

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 343 of 2018(O&M)

Date of Decision:25.5.2018

Sheotaj

---Appellant

vs.

Bani Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.D.Sharma, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against judgment and decree dated 27.10.2017 passed by the Additional District Judge, Narnaul whereby appeal against judgment and decree dated 17.12.2014 passed by the Civil Judge (Junior Division), Narnaul was allowed and suit of the plaintiff-appellant for declaration and injunction was dismissed.

In short, case of the appellant is that the appellant and respondents are descendants of Jai Ram son of Puru Ram son of Lala Ram. Jai Ram was married to Smt. Surji and the plaintiff was born about 70 years ago from that wedlock. Smt. Surji died and Jai Ram married with Smt. Mewa Devi and defendants No. 1 to 9 were born from the wedlock of Jai Ram and Mewa Devi. Jai Ram and parties to the suit formed joint Hindu family. Defendants No. 5 to 9 were married and lost status of membership in the said joint Hindu family. Later, the plaintiff alongwith defendants No.

1 to 4 and 10 formed joint Hindu family as Jai Ram died long back. The plaintiff was 22 years old when defendant No. 1 was born and defendants No. 2 to 4 were born afterwards. It is averred that defendants No. 5 to 9 were married in wealthy families after giving them handsome dowry from funds of joint Hindu family. After their marriage, ceremonies like *bhaat* and *chhuchhak* were performed by the plaintiff and defendants No. 1 to 4 out of income of the joint Hindu family. The plaintiff treated defendant No. 10 with respect like his real mother. Defendants No. 5 to 10 proclaimed that they do not want any share in joint Hindu family and desired to release their share in suit property in favour of the plaintiff and defendants No. 1 to 4 in equal shares. In January 2004, at the time of *Kuan Pujan* ceremony of Happy son of Ashok Kumar son of Sheotaj, defendants No. 5 to 9 assembled in the village. They alongwith defendant No. 10 arrived at an oral family settlement in presence of relatives and respectables and released/relinquished their share of the suit property in favour of plaintiff and defendants No. 1 to 4 in equal share. Thus, plaintiff became co-sharer to the extent of $\frac{1}{5}^{\text{th}}$ share while defendants No. 1 to 4 became owners to the extent of $\frac{4}{5}$ shares equally. However, defendants No. 1 to 4 secretly colluded with defendants No. 5 to 10 and obtained judgment and decree dated 26.9.2009 in Civil Suit No. 284/2008 which are illegal, null and void and *non est* qua rights of the plaintiff as earlier suit filed by defendant Nos. 1 to 4 in which the plaintiff was impleaded as a party on application filed under Order 1 Rule 10 of the Code of Civil Procedure (in short “the Code”) was dismissed as withdrawn unconditionally, therefore, the second suit is barred under Order 23 Rule 1 and 2 Rule 2 of the Code.

Defendants No. 1 to 5, 7 and 9 filed their written statement admitted the pedigree table but denied material averments made in the plaint. It is averred that after marriage of plaintiff, he never lived with Jai Ram nor there was joint income of the family. The plaintiff never co-operated with Jai Ram nor the self acquired property of Jai Ram was put in common pool.

The trial court framed issues, reproduced in para 4 of the judgment. Parties were permitted to adduce evidence in support of their respective pleas. Having heard counsel for the parties in the light of materials on record, the trial court decreed the suit for declaration that plaintiff is owner in possession of suit property to the extent of 1/5 share and the judgment and decree dated 26.9.2009 in Civil Suit No. 284/2008 titled "Bani Singh and others vs. Smt. Savitri and others" is wrong, null and void and *non est* qua the interest of plaintiff and the same is set aside. The defendants were restrained from alienating the suit property or creating any charge thereof more than their share.

As has been noticed hereinbefore, appeal preferred by Bani Singh and others sons of Jai Ram and step brothers of the appellant was allowed by the First Appellate Court and as a consequence, the judgment and decree passed by the trial court were set aside and suit filed by the plaintiff/appellant was dismissed.

Counsel for the appellant has challenged the judgment and decree passed by the Appellate Court by making two fold submissions. The first contention raised by counsel is that defendants No. 5 to 9, real sisters of defendants No. 1 to 4 and step sisters of the plaintiff openly declared that

they do not want to have any share in the suit property. They relinquished their right in the suit property by way of oral family settlement in favour of the appellant and defendants No. 1 to 4, therefore, all the five sons of Jai Ram became co-owners in the suit land to the extent of 1/5th share each.

Another submission made by counsel is that defendants No. 1 to 4 filed civil suit No. 26 of 20.2.2006 against defendants No. 5 to 9 claiming their right in the suit property even in respect of share of defendants No. 5 to 9 but in the said suit, plaintiff was not impleaded as a party. When he came to know about pendency of the suit, he filed an application for impleadment by invoking Order 1 Rule 10 of the Code. Defendants No. 1 to 4 withdrew the suit unconditionally on 7.11.2007 and assured the plaintiff to abide by oral family settlement. At the back of the plaintiff, they filed another civil suit bearing No. 284/2008 without impleading the plaintiff as a party and were successful in obtaining judgment and decree dated 26.9.2009 whereby defendants No. 1 to 4 were declared to be owners in possession to the extent of 10/11 share in the suit property. It is argued with vehemence that second suit filed by respondents/defendants No. 1 to 4 is barred under Order 23 Rule 1 and 2 Rule 2 of the Code, therefore, the judgment and decree impugned in the present case is liable to be set aside being illegal, null and void, *non est* qua rights of the plaintiff.

I have heard counsel for the appellant, perused the paper book particularly the judgment passed by the Court in Appeal.

There cannot be any dispute about the settled position in law that amongst the members of joint Hindu family, there can be oral partition

and in case that oral partition is recorded in writing later, the same does not require registration. In this context, reference can be made to the authoritative enunciation of Hon'ble the Supreme Court **Kale and others vs. Deputy Director of Consolidation and others AIR 1976 (SC) 807** wherein it has been held that family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between various members of the family. In the case at hand, it is not the plea of the appellant that in the alleged oral family settlement, any property was given to defendants No. 5 to 9. On the contrary, plea of the appellant is that defendants No. 5 to 9 agreed to relinquish their rights in the suit property in favour of the appellant and defendants No. 1 to 4, admittedly, sons of Jai Ram. If there is only relinquishment of rights in immovable property of value more than Rs. 100/-, the same cannot be effected except by a registered deed. I would hasten to add that any admission made by the contesting party with regard to oral settlement qua relinquishment of rights in immovable property by defendants No. 5 to 9 would neither create estoppel against law nor confer a right upon the appellant to claim ownership in the suit land to the extent of 1/5th share. In this view of the matter, contention raised by counsel for the appellant is not meritorious and liable to be rejected.

This brings the Court to challenge qua judgment and decree passed in civil suit No. 284/2008 in the face of withdrawal of earlier suit dated 20.2.2006. The plaintiff was not impleaded as a defendant in the said suit. Any challenge qua maintainability of the second suit either being barred under Order 23 Rule 1 or 2 Rule 2 of the Code could be raised only

by the defendants of the said suit. In this view of the matter, the appellant cannot challenge the judgment and decree dated 26.9.2009 passed in Civil Suit No. 284/2008 on the grounds sought to be raised in the present lis. In this view of the matter, I do not find an error much less perversity in the judgment and decree passed by the Court in Appeal, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

25.5.2018
paramjit

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