR 1996 SC 196.

Next reason assigned by the Court that the plaintiff were having no right to challenge the decree during the life time of Hans Raj is also erroneous. Once the plaintiffs-respondents were asserting that the decree is result of fraud, they had always right to challenge the same. A decree is not a sale executed by the Karta which cannot be challenged by the other members of the family during the life time of Karta.

Next reason assigned by the learned First Appellate Court is that the defendant-appellant who was plaintiff in the previous suit was not having any pre-existing right. In the considered opinion of this Court, it is

not necessary for a Civil Court to pass a decree acknowledging a family settlement only after recording a finding that a family member has a pre-existing right. It is well settled that all the members of the family are not required to have pre-existing right before a family settlement is arrived at and the properties are distributed. Hon'ble Supreme Court has even held that some of the members may not be directly member of a closer family can be part of a family settlement and the properties can be divided. The family, in the context of family settlement, is assumed to be quite large and include distant relatives also.

In view of the discussion made, the judgment passed by the learned First Appellate Court is set aside and that of the trial Court is restored.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Regular second appeal is allowed.

13.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No