

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

**RSA No.5880 of 2017 (O&M)**

**Date of Decision: January 17, 2019**

**Ram Kumar (since deceased) through L.Rs & others**

...Appellants

Versus

**Ram Sarup & others**

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr. Jai Vir Yadav, Advocate,  
for the appellants.

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**AMIT RAWAL, J. (Oral)**

The present Regular Second Appeal is directed against the judgment and decree of the Lower Appellate Court, whereby the appeal preferred by the respondent-defendant against the judgment and decree of the trial Court decreeing the suit of the appellant-plaintiff laying challenge to the decree dated 09.04.1982 passed in Civil Suit No.156 of 03.03.1982 and dismissing the counter claim of the defendants on the basis of the writing dated 20.04.1960, has been allowed.

Ram Kumar (now deceased and represented by his son Karan Singh) instituted the suit alleging that Ram Kumar and Kanha (father of defendant Nos.1 to 4) were cousin brothers. They were owners of the land to the extent of half share. Kanha was a very clever person. The plaintiff and Kanha alienated some part of the land vide sale deeds dated 26.04.1960 and

27.04.1960 in equal shares and also received the sale consideration. About 26-27 years back, the plaintiff marked his thumb impression over some papers in the court on the instructions of Kanha on the pretext of partition of the suit land, but it was revealed that about a year ago, Kanha had fraudulently procured a decree dated 09.04.1982 in Civil Suit No.156 of 1982 and, therefore, cause of action accrued to file the suit in 2009.

Defendant Nos.1 to 4 filed a joint reply and opposed the suit by relying upon the writing dated 20.04.1960, whereby 8 kanals of land was stated to be given to Ram Kumar and 7 kanals remained with Kanha. As per the decree, Ram Kumar was allotted 96 kanals land, whereas 110 kanals remained with Kanha.

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

- “1. Whether plaintiff is the owner in possession of suit property detailed in head note of the plaint and contesting defendants have no concern with it? OPP*
- 2. Whether judgment and decree dated 9.4.1982 passed in civil suit no.156 of 3.3.1982 is liable to be set aside being fraudulent in nature as claimed? OPP*
- 3. Whether plaintiff is entitled for a decree of permanent injunction against defendants qua suit property w.r.f. possession, alienation etc. as claimed? OPP*
- 4. Whether suit of the plaintiff is maintainable in present form? OPD*
- 5. Whether plaintiff has no locus standi to file the present suit? OPD*
- 6. Whether plaintiff has concealed the material facts from the court? OPD*
- 7. Whether plaintiff is estopped from his act and conduct to file the present suit? OPD*
- 8. Whether suit of the plaintiff is barred by limitation?*

*OPD*

9. *Relief.”*

Vide order dated 02.01.1995, following additional issue was framed:-

*“Issue No.4A. Whether the defendants no.1 to 4 are owners in possession of their 160/2795 share in the suit property as alleged in the counter claim? OPD/counter-claimant.*

Plaintiff examined five witnesses, whereas defendants examined two witnesses including Expert.

Mr. Jai Vir Yadav, learned counsel for the appellants submitted that the writing of 1960 had not been proved. As per the decree of 1982, 96 kanals came to the share of Ram Kumar and 110 kanals remained with Kahna, thus, Kanha was benefited by 14 kanals. Once the trial Court had decreed the suit, equal distribution was required to be done with regard to 15 kanals as 7 kanals remained with Kanha and the balance area, i.e., 8 kanals remained with Ram Kumar. The decree required registration. There is no limitation to claim the right in the suit property as the factum of the decree acquired in 2009 is falling within the provisions of Article 59 of Limitation Act despite the fact that mutation of 07.10.1983 was sanctioned in pursuance to the decree. Ram Kumar was misrepresented in a suit filed by Kanha as he was identified by the counsel for the plaintiff. Suit could not have been dismissed as per the provisions of Order 23 Rule 3A CPC in view of the law laid down by this Court in **Suresh Versus Smt.Mariyan & Ors. 2010(7) R.C.R. (Civil) 2995 and Gurdev Kaur and anr. Versus Mehar Singh and ors., 1989(2) R.C.R. (Rent) 625** as the compromise decree on the basis of the fraud and misrepresentation can always be challenged in independent suit.

I have heard the learned counsel for the appellants and appraised the paper book.

It would be apt to reproduce the provisions of Rule 3A of Order 23 Rule. The same read thus:-

***“23. WITHDRAWAL AND ADJUSTMENT OF SUITS***

***1. Withdrawal of suit or abandonment of part of claim.-(1)***

*At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:*

xxx

xxx

xxx

***3A Bar to suit.-No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”***

It shows that no suit lie to challenge the decree on the ground that the compromise on which the decree is based was not lawful. The term “not lawful” was interpreted by the aforementioned judgments cited supra by relying upon the ratio decidendi culled out in **Ram Kishan & Ors. Versus Smt.Sardari Devi & Ors., 2002(4) RCR (Civil) 837** by holding that Rule 3A did not bar the maintainability to challenge the compromise on the ground fraud, coercion and undue influence as they would not fall within the expression “not lawful”.

Without going upon the maintainability of the suit, I proceed to decide whether the plaintiff has been able to establish the ingredients of fraud and misrepresentation. There are two ingredients, i.e., pleadings and the direct and cogent evidence. On perusal of the statement and the decree dated 08.04.1982, it is revealed that Ram Kumar was identified by the

learned counsel appearing before the court. The order reads as under:-

*“Present: Plaintiff in person with Sh.Din Dayal Advocate.*

*Defendant in person.*

*Order*

*The file has been taken up today on the application of the plaintiff. The parties have arrived at a compromise. The statements of the parties have been reduced into writing. The parties have also filed a written compromise Ex.PX. The defendant has been identified by the learned counsel for the plaintiff before the court. In view of the statements of the parties and the written compromise Ex.PX, the suit of the plaintiff is, hereby, decreed declaring that the plaintiff is an owner as well as in possession of the suit land as detailed in compromise Ex.PX. The compromise Ex.PX shall form a part of the decree. No order as to costs. A decree-sheet be prepared and the file be consigned to record room.*

*Announced*

*Sd/-Sub Judge Ist Class,*

*Dated. 8.4.1982*

*M/Garh.”*

The aforementioned statement was also thumb marked, much less the compromise. No effort had been made to belie the thumb impression of Ram Kumar as he admitted to have given on a blank paper. Once the mutation was already effected in 1983, no sane person would sit idle in case of fraud and take all efforts to launch criminal proceedings, but chose to file the suit only in 2009, though the defendants had not been successful in proving the settlement of 1960 by laying claim qua 7 kanals as 8 kanals out of balance 15 kanals remained with Ram Kumar. In my view, it was an arrangement between the parties and short fall should not

have been recouped by laying challenge to 1982 decree.

For the reasons mentioned above, I do not find any illegality or perversity in the findings of Lower Appellate Court under challenge, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

**January 17, 2019**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

|                                  |               |
|----------------------------------|---------------|
| <b>Whether speaking/reasoned</b> | <b>Yes/No</b> |
| <b>Whether Reportable:</b>       | <b>Yes/No</b> |