

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

**RSA No.5757 of 2016 (O&M)
Date of Order:14.05.2018**

Kamlesh and others

..Appellants

Versus

Kutumb Piyari and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep K. Sharma, Advocate,
for the appellants.

Mr. Sherry K. Singla, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

This appeal was allowed on 14.05.2018. Now the court proceed to record reasons.

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing the suit filed by the plaintiff Kutumb Piyari for declaration to the effect that the plaintiff is the owner in possession of land to the extent of 1/3 share in the land measuring 240 kanals and 17 marlas described in head note of the plaint.

In the considered opinion of this court following substantial questions of law arise for determination:-

- (i) Whether in absence of proper pleadings as required under Order 6 Rule 4 of the Code of Civil Procedure as well as evidence supporting, proceedings recorded by the court while passing the consent judgment and decree can

be set aside on the ground that it is fraudulent?

- (ii) What are the grounds available to get a civil court decree set aside, particularly a consent decree as is commonly known in a subsequent suit?
- (iii) Whether courts are justified in following the judgment passed by a superior court without noticing the context in which such judgment was delivered?

Brief Facts which are required to be noticed are that:-

Balbir Singh who died on 25.12.1995 was having two wives, one Smt. Sugna Devi, who died on 08.01.1975 and second Smt. Kamlesh (alleged to be mistress). From Sugna, Balbir Singh had one daughter i.e. one Kutumb Piyari plaintiff in the present suit, respondent herein. Whereas from Kamlesh, Balbir Singh was having two sons i.e. Deepak and Raju and five daughters. As per jamabandi for the year 1972-73, Ex.P4, Balbir Singh and Smt. Sugna were joint owners of land measuring 240 kanals and 17 marlas in equal share. On the death of Smt. Sugna, her entire property was inherited and mutated in favour of Kutumb Piyari. Deepak and Raju sons of Balbir Singh filed a suit for declaration claiming that in a family settlement, Balbir Singh had admitted Deepak and Raju to be owners in possession of land i.e. $\frac{1}{2}$ share of 240 kanals and 17 marlas in a family settlement. However, later on Balbir Singh is refusing to honour the same forcing Deepak and Raju to file a suit. Balbir Singh admitted the claim and the civil court on the basis of Order 12 Rule 6 of the Code of Civil Procedure, decreed the suit on 22.04.1991 declaring Deepak and Raju to be owner in possession of the land measuring 120 kanals and 8 $\frac{1}{2}$ marlas being $\frac{1}{2}$ share of 240 kanals 7 marlas. Thereafter Kutumb Piyari was owner of

the $\frac{1}{2}$ share and Deepak and Raju were owners of the remaining half of the joint land.

Once again Balbir Singh filed a suit against Kutumb Piyari claiming that in a family settlement Kutumb Piyari has admitted Balbir Singh to be owner to the extent of $\frac{2}{3}$ rd share of the land out of $\frac{1}{2}$ share of the land owned by Kutumb Piyari in the total land measuring 240 kanals and 17 marlas. In essence, 80 kanals and little less than 6 marlas land was claimed on the basis of family settlement. The aforesaid suit was decreed as Kutumb Piyari filed written statement admitting the claim of her father Balbir Singh and suffered a statement in the court before the Presiding Judge admitting the claim of Balbir Singh. Pursuant thereto on the same day i.e. 20.09.1991, decree was passed. However, while framing decree, court committed an error in recording that declaratory decree is with respect to land to the extent of $\frac{2}{3}$ rd share of the land measuring 240 kanals and 17 marlas. Kutumb Piyari also executed a registered will in favour of Deepak and Raju, her brothers from different mother with respect to the land measuring 80 kanals and little less than 6 marlas being $\frac{2}{3}$ rd share in her $\frac{1}{2}$ share of the land measuring 240 kanals 17 marlas. Balbir Singh died on 25.12.1995. The will is dated 20.09.1991. Kutumb Piyari instituted a suit on 02.09.1996 claiming that she is the only legal heirs of Balbir Singh and Kamlesh and her five children including two sons and five daughters are nobody in the family. Aforesaid suit was dismissed by the learned Civil Judge vide judgment dated 22.02.2004 declaring that Kamlesh and her five children are legal heirs of Balbir Singh and the claim of Kutumb Piyari is wrong.

Kutumb Piyari also filed another suit on 23.08.1997

challenging decree passed by the civil court on 22.04.1991 in the suit filed by Deepak and Raju v. Balbir Singh. In that suit also Kutumb Piyari claimed that Deepak and Raju were not sons of Balbir Singh and, therefore, decree is illegal. The aforesaid suit was also dismissed on 03.09.2003.

In the meantime, Deepak and Raju and others being legal heirs of Balbir Singh filed an application for correction of an accidental slip in the decree dated 20.09.1991 with a prayer to correct the decree to the effect that Balbir Singh is to be declared owner of land measuring 80 kanals and little less than 6 marlas being $\frac{2}{3}$ rd share of the half share of Kutumb Piyari in land measuring 240 kanals and 17 marlas. In the aforesaid application, Kutumb Piyari appeared through counsel and conceded that there was an accidental slip and therefore she has no objection to the correction of the decree. Accordingly correction was ordered while exercising powers under Section 152 of the Code of Civil Procedure vide order dated 29.10.1999.

Kutumb Piyari filed a fresh suit from which this appeal has arisen on 06.06.2000 impleading Kamlesh and her children from Balbir Singh seeking declaration that she is owner of $\frac{1}{3}$ rd share in the land measuring 240 kanals and 17 marlas and judgment and decree dated 20.09.1991 corrected on 29.10.1999 is illegal, null and void, based upon fraud and misrepresentation. In the plaint, she claimed that on 20.09.1991 she was brought to the court premises with an intention to get a Will-testamentary document executed and registered in respect of the suit land in favour of defendants no.2 and 3 i.e. Deepak and Raju and during aforesaid\ execution of the Will her signatures were also obtained on various papers and a decree was obtained. She further claimed that order of correction passed by the court on 29.10.1999 was also result of fraud as she did not

authorize Sh. Udaiveer Singh Chauhan, Advocate to file any reply to the aforesaid application. The suit was contested by the defendants.

Learned trial court as well as first appellate court have set aside the decree dated 20.09.1991 corrected decree dated 29.10.1999 after returning a finding that the decree dated 20.09.1991 was result of fraud. Hence, this appeal.

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

Questions no.(i) and (ii)

- (i) ***Whether in absence of proper pleadings as required under Order 6 Rule 4 of the Code of Civil Procedure as well as evidence supporting, proceedings recorded by the court while passing the consent judgment and decree can be set aside on the ground that it is fraudulent?***
- (ii) ***what are the grounds available to get a civil court decree set aside, particularly a consent decree as is commonly known in a subsequent suit?***

As per Order 6 Rule 4 of the Code of Civil Procedure, it is necessary for the party to plead necessary particulars to prove any misrepresentation, fraud, breach of trust, willful default or undue influence.

Order 6 Rule 4 of the Code of Civil Procedure is extracted as under:-

- | | | | |
|-------|----|----|----|
| 1. XX | XX | XX | XX |
| 2. XX | XX | XX | XX |
| 3.XX | XX | XX | XX |

4. Particulars to be given where necessary.- In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with

dates and items if necessary) shall be stated in the pleading.”

Still further, fraud, misrepresentation have to be proved beyond reasonable doubt as is required in criminal cases. Once the court is called upon to give a finding on fraud or misrepresentation, the court must look for material particulars which have been pleaded in the pleadings and the evidence led in support thereof. Finding on fraud cannot be given simply on the basis of assumptions. Such findings, if given, would be based upon conjectures and surmises which is not permissible.

In the present case, let us examine what is the pleadings of the fraud or misrepresentation. In para 6 of the plaint, plaintiff asserts that she was brought to the court premises with an intention to get a testamentary document executed and registered in respect of land in dispute in favour of defendants no.2 and 3 i.e. Deepak and Raju and Will was executed and registered and during the course of execution of the aforesaid Will, she was also asked to sign certain blank papers which have been misused. She has also pleaded that she is not much educated as she failed in her primary education and she does not know English and she was brought to the court premises at Jhajjar to get the will executed. She further asserts that after her life time period, the property would pass on to defendants no.2 and 3 but later on she cancelled the aforesaid will.

Apart from that, it has been pleaded that Balbir Singh kept the impugned judgment and decree as top secret and did not get the mutation of the land sanctioned on the basis of the aforesaid decree for more than 8½ years. Decree was also claimed to be illegal being unregistered and the possession was never transferred. When she appeared in the evidence in

court, she admitted that her statement given in the court bears her signatures. She further admitted that power of attorney given to the Sh. Udaiveer Singh Chauhan, Advocate, also bears her signatures, however she submits that she did not go inside the court and she never appeared before the court. She stated that she was asked to sign some papers while sitting outside the court. The signatures were obtained by her father. Apart from that she also examined one Sh. Gaje Singh as PW2.

On the basis of the aforesaid pleadings, both the courts have found that the decree dated 20.09.1991 and particularly corrected decree dated 29.10.1999 was result of fraud. First appellate court has relied upon a judgment passed by the Hon'ble Supreme Court in the case of **Smt. Badami (deceased) By her L.R v. Bhali, (2012) 11 SCC 574.**

Once Smt. Kutumb Piyari, respondent-plaintiff admitted that she engaged Sh. Udaiveer Singh as Advocate and she signed her statement in the court, the courts were not justified in giving finding on fraud. In the considered opinion of this court, necessary pleadings and evidence for proving fraud missing in the plaint. First appellate court has held that signatures of Kutumb Piyari in the reply filed to the application for correction of accidental slip as noticed in the previous part of the judgment are placed in the manner and it appears that such signatures were obtained on blank papers. Learned first appellate court has not even understood the scope of application for correction of the accidental slip. As per the decree passed on 20.09.1991, late Sh. Balbir Singh, father of the respondent-plaintiff was declared owner of the 2/3rd share of the land measuring 240 kanals and 17 marlas, which would come to 160 kanals and 12 marlas approximately, whereas his claim was only to the extent of 80 kanals and

little less than 6 marlas of land being $\frac{2}{3}$ rd share of $\frac{1}{2}$ share of Kutumb Piyari in land measuring 240 kanals 17 marlas. In fact on the day, the decree was passed, Kutumb Piyari was never owner of $\frac{2}{3}$ rd share in the total land measuring 240 kanals 17 marlas. Kutumb Piyari became owner to the extent of $\frac{1}{2}$ share in the land measuring 240 kanals 17 marlas on the death of her wife Sugna in the year 1976. Therefore, the correct decree was in the interest of the respondent-plaintiff. However, the courts have not appreciated this fact. Sh. Udaiveer Singh Chauhan, Advocate, was engaged by her for defending her in the suit in the year 1991. She admits that she engaged Shri Udaiveer Singh Chauhan, Advocate. In these circumstances, the courts clearly erred in recording a finding that the decree was result of misrepresentation and fraud.

Still further, it is the pleaded case of the plaintiff that she wanted to give land measuring 80 kanals 6 marlas to her half blood brothers after her death, so obviously there was some family settlement between the parties. She acknowledged her father Balbir Singh to be owner of 80 kanals 6 marlas of land vide decree dated 20.09.1991.

Courts have further held that the decree becomes suspicious as the decree was passed on the same day when Kutumb Piari, defendant in the aforesaid suit, appeared and filed her written statement and suffered a statement in the court. Once the court comes to know that the suit is not being contested, the courts are not expected to wait and adjourn the cases unnecessarily. Order 12 Rule 6 of the Code of Civil Procedure clearly provides that if the court comes to a conclusion that the parties are not contesting and no triable issue arises, the courts are justified in passing the judgment on admissions. Order 12 Rule 6 of the Code of Civil Procedure is

extracted as under:-

6. Judgment on admissions. (1) *Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.*

(2) *Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”*

In the present case, Kutumb Piari, plaintiff in the present suit and defendant in the previous suit have admitted that she signed the power of attorney given to the Advocate representing her and she has signed the statement given in the court. Proceedings recorded in the courts are assumed to be carried out in accordance with law. Correctness of the proceedings recorded in the court should not be easily doubted unless there is some strong and unimpeachable evidence available to prove that such proceedings were wrongly recorded.

In view of the aforesaid discussion, questions no.1 and 2 are answered in favour of the appellants.

Question No.(iii)

Whether courts are justified in following the judgments passed by a superior court without noticing the context in which such judgment was delivered by the superior court?

Learned first appellate court has relied upon the judgment passed by the Hon'ble Supreme court in the case of Smt. Badami (deceased) (supra). A careful reading of the aforesaid judgment proves that the Hon'ble Supreme Court in a peculiar fact situation decided the case on the basis of evidence available on the file and returned a finding that the previous decree was result of fraud and manifest illegality. The aforesaid judgment passed by the Hon'ble Supreme Court does not as a preposition of law lays down that if the consent decree under Order 12 Rule 6 CPC is passed on the same day when the defendants appears in court pursuant to notice, the decree must be held to be result of fraud. In fact in the aforesaid case, suit was instituted on 24.11.1973 and it was decreed on 27.11.1973. It was not even proved in the aforesaid case that notices sent to the defendants were served. The courts while following a judgment passed by the superior court must examine the judgment thoroughly in the context it was delivered.

No doubt, the judgment passed by the Hon'ble Supreme Court is binding as a precedent under Article 141 of the Constitution of India. However, it is also equally true that ratio decidendi in a judgment is binding and not *obiter-dicta*. The decision of the Supreme Court on a peculiar fact situation cannot be treated to be declaration of law as envisaged in Article 141 of the Constitution of India.

In view of the above, question no.3 is also answered in favour of the appellants.

Learned first appellate court have recorded following reasons to uphold judgment of the trial court. The reasons recorded are as under:-

(i) She had acquired the suit land (i.e. 1/3 share of the total land measuring 240 kanals 17 marlas) by way of inheritance, after the death of her mother Sugna Devi.

This fact is admitted on the part of the appellants-defendants no.1 to 7. filing of the previous suits challenging the transfer of partes/shares of the present land by sh. Balbir Singh, biological father of the parties and execution of the Will dated 20.09.1991 and subsequently, cancelling the Will dated 20.09.1991, i.e. Ex.P2 by executing another Will dated 07.01.1996, i.e. Ex.P3 it can be unequivocally inferred that the respondent-plaintiff was always having an intention to retain the suit land, as her exclusive property, at least till her death. Had it been not so, she could have easily transferred the same, in favour of the beneficiaries of the subsequent Will dated 07.01.1996, instead of execution that Will (ex.Ex.P3). It becomes hard to believe that a person having such strong possessiveness qua property, would execute a Civil Court Decree in favour of some other person also, which would immediately deprive her from all rights in respect of the land. In that situation, what would have been the logic with her, for executing a Will and keeping a copy of the same with her, followed by executing another Will (Ex. P3) and substituting the candidature of former beneficiaries, with the latter.

(ii) It is pertinent to observe that the said impugned Decree Ex.D9 of Civil Suit No.402 was passed on dated 20.09.1991. The written statement Ex.D12 was also filed on the same date, i.e. 20.09.1991. Surprisingly, the admitting statement of the defendant of that suit, i.e. the present respondent-plaintiff was also recorded on the same date, immediately followed by the statement of counsel of the plaintiff of that suit and then, passing of the Decree on the same date. Should this missile speed of the accomplishment of the task, not raise an alarm in mind?

Here arrives the significant of the features of written statement Ex.D12. When it is carefully perused,

it is made out that the signature of the deponent/executant of this written statement is present at a place, highly abnormal when compared to the regular places where such signatures are found present, below the averments of the written-statement, i.e on the right side. The name of the executant is written at proper place after end of the averments, whereas the signature of the executant is present approximately three inches below the requisite point. The intermediary space is filled up by writing a jargon, which normally is found at the bottom of such page of the written-statement, and ordinarily in the centre. The signature beneath the verification is without putting the name ahead, rather the various written material has been expanded, so as to fill up the place upto the signature present on the left side. The signature on the right side is present slightly below to that under verification, which is also an irregular feature. It can be safely made out that the signatures on the two sides were obtained on blank paper and subsequently, the written-matter was inscribed on this paper and was expanded as per requirement, to spread down upto the two signatures.

*In similar circumstances, Hon'ble Apex Court has held in case titled **Badami vs. Bhali, 2013 (1) RCR (Civil) 821** that:*

“It would be an exaggeration, but on the contrary an understatement, if it is said that all facets of fraud get attracted to the case at hand. A rustic and illiterate woman is taken to court by a relation on the plea of creation of a Lease Deed and magically in a hurried manner the Complaint is presented, written-statement is drafted and filed, statement is recorded and a decree is passed within three days. On a perusal of the

decree, it is manifest that there is no reference of any kind of family arrangement and there is total non-application of mind. It only mentions there is consent in the written statement and hence, suit has to be decreed.”

Applying the above ratio, in the present case, where no summons was issued to the defendants and filing of written statement, recording of statements of parties, passing of judgment and decretal of the suit were concluded on a single date, nothing can prevent an inference that fraud was infiltrated somewhere in the proceedings.

(iii) It cannot be ignored that vide the impugned decree Ex.D9, the rights in 1/3 share of land of defendant of that suit (i.e the present respondent-plaintiff) were transferred in favour of her father Balbir Singh. Obviously this decree would have been passed subsequent to execution of the Will, because otherwise, there was no occasion for the present respondent-plaintiff to execute the Will(dated 20.09.1991) i.e. Ex.P2. Firstly, these facts by itself are so weird as to bereave sanctity out of both the documents, because if of Kutumb Pyari was having an intention to relinquish her estate in favour of the present appellants, along with the original defendant no.7, by virtue of the Will Ex.P2, why would she be executing the decree Ex.P9, in favour of Sh. Balbir Singh? And if she had consciously effected the decree Ex.D9 in favour of her father on 20.09.1991, then on what basis she could claim herself as owner-in-possession of the suit land and hibernate title qua the suit land, in favour of the present appellants and the original defendant no.7, when the title was already transferred. In other words, on account of diverse identifies of the beneficiaries, the two documents (the

Decree Ex.D9 and the Will Ex.P2) stand mutually destructive. No situation can be funnier and pathetic than that.

(iv) A very significant aspect of the facts and circumstances of the present case is that the decree Ex.D9 was incepted on dated 20.09.1991, but surprisingly, the same never came to day-light till year 1999. The beneficiary, viz. Sh. Balbir Singh expired in year 1995. Meaning thereby that Sh. Balbir Singh did not disclose the fact regarding the inception of the impugned decree Ex.D9, till the date of his death even. The unequivocal inference of this situation is that Balbir Singh never made an effort to exercise his title or possessory rights, by dint of that decree. Obviously, this was on account of the existence of the Will Ex.P2. Meaning thereby that, Sh. Balbir Singh reserved the Decree Ex.D9, only to serve as a tool/weapon, if his daughter (the respondent-plaintiff Kutumb Pyari) tried to change or get cancelled the Will Ex.P2. But Alas!, the old man left for heavenly abode, prior to wielding the weapon. The facts speak volumes of the intention of Sh. Balbir Singh, since deceased, that he did not intend to exercise any title or possessory rights through that decree, for himself. As such, the decree Ex.P9, even if actually executed by the respondent-plaintiff Kutumb Pyari, was only a paper transaction and cannot be held to be a legal and valid document, by any corner.”

First reason assigned by the first appellate court is factually incorrect. On the death of Smt. Sugna, her mother, plaintiff-respondent came to be recorded as owner of share of her mother . She became owner of 120 kanals and 8½ marlas of land as per mutation no.3319, Ex.P5 on the record. She was not owner of 1/3rd share in the total land measuring 240 kanals and 17 marlas.

Secondly the first appellate court has given unnecessarily weighage to the decree having been passed on 20.09.1991, the same day when she appeared and written statement file and suffered a statement in the court admitting the claim of the plaintiff. This issue has already been discussed in the previous part of the judgment which does not need any repetition.

Thirdly the court has also held that the facts are “so weird as to bereave sanctity”.

In the present case, a joint family had resolved their disputes by entering into a family settlement. The aforesaid family settlement was acknowledged through a civil court decree. It is normally that sisters after having been married usually do not claim share in the property of their father, Hindu Succession Act acknowledges that they are owners of equal share along with their brothers. First appellate court has also erred in recording that the judgment and decree dated 20.09.1991 saw the light of the day in 2000. Such observations cannot be made with regard to a civil court judgment and decree. A judgment and decree passed by the court is binding between the parties. Mutation of the land pursuant to the aforesaid decree is only an executive function of the revenue authorities. Merely because a judgment and decree has not been given effect to in the revenue record, the validity of the judgment and decree does not cease to exist or fade away. In the present case, reason for delay are obvious. The decree as framed by the court was having a patent error due to accidental slip. The error was corrected only in the year 1999 after the death of Sh. Balbir Singh when Deepak and Raju and others filed application for correction and thereafter the moment order was passed and revenue record was corrected.

Hence, the observations of the first appellate court that such decree saw the light of the day is clearly erroneous.

Learned counsel for the respondent-plaintiff has made a passionate statement that Smt. Kutumb Piyari has been divested of her land. This court has examined this aspect also. However, the submission of the learned counsel for the respondent-plaintiff is not correct. Smt. Kutumb Piyari is owner of more than 40 kanals of land inherited by her from her mother. She inherited 120 kanals and 8½ marlas of land. The effect of decree dated 20.09.1991 is only to take away the 80 kanals 6 malas of land.

In view of the aforesaid discussion, judgments and decrees passed by the courts below are set aside and the suit filed by the plaintiff shall stand dismissed.

The regular second appeal is allowed.

May 14, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No