

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

RSA No.1549 of 2017 (O&M)

Date of decision: 16.05.2018

Smt. Parmeshwari and others

.....Appellants

Versus

Narender Kumar and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Mohinder Pal, Advocate,
for the appellants.

Ritu Bahri, J.

This appeal has been directed against the judgment dated 16.11.2016 passed by the Additional District Judge, Fatehabad, whereby appeal filed by plaintiffs (appellants herein) against the judgment & decree dated 16.10.2014 passed by the Civil Judge (Junior Division), Fatehabad, has been dismissed.

Smt. Parmeshwari etc-plaintiffs (appellants herein) (hereinafter referred to as 'the plaintiffs') filed a suit for declaration alleging that plaintiff No.1 was widow and plaintiff Nos.2 to 5 were children of Ranjit Singh. Jaisa Singh (father of Ranjit Singh), Mam Chand (father of Om Parkash defendant No.4) and Tiku (father of Sadhu Ram defendant No.5) were sons of Mukha. Defendant No.1 was son of Sadhu Ram, whereas defendant Nos.2 and 3 were sons of Om Parkash. Smt. Mani Devi (widow of Jaisa and mother of Ranjit) and Ranjit (son of Jaisa) received the land of Jaisa by way of inheritance and mutation No.1129 was entered and sanctioned in their favour. A civil suit No.946 of 1990 titled as 'Narender Kumar etc vs Smt.

Mani Devi etc.' was filed by defendant Nos.1 to 3 through defendant Nos.4

and 5 against Smt. Mani Devi and Ranjit Singh on the basis of family settlement vide which, land measuring 23 Kanals 6 Marlas was given to defendant Nos.1 to 3 by Smt. Mani Devi and Ranjit. The said suit was decided in favour of defendant Nos. 1 to 3 vide judgment and decree dated 01.08.1990 by the then Sub-Judge, First Class, Fatehabad. Plaintiff-appellants are claiming that the said judgment and decree was against the law and facts and the same was liable to be set aside on the following grounds:-

- (I).The suit land was received by Smt. Mani Devi and Ranjit in inheritance and as plaintiffs had pre-existing right in the suit land, Smt. Mani Devi and Ranjit Singh were not entitled to get the decree passed in respect of suit land in favour of defendant Nos.1 to 3.
- (II). No family settlement ever took place between Smt. Mani Devi and Ranjit on one side and defendant Nos. 1 to 3 on the other side.
- (III). No family settlement could take place between the aforesaid persons as neither Smt. Mani Devi was real grandmother of defendant Nos. 1 to 3 nor Ranjit Singh was their real uncle.
- (IV). Smt. Mani Devi and Ranjit were not entitled to transfer the suit land as there was no legal necessity of the same.
- (V). Judgment and decree dated 01.08.1990 should have been got registered by defendant Nos.1 to 3 as they had no pre-existing right in the suit land. Hence, the judgment and decree dated 01.08.1990 is liable to be declared null for want of registration.
- (VI). The aforesaid judgment was obtained by the defendants by

presenting distorted facts regarding relationship of parties and as such, the judgment and decree dated 01.08.1990 is based upon fraud and mis-representation.

(VII). The judgment and decree dated 01.08.1990 was obtained by defendant Nos. 1 to 3 by using undue influence upon Smt. Mani Devi and Ranjit.

(VIII). At the time of filing of civil suit No.946 of 1990, defendant Nos. 1 to 3 were minors and as such, no family settlement could take place between them and predecessors-in-interest of plaintiffs namely Smt. Mani Devi and Ranjit.

(IX). Smt. Mani Devi and Ranjit Singh, who resided with plaintiffs at the time of passing of judgment and decree dated 01.08.1990, never informed the plaintiffs about the said family settlement. The said judgment and decree was obtained by defendant Nos. 1 to 3 secretly and by keeping the Court in dark.

It was further stated that mutation No.2 dated 05.07.1997 entered on the basis of aforesaid judgment and decree was wrong as no notice was given to the plaintiffs in that regard. Moreover, no mundai was effected before the sanction of said mutation. Subsequent entries in the jamabandis for the year 1998-99, 2003-04, 2008-09, on the basis of mutation No.2, were also wrong, against law and facts. It was further pleaded that after the death of Smt. Mani Devi and Ranjit Singh on 12.06.2007 and 07.01.2006 respectively, civil suit No.275-C of 04.10.2010 was filed by defendant Nos. 4 and 5 against the plaintiffs. At the time of filing of written statement in that suit, the plaintiffs came to know about the judgment and decree dated

01.08.1990. Ultimately, the plaintiffs claimed the relief of permanent injunction to the effect that defendant Nos. 1 to 3 be restrained from alienating or creating any kind of charge over the suit land on the basis of wrong entries in the revenue record in their favour. Hence, the suit.

Upon notice, defendant-respondent Nos. 1, 3 and 5 filed joint written statement taking preliminary objections with regard to limitation, estoppel, resjudicata, maintainability etc. On merits, it was submitted that civil suit No.946 of 1990 was filed by Sadhu Ram (defendant No.5) as a next friend of his son Narender Kumar (defendant No.1) and by Om Parkash (defendant No.4) as next friend of his sons Devender and Ravinder (Defendant Nos. 2 and 3) against Smt. Mani Devi and Ranjit. The aforesaid family settlement had taken place in the month of January, 1990 between defendant Nos.1 to 3 through their guardian Om Parkash and Sadhu Ram on one side and Smt. Mani Devi and Ranjit Singh on the other. As per family and mutual settlement, half share was given to Narender Kumar and remaining half share was given to defendant Nos. 2 and 3 by Smt. Mani Devi and Ranjit Singh. All other allegations levelled by the plaintiff in the plaint were denied and prayer for dismissal of the suit was made.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment and decree also met the same fate.

Heard.

Both the Court below have given a concurrent finding of fact that plaintiffs had led evidence to show that vide mutation No.1129 Ex.P1, property of Jaisa was inherited by Mani Devi and Ranjeet in equal shares.

As per jamabandi for the year 1968-69 Ex.P13, Jaisa was recorded as owner

of the suit land. However, plaintiffs did not place on file any revenue record to show that the suit land was received by Jaisa from his father, father's father or father's father's father. Hence, as per Section 8 of the Hindu Succession Act, the suit land deemed to be self acquired property of Smt. Mani Devi and Ranjeet Singh. Since the land in the hands of Jaisa was not ancestral, after his death, Smt. Mani Devi had inherited this land from her husband and as per Section 14 of the Hindu Succession Act, she became absolute owner of the said land. Thus, this land could not be treated as ancestral land in the hands of Smt. Mani Devi and Ranjeet Singh. Even the property in the hands of Ranjeet would be a self acquired property.

It has been held that prior to the present suit, a civil suit No.275 dated 04.10.2010 was filed by Om Parkash and Sadhu Ram (defendant Nos. 4 and 5) against the present plaintiffs for correction of revenue record stating therein that a family settlement had been reached between the parties keeping in view the revenue record. In that suit, written statement was filed by the present plaintiffs stating that land measuring 23 Kanals 06 Marlas i.e. the suit land was transferred to Om Parkash and Sadhu Ram in equal shares by way of family settlement vide judgment and decree dated 01.08.1990. Hence, the plaintiffs had admitted the factum of family settlement entered into between Smt. Mani Devi and Ranjeet Singh on one side and the defendants on the other.

Another stand taken by the plaintiffs was that in civil suit No.946 of 1990, Smt. Mani Devi and Ranjeet Singh were wrongly shown as grandmother and uncle respectively of defendant Nos.1 to 3. In this regard, both the Courts have examined the plaint Ex.P7 filed in civil suit No.946 and held that Mani Devi and Renjeet Singh were having common ancestral

namely Mukha, therefore, in a joint family Mani Devi is grandmother and Ranjeet Singh was parental uncle of defendant Nos. 1 to 3. Accordingly, nothing was concealed from the Court regarding relationship between the parties.

On the question of lack of registration, it has been held that the family settlement requires registration, only if, the terms are reduced into writing, but where the memorandum had been prepared after the family settlement either for the purpose of record or for information of Court, the memorandum itself will not create or extinguish any rights in immovable property. Therefore, it does not fall within the mischief of Registration Act and does not require any compulsory registration. In the present case, after the family settlement had taken place, a decree dated 01.08.1990 was passed. Hence, no compulsory registration was required. While holding so, reference was made to a judgment passed by Hon'ble the Supreme Court in **Kale and others vs. Deputy Director of Consolidation and others**, 1976 AIR 887.

Both the Courts have further held that challenge to the aforesaid decree on the ground of fraud and misrepresentation was also not made out as the said decree was never challenged during the life time of Mani Devi and Ranjeet Singh. Moreover, the plaintiffs had admitted the family settlement in civil suit No.275 of 04.10.2010, which was filed by present defendant Nos. 4 and 5. In the absence of any evidence showing any fraud, this argument has been rightly rejected by the trial Court as well as the first appellate Court. Further, it has been held that in civil suit No.275-C of 04.10.2010, plaintiffs had filed their written statement and admitted that the judgment and decree dated 01.08.1990 had been passed on the basis of

family settlement. Hence, they had the knowledge about said decree dated 01.08.1990. Therefore, the suit was barred by limitation having been filed beyond the period of three years from the date of knowledge.

Having examined the impugned judgments, the suit filed by plaintiff-appellants has been rightly dismissed by the Courts below. Judgment referred to by learned counsel for the appellant in **Gurcharan Singh and others vs. Angrez Kaur and another**, RSA No.3472 of 2004 (decided on 09.05.2008) will not be of any help to the appellants, as in that case the dispute was with regard to a decree dated 09.01.1995, whereby Bhajan Singh had given some land to the appellants (in that case), who were his nephew. After going through the evidence, it was found that plaintiffs had no relationship with Bhajan Singh and hence, there could not be any occasion for any family settlement between them on account of the relationship. Moreover, they had no pre-existing right in the suit property. Since, they did not have any pre-existing right, registration of family settlement was compulsorily required as per judgment passed in **Bhoop Singh vs Ram Singh Major and others**, AIR 1996 Supreme Court 196.

To the contrary, in the present case, relationship between the parties is not in dispute. The plaintiffs in civil suit No.275 of 04.10.2010 had themselves admitted the factum of passing of decree dated 01.08.1990. Moreover, the plaintiffs and defendants have common predecessor namely Mukha Ram.

Resultantly, after going through the impugned judgments, this Court is of the view that suit of plaintiff-appellants has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this

Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

16.05.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No