

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4793 of 2004 (O&M)
Date of Order: 06.03.2019

Jaspal Singh

..Appellant

Versus

Bali Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajiv Godara, Advocate,
for the appellant.

Mr. Sanjiv Gupta, Advocate,
for respondent nos.1 and 2.

Mr. Ajit Sihag, Advocate,
for respondent no.3.

Mr. P.S.Jammu, Advocate,
for respondent no.4.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below, dismissing the suit filed by the plaintiff for declaration that he is owner in possession of ½ share of the suit property and the judgment and decree dated 12.04.1991 in the suit titled as 'Bali Singh vs Jaspal Singh is void, illegal and wrong.

At the time of admission, following questions of law were framed:-

“1. *Whether the judgment and decree passed by the learned Courts below upholding the consent decree, without*

proof of service on Jaspal Singh, is perverse and, thus, not sustainable in law?

2. *Whether the decree having transferred the right for the first time in favour of the respondent/defendants, required registration?*
3. *Whether the learned Courts below have taken into consideration inadmissible evidence being beyond pleadings?”*

Inter-se relationship between the parties can be noticed in following manner.

Virsa Singh is having two children-one son and one daughter. Defendant No.1 Bali Singh son of Hazara Singh is husband of the daughter. Whereas defendant no.2 Bali Singh is son of Virsa Singh. Incidentally names are same. On the other hand, plaintiff-appellant Jaspal Singh is son of sister of Virsa Singh. A General Power of Attorney was executed by Jaspal Singh in favour of his cousin Bali Singh son of Virsa Singh on 15.03.1984. In the aforesaid attorney, Jaspal Singh, plaintiff has appointed Bali Singh son of Virsa Singh to mortgage, sell, exchange, gift, give on lease apart from contesting the litigation, giving admitting written statement and entering into a compromise apart from conceding in the Court in any litigation. Bali Singh son of Hazara Singh who is brother-in-law of Bali Singh son of Virsa Singh filed a suit against Jaspal Singh claiming that the property in question had fallen to his share in a family settlement arrived at prior in point of time. In the aforesaid suit, Bali Singh son of Virsa Singh appeared on the basis of General Power of Attorney of Jaspal Singh, plaintiff filed admitting written statement. He also appeared in Court and suffered a statement which

resulted into judgment and decree dated 12.04.1991 under Order 12 Rule 6 of the Code of Civil Procedure. This decree has been challenged by Jaspal Singh, plaintiff-appellant by filing the present suit on 18.07.1994. It has come in evidence that originally one Ganesha Ram was allotted land which was surplus area having been declared under the Ceiling on Land Holdings Act, 1972. Jaspal Singh was declared owner in a consent decree dated 17.01.1982.

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.

It is well settled that in a subsequent suit, the jurisdiction of the court to go behind the previous judgment and decree is very limited. Reference in this regard can be made to a Division Bench judgment passed in **Gurdev Kaur and another vs. Mehar Singh and others, 1990(1) PLR, 334.** This judgment was upheld by the Hon'ble Supreme court in **Bhoop Singh vs Ram Singh Major & Ors , AIR 1996 SC 196.**

Learned counsel for the appellant has submitted that the General Power of Attorney which was executed by Jaspal Singh, plaintiff-appellant did not authorize Bali Singh son of Virsa singh to appear in Court and suffer a decree. He further submitted that General Power of Attorney cannot appear as a witness on behalf of the plaintiff. He further submitted that the address of Jaspal Singh in the previous suit which had resulted into decree dated 12.04.1991, was wrong as there is no evidence of Jaspal Singh having been served in the aforesaid suit. He further submitted that the decree on the basis of family settlement should be bonafide and therefore, the decree is liable to be set aside.

This court has considered the submissions and analysed with evidence.

The General Power of Attorney dated 15.03.1984 is Ex.P12. As noticed above, general power of attorney, correctness whereof is not in dispute do authorize Bali Singh son of Virsa Singh to contest litigation, file written statement including admitting written statement, enter into compromise and suffer a statement in Court apart from right to mortgage, sale, exchange, gift, give it on lease and all other rights. Therefore, Bali Singh son of Virsa Singh had acted within his powers as given to him vide Ex.P12.

As regards second argument of learned counsel that general power of attorney is not entitled to appear in Court is to be noticed and rejected particularly when the general power of attorney has been authorized specifically. Reliance placed by learned counsel for the appellant on the judgment passed by the Hon'ble Supreme Court in the case of **Janki Vashdeo Bhojwani vs. Indusind Bank Ltd., (2005) 2 SCC 217**, is also misplaced because the Hon'ble Supreme Court has dealt with the matter in the context of drawing adverse inference against a party for non-appearance in the evidence. Here in the present case, the court is called to adjudicate upon the matter that whether the judgment and decree which has already been passed is correct or not? Once the decree has been passed, the jurisdiction of the court to go behind the decree is very limited.

Next argument of learned counsel that the family settlement should be bonafide is also without any substance because as notice above, all the parties to the suit are members of a larger family. For the purpose of family settlement, the word 'family' is a broader family and it cannot be

construed narrowly.

Next argument of learned counsel that the address of Jaspal Singh was wrong in the previous proceedings and there is no evidence of service of notice on Jaspal Singh is also without substance keeping in view the fact that Jaspal Singh appeared through attorney Bali Singh son of Virsa Singh and filed admitting written statement and made statement. Plaintiff choose to challenge the decree after a period of more than 3 years. The service of notice on Jaspal Singh would pale into insignificance particularly when Jaspal Singh appeared through his validly constituted attorney and suffered statement.

Now the stage is set for considering the questions of law which were framed.

As regards Question No.1, the answer has already been given and it goes against the appellant.

As regards Question No.2, it may be noted that the decree does not result in transferring rights in the immovable property making it compulsorily registrable. The judgment and decree passed by the court is only acknowledging a prior family settlement which is permissible in law. The decree is not transferring any right in the immovable property in which requires compulsory registration. Reference in this regard can be made to the judgment passed by this court in the case of **Dhian Singh and others vs. Mahinder Singh and others, 2017(4) PLR, 729.**

As regards Question No.3, the attention of the court has not been drawn to any inadmissible evidence, taken into consideration by the courts below.

In view thereof, this court does not find any ground to interfere

with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

March 06, 2019
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(ANIL KSHETARPAL)
JUDGE

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