

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

Date of decision: 06.03.2019

1. RSA No.673 of 2013 (O&M)

Dharambir Singh (deceased) and others

..... Appellants

Versus

Braham Parkash

..... Respondent

2. RSA No.960 of 2013 (O&M)

Dharambir Singh (deceased) and others

..... Appellants

Versus

Braham Parkash

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate
for the appellants (in both appeals).

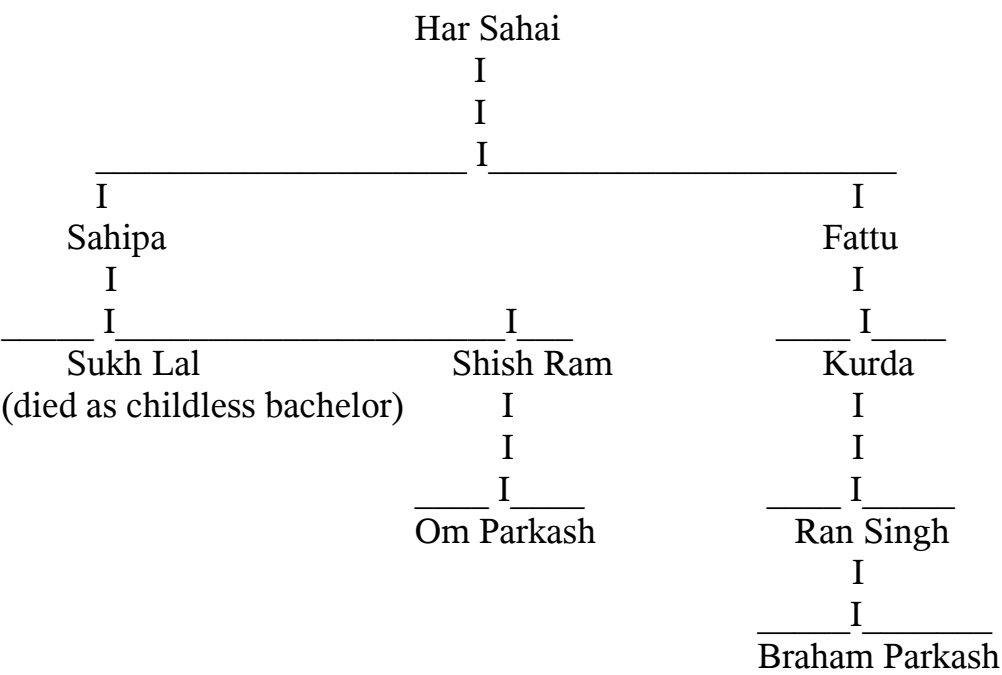
Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Parunjeet Singh, Advocate
for the respondent (in both appeals).

ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of two appeals bearing RSA No.673 of 2013 and RSA No.960 of 2013, although, arising from different suits, however, between the same parties and the issues which require determination are common. Counsel for the parties are also agreed that both the appeals can be conveniently disposed of by a common judgment.

In RSA No.673 of 2013, Sukh Lal-plaintiff since deceased had challenged the execution of the sale deed executed by him dated 02.06.1998 whereas in RSA No.960 of 2013, Sukh Lal has challenged the judgment and decree passed on the basis of a consent dated 07.08.1998. The sale deed as well as Civil Court decree is in favour of Braham Parkash.

To understand the inter se relationship between the parties, a small pedigree table shall be convenient which is drawn as under:-



It is apparent that Sukh Lal was a childless bachelor. He alleged to have executed the following documents in favour of Braham Parkash who was great grand-son of Fattu or in other words, he was grand-son of cousin of Sukh Lal. The documents executed are as under:-

1. A registered Will dated 21.07.1995 Ex.D-7.
2. A registered Will dated 02.06.1998 Ex.D-8.
3. A registered sale deed dated 02.06.1998 transferring 8 marlas of land in favour of Braham Parkash.
4. Civil Court judgment and decree dated 07.08.1998 whereby he acknowledged the family settlement arrived at between the parties.

After execution of various documents and suffering a decree,

Sukh Lal first filed a suit on 15.04.1999 challenging the correctness of the sale deed on the ground that it is result of fraud. The second suit was filed by Sukh Lal challenging the correctness of judgment and decree dated 07.08.1998 by filing a suit on 17.04.1999.

Both the suits were defended and it was pleaded that the sale deed as well as judgment and decree was executed/suffered by Sukh Lal with his free will and volition. Both the Courts dismissed both the suits filed by Sukh Lal.

Learned senior counsel appearing for the appellants has submitted that Braham Parkash was related to Sukh Lal from a distance and therefore, he could not be held to be a family member for the purpose of family settlement. Hence, he submitted that there could not be any pre-existing right with Braham Parkash which was recognized in a family settlement. Hence, the decree required registration. He further submitted that the judgment and decree is result of fraud as almost entire property owned by Sukh Lal was given in a family settlement to Braham Parkash. He further submitted that defendant-respondent/Braham Parkash had got executed various documents which have been noticed above. He submitted that on 02.06.1998, there are two documents, one is registered Will and the second is sale deed. Hence, he submitted that these documents give rise to a suspicion. He has further submitted that in the sale deed, there was no payment before the Sub-Registrar, although, it was acknowledged in the sale deed and it has written that the entire sale consideration has already been received.

On the other hand, learned counsel for the respondent has submitted that in the plaint itself, Sukh Lal has admitted his thumb

impression. He has further submitted that the handwriting and fingerprint expert examined by the plaintiff has not made any comparison with the thumb impression available on the plaint with thumb impressions of the sale deed, Will as well as statements suffered in Court in the first suit. He further submitted that Om Parkash when appeared on behalf of the plaintiff has admitted that he is possessed of the Ration Card and voter list of late Sh. Sukh Lal but the same were withheld from the Court.

This Court has analyzed the arguments of learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the record.

A bare look at the pedigree table, it is apparent that Sukh Lal admittedly was a childless bachelor. It is the case of Braham Parkash that Sukh Lal being all alone started living with him and therefore, he had lot of love and affection towards Braham Parkash.

For the purpose of family settlement, the family is not to be narrowly construed. For the purpose of family settlement, the family is to be considered as a larger family and even if one member of the family is not closely related that would not make a family settlement bad in the eyes of law. The question which arises is whether a judgment and decree passed by the Court can be set aside on this ground or not. Sukh Lal had filed a written statement in the previous suit on 15.03.1996 admitting the contents of the plaint. On the same day, he appeared before the Court and suffered statement admitting the claim of the plaintiff. The photograph of Sukh Lal is also affixed on the statement given by him in evidence. The suit remained pending for more than two years. Even after recording the statement on 15.03.1996, the suit remained pending upto 07.08.1998 i.e.

almost a period of 2 years and 5 months. Sukh Lal never raised any objection or ever objected to passing of decree after suffering the statement in the Court.

Hence, it cannot be said that Braham Parkash was not a member of the family. The concept of family members in the context of family settlement has been discussed by the Hon'ble Supreme Court 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).”

Still further, the judgment and decree is not an instrument of transfer of the property. A judgment and decree acknowledging family settlement which had been arrived at before the filing of the suit is passed on the basis of consent of the parties under Order 12 Rule 6, Civil

Procedure Code, 1908. Once the judgment and decree is not instrument of transfer, it does not require registration. Reference in this regard can be made to the judgment passed by this Court in the case of *Dhian Singh and others Vs. Mohinder Singh and others, 2017(4) PLR 729.*

As regards second argument, it will be noted that the plaintiff has failed to prove how the judgment and decree is result of fraud. As noted above, the statement of Sukh Lal in the previous suit also bears his photograph correctness whereof is not disputed. Once Sukh Lal himself admitted and acknowledged a family settlement, then even if almost entire property of Sukh Lal had been subject matter of suit would not make the decree fraudulent.

Next argument of learned counsel is that various documents were executed in favour of Braham Parkash and the Will and the sale deed were executed on the same day is to be noticed and rejected particularly when the Will as well as sale deed are separately registered may be on the same day.

As regards next argument of learned counsel that no payment was made before the Sub-Registrar, it will be noticed that in the sale deed, receipt of the entire sale consideration is admitted to have already been received. Still further, keeping in view the relationship between the parties and various other documents, there is hardly any doubt about the correctness of the sale deed. Still further, a sale deed cannot be set aside on the ground that the payment of the sale consideration is not before the Sub-Registrar. The registered sale deed has a presumption of correctness and the onus is very heavy on the plaintiff to prove otherwise. In the present case, the plaintiff has failed to prove that there was no payment.

Accordingly, both the judgments passed by the Courts below required no interference.

The pending miscellaneous application, if any in both the appeals, shall stand disposed of in view of the above-said judgment.

Both the appeals are dismissed.

06.03.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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