

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

Date of decision: 21.12.2018

1. RSA No.867 of 2014 (O&M)

Vinay Kumar Goel

..... Appellant

Versus

Mahesh Chand Goel etc.

..... Respondents

2. RSA No.794 of 2015 (O&M)

Mahesh Chand Goel and others

..... Appellants

Versus

Vinay Kumar Goel and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S. Rang, Advocate
for the appellant (in RSA-867-2014).
for respondent No.1. (in RSA-794-2015).

Mr. Arihant Jain, Advocate and
Mr. Arun Jindal, Advocate
for the appellants (in RSA-794-2015).
for respondents No.1 to 7 (in RSA-867-2014).

ANIL KSHETARPAL, J.

CM-2366-67-C-2015 in RSA-794-2015

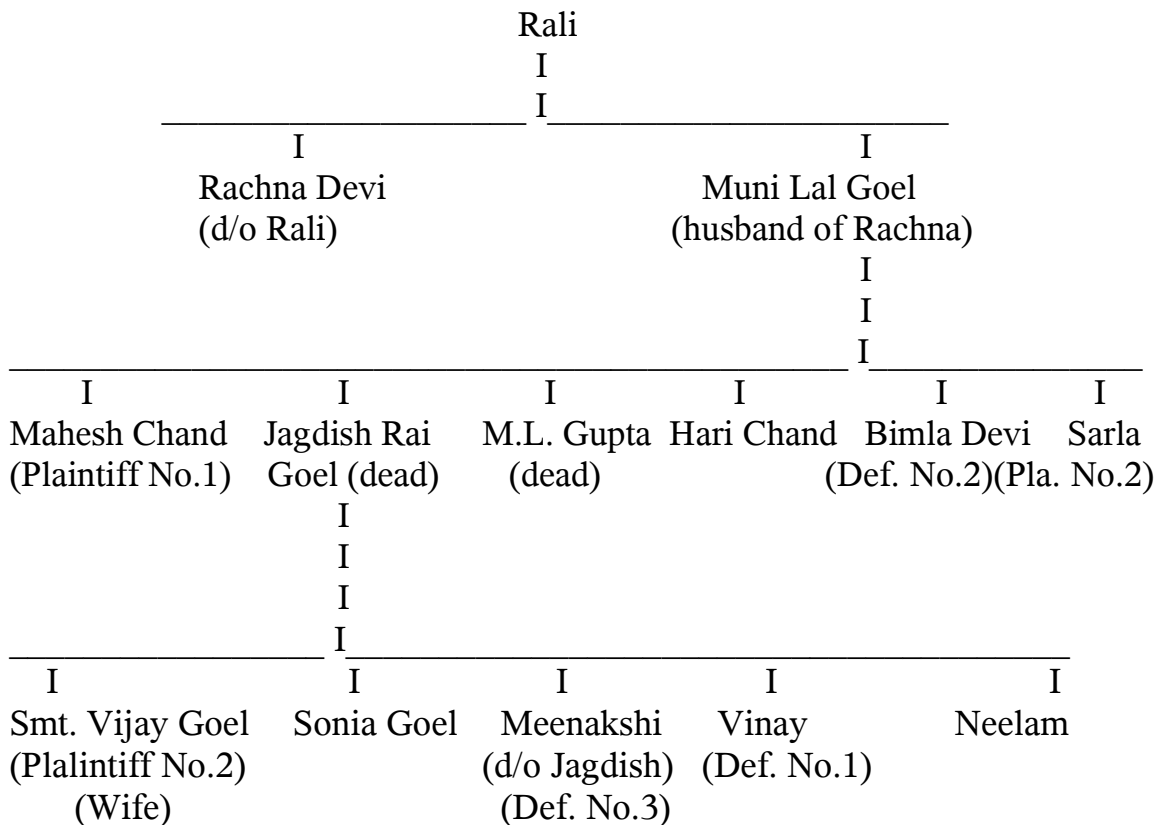
Both the applications are allowed and the delay in filing/re-filing the appeal are condoned.

Main Cases

Vide this judgment, I shall be disposing of two appeals bearing

RSA No.867 of 2014 and RSA No.794 of 2015, arising from the same suit.

To have clarity, it would be appropriate to draw a pedigree table which would clarify the relationship between the parties:-



The question of law which needs consideration is:-

“Whether after having entered into a settlement between the family members during the pendency of the previous litigation and acted thereupon, can some of the family members thereafter be permitted to resile therefrom?”

Rachna Devi had received the property from her mother. Rachna Devi had married with Muni Lal Goel and they were blessed with four sons and two daughters. Rachna Devi was stated to be lunatic and Sh. M.L. Gupta had got a registered Will from Rachna Devi dated 31.05.1983 bequeathing entire property in favour of Sh. M.L. Gupta. Mahesh Chand Goel, son filed a petition under Section 36 of the Indian Lunacy Act, 1912 for declaring Rachna Devi @ Rachni Devi to be lunatic. It was pleaded in the aforesaid suit that Sh. M.L. Gupta had forcibly taken her away from the custody of Mahesh Chand and hence, may obtain certain thumb

impressions. Along with the petition, application under Section 41 of the Act of 1912 was also filed for requiring her to personally appear or the Court may appoint an expert to report about the mental and physical condition of late Smt. Rachna Devi. During the pendency of the aforesaid petition, the parties i.e. all sons of Rachna Devi entered into agreements dated 21.06.1983. It will be noted that in a connected RSA No.559 of 2011, this Court has found that there is another agreement between the brothers of the same date with regard to different property. In the present case, the dispute is with regard to the property located in Rajpura. After the agreement was arrived at, the petitioner-Mahesh Chand in the aforesaid petition under Indian Lunacy Act, 1912 suffered a statement on 05.09.1983 that he had got his share in the property and therefore, he wishes to withdraw the petition. The petition was permitted to be withdrawn by the Court vide order of even date i.e. 05.09.1983 when counsel appearing for Hari Chand and M.L. Gupta were present.

Present suit was filed by Mahesh Chand Goel, Vijay Goel and Sarla Devi seeking declaration that they are owners of the property according to agreement dated 21.06.1983.

The defendant contested the suit and pleaded that agreement dated 21.06.1983 is illegal, null and void. The property was claimed on the basis of Will dated 31.05.1983 executed by Rachni Devi. Learned trial Court dismissed the suit on three grounds:-

1. Rachni Devi was not signatory to the agreement dated 21.06.1983.
2. Execution of the Will dated 31.05.1983 is admitted.
3. Relief of declaration has only been sought and therefore, the

suit is not maintainable under proviso to Section 34 of the Specific Relief Act.

Both the parties filed the appeal. Learned First Appellate Court has partially reverse the judgment by recording the following reasons:-

1. The agreement dated 21.06.1983 cannot be enforced as Rachna Devi @ Rachni Devi had not signed the agreement and on that day, Rachni Devi was alive.

2. The registered Will as propounded by the defendant has not been proved in accordance with law and mere admission of the Will by the other party, if any, would not result in passing a decree. Thus, the Court held that the property in the hands of Rachna Devi would go by natural succession.

On careful examination of agreement dated 21.06.1983, it is apparent that it was in the form of a family settlement arrived at between four brothers. The agreement divides the family property in a particular manner. The Will executed by Rachni Devi is agreed to be held inoperative and it is further agreed that no fresh Will would be got executed. Through the agreement, the interest of the sisters would also taken care of and it was decided that Mahesh Chand Goyal will withdraw the application filed before District Judge, Ambala under Lunacy Act.

The agreement between the parties is extracted as under:-

“

AGREEMENT

Agreement executed between the four brothers named Sh. Hari Chand Goyal First party, Sh. Mohan Lal Goyal second party, Sh. Jagdish Rai Goyal third party and Sh. Mahesh Chand Goyal fourth party in connection with the immovable property, agriculture land about 44 bighas, house, khola and Kuradi of 2

biswas situated at village Shambhon Kalan, Tehsil Rajpura, District Patiala, which witnesses as under:-

1. That the above mentioned agriculture land about 44 bighas is divided in all the above mentioned four brothers in the shares as mentioned below:-

- 1. Shri Hari Chand Goyal ... 20%*
- 2. Sh. Mohan Lal Goyal ... 35%*
- 3. Sh. Jagdish Rai Goyal ... 20%*
- 4. Sh. Mahesh Chand Goyal 25%*

2. That Sh. Mohan Lal has been given the constructed house and a shop and (near the house of Sh. Makhan Singh) and Kuradi of 2 biswas at village Shambhon Kalan.

3. That one khola opposite constructed shop near the house of Babu Singh and Lachhman Singh Kamboj, both sons of Shri Hatha Singh is given to Sh. Mahesh Chand Goyal.

4. That the Will executed by the mother Shrimati Rachna Devi of all the four brothers will stand un-operative and no fresh or old will if any executed by mother in the name of any of the brothers will also be un-operative and shall not be enforceable in any court of law.

5. That all the brothers will be reasonable individually for any expenses is to be incurred in connection the marriage of the children of the two sisters.

6. That Mr. Mahesh Chand Goyal will withdraw application filed above all the three brothers and mother in the court of District Judge, Ambala and the application filed by Sh. Mahesh Chand Goyal will be withdrawn against all the remaining brothers and mother and he will also not move to any competent court of law against mother and his brothers and if he moves, it will be illegal and will get nothing from the property.

This agreement executed dated 21.6.1983 between all the four brothers sons of late Sh. Muni Lal and the said agreement is read over and explained to all the four brothers and after going through the same all the four brothers have signed with their own sweet will and consent before the presence of undersigned witnesses.”

When the plaintiffs filed the present suit claiming the property on the basis of the aforesaid agreement. Defendant No.1-Vinay Kumar Goel contested the suit on the ground that the agreement is not signed by Smt. Rachna Devi. The defendant further went on to deny existence of any agreement.

None of the Court has recorded a finding that the agreement between the parties dated 21.06.1983 is not signed or executed by the parties. Learned trial Court rejected the agreement on the ground that the family settlement is a unregistered and therefore, cannot be read in evidence. As noticed above, learned First Appellate Court has recorded the following two reasons:-

1. Rachna Devi has not signed.
2. The registered Will can be revoked only by a registered document.

Both the Courts have overlooked that for resolving dispute between the parties, family settlement is a best method recognized by the Courts. The Courts always lean in favour of resolving the disputes through a family settlement. The Courts have always been making effort to uphold the family settlement so that the disputes which have been resolved are not opened and the parties do not indulge in any unnecessary litigation.

Now let us deal with the reasons given by the First Appellate Court. No doubt, Rachna Devi was a member of the family, so were two sisters. Rachna Devi is alleged to be a lunatic, therefore, she could not sign the family settlement. Sisters are not claiming any right in the property. It will be noted that although, plaintiffs No.3 is daughter of Rachna Devi but she in the suit filed along with her brother and nephew has relied upon the

agreement dated 21.06.1983. The other sister i.e. Bimla Devi has not chosen to contest. Thus, the family members who are contesting i.e. four sons of Rachna Devi. All the four sons have signed. Rachna Devi never challenged or ever disputed the correctness of a family settlement dated 21.06.1983. This issue can be examined from another angle. As regards sons being signatory to the aforesaid family settlement are bound by the same. Hence, first reason assigned by the First Appellate Court is erroneous.

As regards second reason, it will be noted that learned counsel for the respondents could not draw attention of the Court to any provision of law which mandates that the registered Will can only be revoked by a registered document only. It is optional for the party to get the Will registered or not. The Will is not compulsorily registerable. Once the Will is not compulsorily registerable and it is the last Will which has to operate, the registered Will is not required to be revoked by another registered Will or cancellation deed.

Thus, both the reasons given by the learned First Appellate Court are erroneous.

Learned counsel appearing for the appellant in RSA No.867 of 2014 has submitted that the execution of the Will is admitted in the agreement dated 21.06.1983. He further referred to Para 3 of the replication to contend that execution of the Will has not been disputed. Hence, he submitted that First Appellate Court erred in ignoring the registered Will on the ground that it has not been proved in accordance with Section 68 of the Evidence Act.

This Court has considered the submission. However, find no

substance therein. The agreement dated 21.06.1983 no doubt notices a Will but it was agreed to be inoperative. In such circumstances, attestation of the Will as required under law cannot be said to have been admitted. The existence of Will may have been admitted but that would not establish the execution of the Will in accordance with Section 63 of the Indian Succession Act, 195 and proof of the Will in accordance with Sections 68 and 69 of the Evidence Act in Court.

On careful reading of Para 3 of the replication, it cannot be concluded that the execution of the Will has been admitted. In Para 3 of the replication, it is specifically asserted by the plaintiffs that at that time, Rachna Devi was under the influence of Mohan Lal and when the Will came to their knowledge, they challenged it as the Will was not voluntary Will rather it was under undue influence, misrepresentation of Mohan Lal Gupta. Hence, there is no clear admission of the plaintiffs about the Will allegedly executed by Rachna Devi on 31.05.1983. Although, First Appellate Court has not examined this aspect, however, this Court has gone through the judgment passed by the trial Court where the agreement dated 21.06.1983 has been ignored on the ground that it is not registered. It will be noted that the agreement is between the family members and it is in fact a family settlement. Still further, it has been proved on file that pursuant to the family settlement, Mahesh Chand had withdrawn his petition filed under Indian Lunacy Act, 1912. When the petition was withdrawn, counsel representing respondents in the aforesaid petition i.e. counsel for Hari Chand and Mohan Lal Gupta were present. Thus, Mahesh Chand had acted upon the aforesaid family settlement. No doubt, if immovable property is partitioned, such document is required to be compulsorily

registerable under Section 17 of the Indian Registration Act. However, a family settlement is a clause at which the Courts have always been making effort to upholding family settlement provided the family settlement is bona fide one so as to resolve the family disputes and arrive claiming by a fair and equitable division or allotment of the properties between the various members of the family. Hon'ble Supreme Court in the case of Kale and others Vs. Deputy Director of Consolidation and others, AIR 1976 SC 807 while dealing with such situation have held that once there is a compromise between the family members and it has been acted upon, then the other member are estopped from resiling therefrom on the ground of non-registration. The relevant discussion in are Para 38 and Para 44 of the judgment which are extracted as under:-

“38.Rebutting the arguments of the learned counsel for the appellant, Mr. Sharma for the respondents, contended that no question of estoppel would arise in the instant case inasmuch as if the document was to be compulsorily registrable there can be no estoppel against the statute. In the first place in view of the fact that the family arrangement was oral and the mutation petition was merely filed before the Court of the Assistant Commissioner for information and for mutation in pursuance of the compromise, the document was not required to be registered, therefore, the principle that there is no estoppel against the statute does not apply to the present case. Assuming, however, that the said document was compulsorily registrable the Courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it. This principle has been established by several decisions of this Court as also of the Privy Council. In Kanhai Lal v. Brij Lal and Anr. (3) the Privy Council applied the principle of estoppel to the facts of the case and observed as follows:-

"Kanhai Lal was a party to that compromise. He was one of those whose claims to the family property, or to shares in it, induced Ram Dei, against her own interests and those of her daughter, Kirpa, and greatly to her own detriment, to alter her position by agreeing to the compromise, and under that compromise he obtained a substantial benefit, which he has hitherto enjoyed. In their Lordships' opinion he is bound by it, and cannot now claim as a reversioner."

*44. In view of our finding that the family settlement did not contravene any provision of the law but was a legally valid and binding settlement in accordance with the law, the view of Respondent No. 1 that it was against the provisions of the law was clearly wrong on a point of law and could not be sustained. Similarly the view of the High Court that the compromise required registration was also wrong in view of the clear fact that the mutation petition filed before the Assistant Commissioner did not embody the terms of the family arrangement but was merely in the nature of a memorandum meant for the information of the Court. The High Court further erred in law in not giving effect to the doctrine of estoppel which is always applied whenever any party to the valid family settlement tries to assail it. The High Court further erred in not considering the fact that even if the family arrangement was not registered it could be used for a collateral purpose, namely, for the purpose of showing the nature and character of possession of the parties in pursuance of the family settlement and also for the purpose of applying the rule of estoppel which flowed from the conduct of the parties who having taken benefit under the settlement keep their mouths shut for full seven years and later try to resile from the settlement. In *Shyam Sunder vs. Siya Ram*, AIR 1973, it was clearly held by the Allahabad High Court that the compromise could have been taken into consideration as a piece of evidence even if it was not registered or for that matter as an evidence of an antecedent title. The High Court observed as follows:*

*"The decision in *Ram Gopal v. Tulshi Ram*, -AIR 1928 All. 641*

(FB)-is clear that such a recital can be relied upon as a piece of evidence.

It is clear, therefore, that the compromise can be taken into consideration as a piece of evidence. x x x To sum up, therefore, we are of the view that the compromise could have been relied upon as an admission of antecedent title.”

Keeping in view the aforesaid settled declaration of law, now let us examine the fact of the present case. In the present case, the family members had resolved their dispute by entering into a family settlement.

RSA No.867 of 2014 has been filed against the findings of the learned First Appellate Court that the Will even in absence of any witness having been examined stood proved because execution of the Will was admitted. This Court discussed this aspect and found that there is no admission. Still further, learned First Appellate Court has correctly held that the Will can only be proved or admitted in evidence once it has been proved in accordance with Sections 68 or 69 of the Evidence Act. In the present case, none of the attesting witness has been examined. In such circumstances, learned First Appellate Court has rightly held that the Will is not proved. Reference in this regard can be made to the judgment passed by the Hon'ble Supreme Court in the case of S.R. Srinivasa and others Vs.S. Padamavathamma (2010) 5 SCC 274.

In view of the aforesaid discussion, the question of law framed is answered in favour of the appellants/plaintiffs in RSA No.794 of 2015.

Pending miscellaneous application, if any shall stand disposed of.

Hence, RSA No.794 of 2015 is allowed whereas RSA No.867 of 2014 is dismissed.

21.12.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No