

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

124

RSA No.3894 of 2003 (O&M)

Date of decision: 22.02.2019

Gurpreet Singh

..... Appellant

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 appellant.

Mr. Vishal Aggarwal, Advocate
for respondent No.1.

Mr. V.K. Kataria, Advocate
for respondents No.3 and 4.

Mr. Ramesh Kumar, Advocate
for respondents No.2, 5 to 8.

ANIL KSHETARPAL, J. (ORAL)

CM-1657-C-2019

Appeal is restored.

Application is disposed of.

Main Case

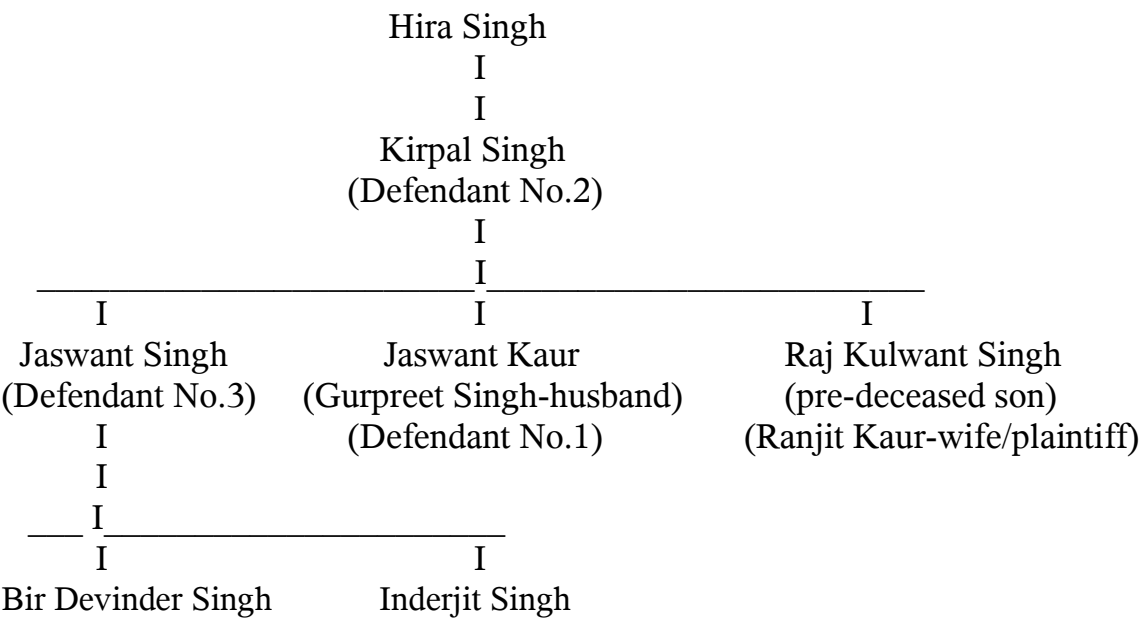
With the consent of learned counsel for the parties taken on
board for final disposal. Arguments have been heard at length.

Defendant-appellant is in the regular second appeal against the
concurrent finding of fact.

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

“Whether a judgment and decree acknowledging a family settlement which does not itself transfer rights in the immovable property in present is required to be registered?”

A small pedigree table would facilitate to understand the inter se relationship between the parties is extracted as under:-



Kirpal Singh had purchased a house in Samana Town. On the basis of a family settlement which took place before approximately 3 years from the date of judgment and decree, he acknowledged Gurpreet Singh (son-in-law), husband of Jaswant Kaur, his daughter to be owner of the property. The aforesaid family settlement was further acknowledged in the judgment and decree dated 08.01.1993. This decree has been challenged by Smt. Ranjit Kaur widow of late Sh. Raj Kulwant Singh. Both the Courts have set aside the judgment and decree passed.

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 declared 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.

In the present case, Ranjit Kaur does not dispute the existence of judgment and decree dated 06.05.1972. She in the replication admits the existence of judgment and decree dated 06.05.1972. However, she claims that such decree which acknowledges transfer of the land measuring 54 kanals and 7 marlas in favour of her husband-Raj Kulwant Singh is illegal. However, she has never given up her land which was received under the aforesaid judgment and decree.

Learned trial Court has held that in the plaint filed on 12.12.1992, Gurpreet Singh himself has pleaded that the property is ancestral joint Hindu family property and therefore, the defendants now cannot claim that the property is not joint Hindu family. Learned First Appellate Court has further gone ahead and confirmed this judgment and has also ordered that Ranjit Kaur would be entitled to 1/3rd share in the property in question i.e. House at Samana.

It would be noted that after the judgment and decree dated 06.05.1972, existence whereof is not disputed in the present litigation, there was division in the family. Larger joint Hindu family came to an end.

Thereafter, the plaint dated 12.12.1992 no doubt refers a property as ancestral Joint Hindu family property but it has come in evidence that the

property-house was in fact purchased by Kirpal Singh. Even if, it is assumed that it was put in common hotchpotch, still family settlement acknowledged in 1972 decree resulted into separation of the family members when the properties were divided. In such circumstances, joint Hindu family has to be understood in the context of a smaller family. Once husband of Ranjit Kaur i.e. Raj Kulwant Singh separated, he or she can no longer continue to be a member of larger joint Hindu family. After 1972 consistently each one of the family member was shown as owner, of course, as co-sharers but their share was definite and specific. In such circumstances, acknowledging a family settlement in favour of son-in-law by Kirpal Singh cannot be said to be illegal or bad in law. Learned counsel for the respondent has submitted that son-in-law cannot be member of the family. In the considered view of this Court, such contention is not correct. The family in the context of family settlement cannot be construed narrowly. Reference in this regard can be made to the judgment in the case of Krishna Beharilal Vs. Gulabchand, AIR 1971 SC 1041, relevant part of the judgment is extracted as under:-

“The next question that we have to consider is whether the compromise in question can be considered as a settlement of family disputes. It may be noted that Lakshmichand and Ganeshilal who alongwith Pattobai were the principal parties to the compromise were the grand-children of Parvati who was the aunt of Bulakichand. The parties to the earlier suit were near relations. The dispute between the parties was in respect of a certain property which was originally owned by their common ancestor namely Chhedilal. To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in Ram Charan Dass Vs. Girija Nandini Devi, (1965) 3 SCR 841, the word "family" in the context of a family arrangement is not to be understood in a narrow sense of being

a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement- see Ramcharan Das's case (supra).”

As regards the decree being unregistered, it will be noted that acknowledging a prior family settlement through a judgment and decree which does not result in transfer of immovable property worth more than Rs.100/- in present does not require registration. Reference in this regard can be made to the judgment in the case of Dhian Singh and others Vs. Mohinder Singh and others, 2017(4) PLR 729.

In view of the aforesaid, the judgment and decree passed by the Courts below are set aside and the suit filed by the plaintiff shall stand dismissed.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is allowed.

22.02.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No