

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

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Date of decision: 22.02.2019

1. RSA No.2874 of 2003 (O&M)

Gurpreet Singh and another

..... Appellants

Versus

Ranjit Kaur and others

..... Respondents

2. RSA No.1760 of 2003 (O&M)

Inderjit Singh and another

..... Appellants

Versus

Ranjit Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate
for the appellants (in RSA-2874-2003).
for respondent No.7 (in RSA-1760-2003).

Mr. V.K. Kataria, Advocate
for the appellants (in RSA-1760-2003).
for respondents No.2 and 3 (in RSA-2874-2003).

Mr. Vishal Aggarwal, Advocate
for respondent No.1 (in both appeals).

Mr. Ramesh Kumar, Advocate
for respondents No.4 to 7 (in RSA-2874-2003).
for respondents No.2 to 5 (in RSA-1760-2003).

ANIL KSHETARPAL, J. (ORAL)

CM-1656-C-2019 in RSA-2874-2003

CM-1578-C-2019 in RSA-1760-2003

Both the appeals are restored.

Applications stand disposed of.

CM-1581-C-2019 in RSA-1760-2003

Prayer in the application is for impleading the legal heirs of appellant No.2-Bir Devinder Singh.

Application is allowed subject to just exceptions. The legal heirs of appellant No.2 as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the appeal only.

Main Cases

With the consent of learned counsel for the parties taken on board. Arguments have been heard at length.

Vide this judgment, RSA No.2874 of 2003 and RSA No.1760 of 2003 which are arising from a suit filed by Ranjit Kaur, shall stand decided.

Defendants-appellants are in the regular second appeal against the judgment passed by the First Appellate Court reversing the judgment of the trial Court.

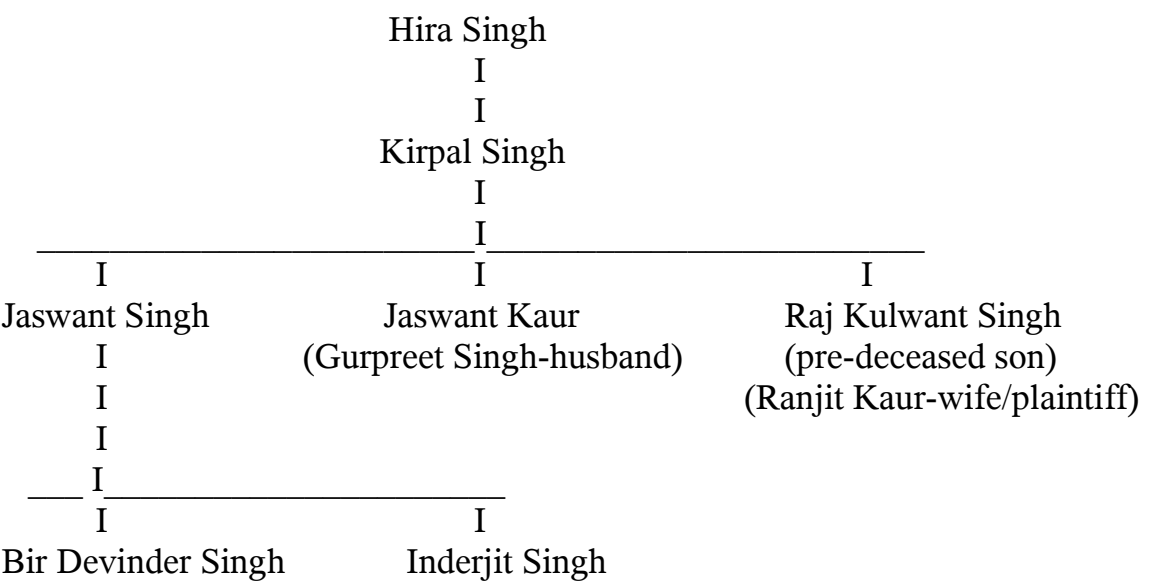
In the considered view of this Court, the following substantial questions of law arise for consideration:-

1. Whether a Civil Court judgment and decree acknowledging a prior family settlement distributing the property requires registration before such decree can be held to be binding?
2. Whether after partition of the property, a subsequent family settlement arrived at between the remaining family members can be set aside on the ground that there could not be any family settlement in absence of one of the member who had already separated?

Some facts are required to be noticed. Kirpal Singh and Ganda Singh, two brothers were owners of land in Village Namadha. They had land in three khewats i.e. Khewat No.65, 66 and 67. Ganda Singh was unmarried.

A family settlement took place and the aforesaid family settlement was acknowledged through a Civil Court judgment and decree dated 06.05.1972. According to the aforesaid family settlement followed by a judgment and decree, Jaswant Singh son of Kirpal Singh became owner of 59 kanals and 3 marlas of land, late Sh. Raj Kulwant Singh, husband of the plaintiff-respondent was acknowledged owner of 54 kanals 7 marlas of land, Smt. Raghbir Kaur w/o Kirpal Singh was acknowledged owner of 68 kanals 10 marlas of land and Kirpal Singh was acknowledged owner of 27 kanals and 14 marlas of land. Thereafter, it has also come in evidence that Ganda Singh also transferred the property owned by him in favour of his nephews i.e. Jaswant Singh and Raj Kulwant Singh.

To understand the inter se relationship, a short pedigree table is extracted as under:-



behind by Raj Kulwant Singh which includes not only the property which was received in a family settlement acknowledged in a judgment dated 06.05.1972 but also the land which had been received from Ganda Singh.

Thereafter, Kirpal Singh and Raghbir Kaur entered into a family settlement with their grand-sons Bir Devinder Singh and Inderjit Singh during the life time of late Sh. Raj Kulwant Singh which was acknowledged in a consent judgment and decree dated 08.01.1993. The decree dated 08.01.1993 has been challenged by Smt. Ranjit Kaur on various grounds. The suit was contested and on appreciation of evidence, trial Court dismissed the suit, however, the First Appellate Court has set aside the judgment and decree passed by the trial Court on following two grounds:-

1. The judgment and decree dated 08.01.1993 is not registered and therefore, it cannot result in transfer of the immovable property.
2. There could not be any family settlement in absence of Ranjit Kaur, although, she was not member of a co-parcenary.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel appearing for the appellants has submitted that a judgment and decree acknowledging prior family settlement does not require registration. Reliance in this regard can be placed upon in the judgment passed by the Court in the case of Dhian Singh and others Vs. Mohinder Singh and others, 2017(4) PLR 729. It has further been submitted that after a family settlement which was acknowledged through judgment and decree dated 06.05.1972, there was a division in the family and thereafter, Ranjit Kaur cannot claim that she continued as a member of the family for the purpose of family settlement and hence, in her absence, there could not be any family

settlement. On the other hand, learned counsel appearing for the plaintiff has submitted that the decree dated 06.05.1972 has not been filed in Court and therefore, existence of judgment and decree dated 06.05.1972 is not proved. Hence, he submitted that Ranjit Kaur being widow of Raj Kulwant Singh was a member of a family and there could not be any family settlement in her absence or in absence of her husband who was alive at that time. He further submitted that the decree is resulting into transfer of immovable property worth more than Rs.100/- and therefore, it is required to be registered.

No doubt, the judgment and decree dated 06.05.1972 is not part of the file, however, there is ample evidence on the file which proves that there was a judgment and decree dated 06.05.1972. The plaintiff-respondent does not dispute the existence of judgment and decree dated 06.05.1972 in connected suit which is subject matter of RSA No.3894 of 2003 being decided along with this appeal by a separate judgment. Defendants No.1 and 2 while filing the written statement had pleaded that there was a judgment and decree dated 06.05.1972 by virtue whereof Raj Kulwant Singh and Jaswant Singh became absolute owners of the property and there was partition by way of settlement and thereafter, joint Hindu family came to a end. This assertion made in Para 4 of the written statement was not specifically denied in the replication. Contents of para were denied, however, there was no specific denial with regard to judgment and decree dated 06.05.1972. Still further, Ex.D-12 is a mutation in favour of Raj Kulwant Singh on the basis of judgment and decree dated 06.05.1972. This was followed by an entry in the records of right which clear from Ex.P-7 (Jamabandi for the year 1984-85) wherein also Raj Kulwant Singh is recorded as owner of the property equivalent to 54 kanals and 7 marlas. Further, Ex.D-18 is again copy of Jamabandi for the year 1989-90 in which Ranjit Kaur, the plaintiff is recorded

as owner of larger chunk of land including the land measuring 54 kanals and 7 marlas which she received from late Sh. Raj Kulwant Singh. The plaintiff-respondent Ranjit Kaur has also claimed a share from the land comprised in Khewat No.11 measuring 58 kanals and 12 marlas situated in Village Bishanpura owned by late Sh. Kirpal Singh. The above said land was also distributed in equal share to sons of Jaswant Singh i.e. Bir Devinder Singh and Inderjit Singh as per the judgment and decree dated 08.01.1993. In view of the aforesaid overwhelming evidence, the family settlement which was acknowledged on 06.05.1972 through the judgment and decree stands proved.

Now the stage is set to consider the reasons given by the First Appellate Court to reverse the judgment and decree passed by the trial Court.

A family settlement arrived at prior in point of time acknowledged in a judgment and decree, such decree passed by the Court would not be required to be registered before it can be held to be binding. This issue has been deliberated in detail by the Court in the case of Dhian Singh and others Vs. Mohinder Singh and others, 2017(4) PLR 729, wherein it has been held that such judgment and decrees acknowledging a prior family settlement which does not transfer any right in immovable property in present does not require registration. In view of the detailed judgment in the case of Dhian Singh and others (supra), no further deliberation is required.

Now let us examine the second reason. It has been proved on file that the family settlement took place which was acknowledged by a judgment and decree dated 06.05.1972 through which the property was divided, partitioned and separated between family members. Once there was a division/separation, Ranjit Kaur cannot claim that she continued to be member of joint Hindu family headed by Kirpal Singh. In these circumstance, Ranjit Kaur or late Sh. Raj Kulwant Singh cannot claim any prior right in the

property which had fallen to the share of Kirpal Singh and Raghbir Kaur in family partition. It was their own property and not a larger joint Hindu family property. They have acknowledged, that in a subsequent family settlement, the property had gone to the share of grand-sons i.e. sons of Jaswant Singh. Hence, for the purpose of disputing correctness of the family settlement amongst members of a smaller family, Ranjit Kaur cannot plead that such family settlement is bad because she was not made a party or there could not be any family settlement in her absence. It has come in evidence that Ganda Singh, uncle of the parties who died as a childless bachelor divided his entire property equally amongst both the families i.e. family of Raj Kulwant Singh and Jaswant Singh. Hence, only conclusion which can be drawn is that Larger Joint Hindu Family came to an end once there was partition/division pursuant to a family settlement which came to be acknowledged in a judgment and decree dated 06.05.1972. Thereafter, the plaintiff-respondent can claim to be member of Larger Joint Hindu Family.

In view thereof, the questions framed in earlier part of the judgment, are answered in favour of the defendants-appellants.

Hence, the judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

The pending miscellaneous application, if any in both the appeals, shall stand disposed of accordingly.

Both the appeals are allowed.

22.02.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No