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

RSA-1974-1988 (O&M)

Date of decision : 22.04.2019

Gurdial Kaur and another

... Appellants

Versus

Kartar Singh (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.S. Sidhu, Senior Advocate with
Mr. Dushyant Sarvesh, Advocate
for the appellants.

Mr. S.S. Salar, Advocate
for respondent Nos.2, 4 & 5.

AMIT RAWAL, J. (ORAL)

The present regular second appeal, at the instance of the defendants, is directed against the judgments and decrees of the Courts below, whereby the suit of the plaintiff for declaration to be owner in possession of the suit land by setting aside the sale deed dated 30.09.1981 as null and void, has been decreed by the trial Court and affirmed in appeal.

The plaintiff-Kartar Singh sought the aforesaid relief on the premise that he had four sons and four daughters and wife. He was in possession of the land. The plaintiff had gone to meet his daughter Gurdial Kaur, who was married at Rajpura and during his stay, obtained certain signatures on blank paper, resulting into, decree. Decree was not in accordance with the law and it required registration as per the provisions of

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Section 17 of the Registration Act. The transfer of ownership can be made either by gift or sale. Defendant Nos.1 & 2 had taken the advantage of faith reposed by the plaintiff and obtained a fraudulent decree by misrepresentation. There was no family settlement. None of other family members were arrayed as parties.

The defendants opposed the suit and supported the decree being willful and volunteer act.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the impugned judgment and decree dated 30.09.1981 Gurdial Kaur Sant Dayal Singh Vs. Kartar Singh is fraudulent, null and void and as a result of misrepresentation? OPP*
- 2. Whether the suit property is ancestral? OPD 3 & 4.*
- 3. Whether the suit is not maintainable? OPD*
- 4. Whether the suit is false and defendants are entitled to compensatory costs/special costs? OPD*
- 5. Whether the suit is filed in collusion with the defendants No.3 and 5 ? OPD*
- 6. Whether the plaintiff has no cause of action? OPD*
- 7. Relief.*

Both the parties led extensive evidence in support of their respective cases.

Mr. K.S. Sidhu, learned Senior Counsel assisted by Mr. Dushyant Sarvesh, learned counsel appearing on behalf of the appellants-defendants submitted that the decree was acknowledgment of family settlement of all the family members and therefore, did not require registration. There was no fraud or misrepresentation. The property was

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situated within the jurisdiction of Bassi Pathana, therefore, the Court, which passed the decree, had the jurisdiction. Non-impleadment of other family member was on account of previous family settlement.

Per contra, Mr. Salar, learned counsel appearing on behalf of respondent Nos.2, 4 & 5 being few LRs of the plaintiff supported the judgment and decree, under challenge, and stated that there was no pre-existing right or any *yaadgaar* of previous settlement, therefore, decree as per the provisions of Sections 17 and 49 of the Registration Act, required registration.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following 'Substantial Questions of Law' arise for determination:-

- 1. Whether in the absence of any family settlement or impleadment of other family member, the judgment and decree dated 30.09.1981, requires registration.*

It is a matter of record that defendant No.1 is one of the daughter of the plaintiff and she had three sisters and four brothers. Though, during the pendency of the appeal, respondent-plaintiff-Kartar Singh, died intestate and also left behind the widow. It is strange that a person of having such big family would not take care the interest of other children and part with the property in favour of defendant No.1 & 2, being daughter and son-in-law. The alleged family settlement reflected in the pleadings had not seen the light of the day and moreover, the pleadings of the previous suit did not reflect the impleadment of the aforesaid persons. The law of registration of the decree is no longer *res integra*, in view of the judgment of Hon'ble the Supreme Court rendered in **Bhoop Singh Vs. Ram**

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Singh and others (1995) 5 SCC 709 and reiterated in *Phool Patti and another Vs. Ram Singh (dead) through LRs and another (2015) 3 SCC 465*. For the sake of brevity, the relevant para No.29 of *Phool Patti's case* (*supra*) reads as under:-

“29. The terms of the family settlement are not on record. As mentioned above, the family settlement could relate to the ancestral as well as self- acquired property of Bhagwana or only the ancestral property. It appears that it related only to the ancestral property and not the self-acquired property (hence the reference to a hibba). The decree relating to 32 kanals of land did not require compulsory registration, as mentioned above. However, the self acquired property of Bhagwana that is 20 kanals, therefore, in view of the law laid down in Bhoop Singh the gift of 20 kanals of land by Bhagwana in favour of Ram Singh, notwithstanding the decree in the first suit, requires compulsory registration since it created, for the first time, right, title or interest in immovable property of a value greater than ₹100/- in favour of Ram Singh.”

As a matter of record that respondent-plaintiff expired and being represented through Legal Representatives. The appeal was admitted on 12.05.1989 and this Court, vide order dated 03.03.1989, had granted status quo. In the absence of any testamentary document, the property would devolve upon all the legal heirs of Kartar Singh/plaintiff by way of natural succession.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgments and decrees of the Courts below. The Substantial Question of Law, as framed above, is answered in favour of the respondents-plaintiffs and against the appellants-

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defendants. While affirming the judgments and decrees, under challenge,
the present second appeal is dismissed.

22.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**