

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: March 28, 2019

1. RSA No.839 of 1987 (O&M)

Prem Singh & others

...Appellants

Versus

Karam Singh (since deceased) through L.Rs & others

...Respondents

2. RSA No.1066 of 1987 (O&M)

Rai Sahib (since deceased) through L.Rs & others

...Appellants

Versus

Karam Singh (since deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Arun Gupta, Advocate,
for the appellants (in RSA No.839 of 1987)

Mr. C.S.Singh, Advocate,
for the appellants (in RSA No.1066 of 1987)

Mr.Deepak Sharma, Advocate,
for the respondents.

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeals bearing No.839 and 1066 of 1987 arising out of the decision rendered in one Civil Suit No.250 of 1980 titled as “Karam Singh & others Versus Rai Sahaib & others”. The facts are being taken from RSA No.839 of 1987.

Respondent-plaintiffs sought the decree of possession regarding half share in the land and house on the premise that Soheli Singh

alias Sohelu son of Man Singh was the owner of the property. He had two daughters, namely, Joginder Kaur alias Jogindro and Mohindro. Plaintiffs are the successors-in-interest of Jogindro. About 6/7 months and 3 months prior to the institution of the suit, Soheli Singh alias Soheli and Jogindro died. Plaintiffs were astonished to know that defendant No.1, namely, Rai Sahib obtained the mutation in his favour and when contacted, it was disclosed that Rai Sahib (husband of defendant No.2 Mohindro) obtained a fraudulent decree dated 15.03.1976 in Civil Suit No.342 of 1976. The decree, according to the averments, was on account of the fraud having been played upon Soheli Singh alias Soheli. The decree required registration as the son-in-law did not have pre-existing right. Various other grounds were asserted while laying challenge to the decree.

As per Para 9 of the plaint, defendants on the basis of the mutation, obtained the possession.

Defendant Nos.1 and 2 contested the suit by raising preliminary objections qua maintainability of the suit and propounded one family settlement dated 13.04.1969 between defendant No.1 and Soheli Singh alias Soheli, his father-in-law. On merits, it was submitted that Soheli Singh alias Soheli was the owner of the agricultural land and not of the house and he had only one daughter Mohindro. In other words, Jogindro's status as daughter was emphatically denied. They also refuted the allegation qua registration of the decree as it was preceded by the family settlement.

Defendant Nos.3 to 5 contested the suit and claimed themselves to be bonafide purchasers as per the provisions of Section 41 of the Transfer of Property Act and reiterated the stand of defendant Nos.1 and 2.

Since the parties were at variance, the trial Court framed the

following issues:-

- “1) Whether the impugned decree was obtained by defdt No.1 by fraud and mis-representation; if so, to what effect? OPD*
- 2) Whether the suit is not maintainable in the present form? OPD*
- 3) Whether deftd No.3 to 5 purchased land from defdt No.1 for consideration without notice and in good faith; if so, to what effect? OPD*
- 4) Relief.”*

On 28.09.1983, the following additional issues were framed:-

- “3-A) Whether Sahel Singh alias Sohelu had two daughters namely Jogindro alias Joginder Kaur and Mohindro? OPP*
- 3-B) Whether the plaintiffs are sons and daughters of Jogindro alias Joginder Kaur daughter of Sahelu?*

The additional issues were with regard to the fact whether Sahel Singh alias Sohelu had only one daughter or two daughters and plaintiffs being sons and daughters of Jogindro.

Plaintiffs led umpteen number of documentary evidence, including the Bahi entries of the Prohit by discharging the onus as per the provisions of Section 50 of the Indian Evidence Act and on the basis of the aforementioned oral and documentary evidence, the trial Court rendered the findings in favour of the plaintiffs. On issue No.1, it was held that son-in-law did not have pre-existing right and the family settlement did not see the light of the day and decree was held to be null & void for want of registration. Appeal preferred by defendant Nos.1 to 5 was also dismissed.

Mr. Arun Gupta, learned counsel for the appellants in RSA No.839 of 1987 and Mr. C.S.Singh, learned counsel for the appellants in RSA No.1006 of 1987 submitted that the simpliciter suit for possession in

the absence of declaration was not maintainable. In support of the aforementioned stand, relied upon the judgment of Hon'ble the Supreme Court in **Anathula Sudhakar Versus P.Buchi Reddy (Dead) by L.Rs & Ors., AIR 2008 SC 2033**, wherein in Para 12 it was held that it is *sine qua non* to seek the declaration as the decree under challenge had conferred the title upon the defendants. The pith and substance of the plaint revealed a cloud over the plaintiff's title. Neither any permission to withdraw the suit or amendment of the plaint despite the objection was ever moved or sought during the pendency of the suit appeal or second appeal. The suit was also barred by law of limitation as it was filed in June, 1979, whereas the decree under challenge is of March, 1976.

The judgments and decrees of the courts below have been assailed by two set of defendants and, therefore, two Regular Second Appeals.

Mr. Deepak Sharma, learned counsel appearing on behalf of the respondent-plaintiffs submitted that the concurrent findings of fact and law do not call for any interference as there is no illegality or perversity. The matter was referred to a larger bench in view of the two judgments of Hon'ble Supreme Court in **Bhoop Singh Versus Ram Singh Major and others, (1995) 5 Supreme Court Cases 709** and **K.Raghunandan Versus Ali Hussain Sabir, (2008) 13 SCC 102**. In **Bhoop Singh's case**, the larger bench did not find any inconsistency in both the judgments. Both the courts below non-suited the appellants by relying upon the documentary evidence, which has been proved in accordance with law in forming an opinion regarding the relations of the plaintiffs with Jogindro and she being the daughter of Sohel Singh alias Sohelu under issue No.3A and 3B. In other

words, plaintiffs lead evidence in terms of the provisions of Section 50 of the Indian Evidence Act.

Son-in-law is not a member of the family nor had any pre-existing right. Conferring a title by virtue of decree without registration when the property was having value of more than ₹ 100/- has legitimately been set-aside. The alleged family settlement did not see the light of the day. Even otherwise, there is no such averment as to whether the plaintiffs were found to be the children of Jogindro daughter of Sohel Singh alias Sohelu, were party to it and, thus, urged this Court for dismissal of the appeals.

I have heard the learned counsel for the parties, appraised the paper book, records of the courts below and of the view that the following Substantial Questions of Law arise for determination by this Court:-

- 1) Whether the impugned judgment and decree dated 15.03.1976 passed in Civil Suit No.342 of 1976 titled as “Rai Sahib Versus Sahelu” conferring right upon Rai Sahib (son-in-law of Sahelu) is outcome of fraud and misrepresentation and required registration?
- 2) Whether the concurrent findings of fact and law of both the courts below on issue Nos.3A and 3B suffer from illegality or perversity?

Dealing with the objection of learned counsel for the appellants with regard to findings on issues No.3A and 3B, I am of the view that the defendants had not been able to rebut the cogent and consistent evidence, i.e., Bahi entries Ex.PW5/1 to Ex.PW5/4, established that at the time of marriage of Chinto, plaintiff No.4 daughter of Mewa Singh, a sum of ₹10/- was shown to be given as gift by the 'Nankas' (maternal grand-parents) and ₹25/- was shown to have been given by none else but defendant No.1.

Similarly, the marriage of plaintiff No.1 Karam Singh was

solemnized on 22.05.1965. Sahelu, maternal grand-father is shown to have given ₹10/- and a sum of ₹25/- as Shagan by Rai Sahib. Entry Ex.PW5/4 pertained to the death of Dalip Singh father of Mewa Singh to establish that a sum of ₹21/- was given by Rai Sahib-defendant No.1. The aforementioned evidence has gone unrebutted and, thus, in such circumstances, there is no force in the submission of the learned counsel representing the appellants that Sahelu had only one daughter Mohindro and not Jogindro. Plaintiffs, in view of the aforementioned evidence, are the successors-in-interest of Jogindro and, therefore, they had a locus standi to stake the claim. Law with regard to the registration to confer a decree is no longer *res integra*. In **Phool Patti and another Versus Ram Singh (Dead) Through L.Rs and another, 2015(1) R.C.R. (Civil) 606**, the matter was referred to the larger bench by Hon'ble the Supreme Court in view of the inconsistency in the judgments of **Bhoop Singh** and **K.Raghunandan's cases (supra)**, but vide order dated 24.07.2014 reported as **2015(3) SCC 465**, it was held that there is no inconsistency.

In **Bhoop Singh's case (supra)**, it has been held that a compromise decree creating a new right, title or interest in “presenti” in immovable property of value of ₹ 100/- or above requires registration. Rai Sahib-defendant No.1 is none else but son-in-law of Sahelu, i.e., husband of Mohindro daughter of Sahelu. Acquisition of a title in his favour would be in “presenti” and not by recognition of a past decision/yadgar/family settlement and in the absence of any registration, he did not have a title to pass on to defendant Nos.3 to 5. The findings of fact on the aforementioned two counts, in my view, do not suffer from any illegality or falsity. The arguments also do not bring the case within the realm of perversity to form a

different opinion. Resultantly, the substantial questions of law are answered in favour of the respondent-plaintiffs and against the appellant-defendants.

Appeals stands dismissed.

March 28, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No