

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

RSA-1071-2011(O&M)

Date of decision:-6.5.2019

Chand Kaur

...Appellant

Versus

Mani Ram and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.M.L. Saini, Advocate
for the appellant.

Mr.Ajay Jain, Advocate
for respondents No.1 to 6.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Smt.Chand Kaur and Smt.Nand Kaur daughters of Sh.Mohar Singh son of Sh.Natha, resident of village Thana, Tehsil Narnaul, District Mohindergarh had brought a suit against defendants i.e. Mani Ram etc. seeking a declaration that they along with proforma defendants Smt.Choti and Smt.Chand Kaur are owners in possession of 4/6 share equally in the suit land and the contesting defendants had no concern or connection therewith and that decree and judgment dated 3.6.1996 passed in Civil Suit No.56 dated 22.5.1996 titled 'Mani Ram etc. Versus Smt.Chand Kaur etc.' are wrong

against law and facts, based on fraud and misrepresentation and not binding upon rights of the plaintiffs and proforma defendants and as such liable to be set aside. The plaintiffs had also sought a decree for permanent injunction restraining the defendants from interfering in peaceful possession and cultivation of the plaintiffs and proforma defendants.

As per the version of the plaintiffs, the suit land happened to be joint Hindu family coparcenary property of the plaintiffs and proforma defendants; that the contesting defendants got 4/6 share of plaintiffs and proforma defendants vide a decree dated 3.6.1996, which according to the plaintiffs is wrong against facts, null and void, based upon fraud and misrepresentation; that as a matter of fact the plaintiffs and proforma defendants had not suffered the decree in question dated 3.6.1996; they had not appeared in the Court and had not made any statement there; they had not engaged any counsel, as such, the consent decree is liable to be set aside; that in terms of the said decree, the plaintiffs and proforma defendants had not received anything; that on strength of the impugned decree, the contesting defendants wanted to interfere in cultivating possession of the plaintiffs and proforma defendants over the suit land, to which they had no right not listening the requests of the plaintiffs and proforma defendants to desist from doing so. Feeling aggrieved by the same, the plaintiffs had brought the suit in question.

On notice, defendants No.1 to 5 appeared and filed a joint written statement contesting the suit in question raising preliminary objections with regard to maintainability of the suit, locus standi of the

plaintiffs to file it, further stating that the suit had been filed for harassing the answering defendants, therefore the same was liable to be dismissed with special cost under Section 35-A CPC. On merits, such defendants denied the material assertions in the plaint refuting that plaintiffs and proforma defendants are owners in possession of the suit land rather contending that the plaintiffs and proforma deendants had got recorded their statement in the Court of Civil Judge (Jr.Divn.), Narnaul and suffered a decree dated 3.6.1996 in favour of the contesting defendants, resultantly the contesting defendants had been in possession of the suit land prior to passing decree in question in their favour. According to the answering defendants, the suit land is ancestral and joint Hindu family property of the plaintiffs and proforma defendants. These defendants claimed themselves to be owner of the suit land on the basis of the impugned decree, which according to them is legal and valid with no reason being there to set it aside. They craved for dismissal of the suit.

Defendant No.6 filed a separate written statement admitting the claim of the plaintiffs and pleading no objection, if the suit was decreed and impugned decree dated 3.6.1996 was set aside.

Defendants No.7 and 8 filed a separate written statement denying the averments in the plaint submitting that the defendants are owners in possession of the suit land and that plaintiffs and proforma defendants themselves had appeared in the Court through Sh.Udai Singh, Advocate and got recorded their statements with result the suit was decreed on 3.6.1996 and that the contesting defendants are in possession of the suit land having become owners in possession after passing of the

impugned decree. Refuting the remaining allegations of the plaint, such defendants prayed for dismissal of the suit.

The plaintiffs had filed replication to the written statements filed on behalf of defendants No.1 to 5, 7 and 8 controverting the allegations in the written statements whereas reiterating the averments in the plaint.

On pleadings of the parties, following issues were framed:

1. Whether the plaintiffs and defendants No.7 and 8 are the owners of the suit property? OPP.
2. Whether the judgment and decree dated 3.6.1996 passed in civil suit No.56 decided on 3.6.1996 by Civil Judge (Jr.Divn.), Narnaul is illegal and Invalid? OPP.
3. Whether the plaintiffs are entitled to the decree of permanent injunction as prayed for? OPP.
4. Whether the suit of the plaintiffs is not maintainable? OPD.
5. Whether the suit is barred by limitation? OPD.
6. Whether the plaintiffs have no locus standi to file the present suit? OPD.
7. Whether the defendants are entitled to recover special costs from the plaintiffs? OPD.
8. Relief.

In order to prove their case, the plaintiffs had examined Smt.Nand Kaur as PW1 and Sh.Puran Mal as PW2. The plaintiffs had also tendered in evidence documents Ex.P1 to Ex.P5 and Ex.P5/2.

On the other hand, defendant No.1 Mani Ram got his

statement recorded as DW1. The defendants further examined Smt.Chand Kaur as DW2, Smt.Chotti as DW3, Sh.Roshan Lal, Record-keeper as DW4, Sh.Udai Singh Yadav as DW5 and Sh.B.S. Bhardwaj as DW6. The defendants had also moved an application for additional evidence, which was allowed vide order dated 15.5.2006 and the defendants had examined Sh.V.B. Kashyap, Handwriting and Fingerprint Expert as DW7.

After hearing learned counsel for the parties, the trial Court decided issues No.1 to 3 against the plaintiffs, issues No.4 and 6 against the plaintiffs, issues No.5 and 7 against the defendants being not pressed. Resultantly, suit of the plaintiffs was dismissed. This was so done vide judgment and decree dated 15.9.2007.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Narnaul, which was assigned to Additional District Judge(Fast Track Court), Narnaul, who vide judgment and decree dated 28.9.2010 dismissed the same affirming the judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff Chand Kaur has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, resultantly the impugned judgments and decrees passed by the Courts below be set aside and suit of the plaintiffs be decreed.

Notice of the appeal was issued to respondents. However, only respondents No.1 to 6 appeared through counsel.

I have heard learned counsel for the parties besides going through the records and I find that there is no merit in the appeal.

Both the Courts below have returned concurrent findings that the plaintiffs had appeared in the trial Court and admitted the claim of the plaintiff in the civil suit with the result the consent decree was passed and no fraud was played upon the plaintiffs as alleged by them. The findings so recorded by the Courts below are based upon proper appraisal of evidence and correct interpretation of law and there is no ground to upset the detailed and well reasoned judgments passed by the Courts below rejecting the claim of the plaintiffs.

As regards the objection taken by the appellants that the decree was not got registered, the same is also without merit since the said decree was passed on the basis of the family settlement recognizing the pre-existing right of the plaintiffs there, as such, it did not require compulsory registration.

Learned counsel for the respondents has referred to authority **Phool Patti and another Versus Ram Singh (Dead) through LRs and another, 2015(1) RCR(Civil) 606** by the Apex Court, wherein it was observed that in case of family settlement relating to ancestral as well as self-acquired property of a person or only the ancestral property, the decree relating to ancestral property does not require compulsory registration. He has further placed reliance upon **Som Dev and ors. Versus Rati Ram and anr. 2006(4) RCR(Civil) 303** by the Apex Court, wherein it was observed that a decree based on family arrangement does not require registration. The third authority referred to by learned counsel for the respondents was **Rajjo Versus Jawahar Singh, 2007(2) RCR(Civil) 62** by a Co-ordinate Bench of this Court, wherein it was

observed that when a decree is passed on admission or consent, the party who has suffered a consent decree, can challenge it on the grounds of fraud and misrepresentation alone and not on the ground of its non-registration.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

6.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No