

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

RSA No.1284 of 1998(O&M)

Date of decision: 17.2.2020

Satbir Singh

.....Appellant

VERSUS

Chand Kaur

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Salil Bali, Advocate for the appellant.

Mr. Kulbhushan Sharma, Advocate for the respondent.

REKHA MITTAL, J.

The admitted facts and background of the case is to the following effect:-

Sh. Ram Sarup @ Mathura son of Chhotu resident of village Chamarian, Tehsil and District Rohtak was owner in possession of half share of agricultural land, detailed in para 1 of the plaint. The appellant claiming himself to be adopted son of Ram Sarup filed civil suit No.533 of 13.08.1992 titled Satbir Singh Vs. Ram Sarup which was later dismissed as withdrawn vide order dated 30.01.1993 but permission to file a fresh suit was declined by the said order. The appellant filed civil suit No.46 of 04.02.1993 claiming himself to be son of Roop Chand titled Satbir Singh Vs. Ram Sarup in which consent decree dated 09.02.1993 in respect of the suit land was passed in favour of the appellant. Two separate appeals were filed against the aforesaid decree, one by the daughters of Sh. Ram Sarup and the other by Sh. Ram Sarup. The appeal preferred by daughters of Sh. Ram Sarup was withdrawn but appeal filed by Sh. Ram Sarup was

dismissed by the Additional District Judge, Rohtak. The instant suit was filed by Brahma Devi and Chand Kaur, daughters of Sh. Ram Sarup to assail the judgment and decree dated 09.02.1993. Later, the name of Brahma Devi was struck off from the array of plaintiffs but the suit was prosecuted by Ms. Chand Kaur.

Chand Kaur challenged the decree dated 09.02.1993 inter alia on the following grounds:-

- (i) The appellant, from the very beginning, was trying to obtain decree against her father by fraud and suppressing material facts from the Court. Civil Suit No.533 dated 13.08.1992 throws light on ill intention of the appellant wherein he presented himself to be adopted son of Ram Sarup.
- (ii) No family settlement between the appellant and Sh. Ram Sarup had taken place. The appellant had not disclosed in the alleged family settlement as to what was to be obtained by Sh. Ram Sarup in lieu of his approximately 10 killas of agricultural land. Sh. Ram Sarup who was a big landlord prior to the impugned decree is leading life of a destitute.
- (iii) The appellant was not entitle to file the second suit as permission to file another suit has been declined by the Court.
- (iv) The appellant did not disclose in second suit with regard to filing of previous civil suit No.533 of 13.08.1992 regarding the same property and order of

the Court declining his prayer seeking permission to file another suit.

- (v) Consent of Sh. Ram Sarup was obtained by keeping him under confinement and coercion. His consent was not free and spontaneous.
- (vi) The respondent was not informed about filing of suit No.46 of 04.02.1993 in response to caveat dated 05.12.1992. The appellant seems to have managed in the office of Senior Sub Judge, Rohtak so that information was not given to the plaintiff.
- (vii) The Courts of S.S.J./A.S.S.J, Rohtak did not perform their duties well as the appellant was allowed to file and proceed with suit No.46 without checking mandatory para regarding previous litigation.

The appellant filed the written statement and raised preliminary objections in respect of maintainability, locus standi and respondent having not approached the Court with clean hands. All material allegations on the basis whereof the decree dated 09.02.1993 was sought to be assailed were denied. It is averred that suit was filed by answering defendant being adopted son of Ram Sarup by disclosing story about his adoption and relationship between the parties to his advocate. He never took Ram Sarup in illegal confinement. From childhood, he lived with Ram Sarup. The expenses of marriage and dowry of plaintiffs were incurred by the answering defendant. He had been performing his duties as per rites and rituals.

The respondent/plaintiff filed replication, controverted the preliminary objections and reiterated her stand taken in the plaint.

The trial Court framed following issues for determination:-

1. Whether the judgment and decree dated 09.02.1993 passed by Sh. R.L. Sankhla, the then ASSJ, Rohtak, in Civil Suit bearing No.46/93 is illegal, null and void and not binding upon the rights of the plaintiff? OPP
2. If issue No.1 is proved, whether the plaintiffs are entitled to the possession of the suit land? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Relief.

To prove her case, the respondent examined Ram Sarup PW-1, Daya Nand her husband and Attorney PW-2 and Rajinder Singh, Maths Master, Government High School PW-3. Counsel for the respondent tendered into evidence documents Ex.P5 to P9.

To rebut evidence of the respondent, the appellant examined Suresh Kumar, Clerk, Record Room, Sessions Court, Rohtak DW-1, Paramjit, Attorney of the appellant DW-2, Sube Singh DW-3, Dharampal, Reader to Civil Judge (Senior Division), Rohtak DW-4, Umed Singh DW-5.

Having heard counsel for the parties in the light of materials on record, the trial Court determined issues No.1 and 2 against the respondent/plaintiff, issue No.3 in favour of the appellant/defendant and eventually the suit was dismissed with no order as to costs, vide decree and judgment dated 26.04.1997. The appeal preferred by unsuccessful respondent/plaintiff was allowed by the Additional District Judge, Rohtak

vide decree and judgment dated 19.02.1998, impugned in the present appeal. The Appellate Court, in view of observations made in paras 18 onwards, recorded its conclusions to the following effect:-

1. By concealing material facts regarding the previous litigation, the appellant had played fraud on the Court to obtain the impugned decree.
2. There is no explanation as to what was the necessity in withdrawing the earlier suit and again instituting a fresh suit on the same cause of action only after 4 days, thus, it depicts dishonest intention of appellant Satbir Singh.
3. Ram Sarup was under influence of Satbir Singh in admitting his claim in civil suit No.46 of 04.02.1993 in which the impugned decree has been passed.
4. Adoption of Satbir Singh is not a fact in issue nor any specific issue to this effect has been framed or claimed by the parties, thus, the existence of adoption deed Ex.D3 and Will Ex.D4 in favour of Satbir Singh alleged to be executed by Ram Sarup, though the same has been specifically denied by Ram Sarup while appearing in the witness box as PW-1, is also no ground to give legality to the impugned decree. Defendant Satbir Singh himself has not stepped into the witness box to clear the doubts and rebut testimony of PW-1 Ram Sarup. Thus, non-appearance of Satbir Singh in the witness box raises a strong adverse inference against him and his conduct.
5. Contention of the appellant with regard to locus standi of Chand Kaur to file the suit is rejected that as she is

daughter of Ram Sarup and if the impugned decree had not been passed, she was likely to succeed to the property of Ram Sarup who has died during pendency of the suit.

6. No specific plea has been raised by the defendant that suit is barred by principle of res judicata nor required evidence has been adduced to substantiate plea of res judicata.
7. The appeal filed by Chand Kaur and Brahma Devi against impugned decree was not maintainable on technical ground. The appeal of Ram Sarup was also dismissed on technical ground i.e. being barred by limitation and due to absence of allegations regarding fraud or coercion etc.
8. Civil Suit No.46 of 1993 was barred under Order 23 Rule 1 (4) of the Code of Civil Procedure, 1908 (in short 'CPC') but Satbir Singh filed the said suit by concealing the factum regarding withdrawal of his previous suit No.533 of 1992.
9. Once the impugned judgment and decree dated 09.02.1993 is set aside, possession of the suit land will also revert to its original owner i.e. Ram Sarup who was alive on the date of institution of the suit, thus, possession could not be delivered to the plaintiffs in lifetime of Ram Sarup, so no order can be passed to deliver possession in favour of the plaintiff (appellant therein). The legal heirs of deceased Ram Sarup will be

entitle to file legal remedy for seeking possession of suit land as per law.

Counsel for the appellant would argue that decree dated 09.02.1993 was passed on the basis of consent given by Sh. Ram Sarup who filed the admitted written statement and thereafter made a statement before the Court admitting claim of the appellant (plaintiff therein) with regard to a family settlement between the parties. Ram Sarup filed Civil Appeal No.130 of 1993 against judgment and decree dated 09.02.1993 but the same was dismissed by the Additional District Judge, Rohtak vide decree and judgment dated 17.05.1994, therefore, the impugned decree dated 09.02.1993 merged in the decree dated 17.05.1994 and as such the decree dated 09.02.1993 is not amenable to challenge without challenging decree dated 17.05.1994.

Another submission made by counsel is that even if Sh. Ram Sarup had any grievance against the consent decree dated 09.02.1993, the only remedy available to him was to file an appropriate application before the trial Court but he did not avail appropriate remedy, in accordance with law. It is vehemently argued that if Sh. Ram Sarup himself could not maintain an independent suit to assail decree dated 09.02.1993, respondent/plaintiff Chand Kaur daughter of Sh. Ram Sarup does not have locus to maintain the suit challenging decree dated 09.02.1993.

Counsel would argue that Chand Kaur assailed the decree by raising certain legal issues with regard to dismissal of previous suit No.533 dated 13.08.1992 and rejection of permission to file a fresh suit, concealment of the previous litigation in suit No.46/1993. It is argued that the respondent/plaintiff has failed to cite any law that even if a suit has

been filed in violation of the provisions of Order 23 Rule 1 CPC and a decree has been passed in the second suit, the same would be rendered non-est either because of dismissal of the previous suit or non-disclosure of the said fact in the subsequent suit. It is further argued that any such objection with regard to second suit being not maintainable on account of dismissal of earlier suit could be raised only by Sh. Ram Sarup and since he did not raise any such objection, it amounts to waiver, therefore, findings of the Court in appeal that the appellant is guilty of playing fraud upon the Court cannot be allowed to sustain.

Another submission made by counsel is that respondent raised the plea that statement of Ram Sarup was obtained by keeping him under undue confinement and coercion or his consent was not free and spontaneous. It is argued that Ram Sarup never raised such an issue either by filing an application before the Court that passed the decree by availing appropriate remedy available in law nor he challenged the impugned decree by filing suit. It is further argued that Ram Sarup appeared in the witness box and tried to wriggle out of his statement made before the Court by levelling allegations against the Presiding Officer of the Court and that fact has not even been accepted by the Court in appeal in para 23 of the judgment. According to counsel, testimony of Ram Sarup is not at all sufficient to substantiate plea of the respondent that either he was kept in illegal confinement or his consent recorded in civil suit No.46/1993 is the result of undue influence/coercion etc. It is further argued that as per the settled position in law, a party seeking to set aside a decree/deed on the ground of fraud is required to plead essential facts constituting fraud in compliance with the provisions of Order 6 Rule 4 CPC and later prove the same akin to a criminal charge beyond shadow of reasonable doubt. It is

submitted that respondent has miserably failed to discharge her legal obligation to establish any fraud being played by the appellant, therefore, the impugned decree is liable to be set aside.

Counsel representing the respondent/plaintiff, on the contrary, has supported the findings on the basis whereof the Appellate Court reversed the judgment and decree passed by the trial Court and accepted claim of the respondent/plaintiff regarding attack against the judgment and decree dated 09.02.1993 passed against Sh. Ram Sarup in civil suit No.46/1993. It is submitted that as the decree dated 09.02.1993 is the result of fraud, neither the appellant can be heard to say that respondent did not have locus to assail that decree nor the impugned judgment can be set aside on that score as fraud vitiates everything and a decree obtained by fraud can be set aside even in collateral proceedings.

I have heard counsel for the parties, perused the paper-book and original records of instant suit and earlier two civil suits No.533 of 1992 and No.46 of 1993.

The questions that fall for consideration are :-

1. Whether the decree dated 09.02.1993 is the result of fraud played upon Sh. Ram Sarup?
2. Whether the decree dated 09.02.1993 can be said to be the result of fraud as the appellant did not comply with the provisions of Order 7 Rule 1 (j) of CPC and he filed the subsequent suit No.46 of 1993 despite his previous suit No.533 of 1992 had been dismissed as withdrawn and permission to file a fresh suit had been rejected?

3. Whether Chand Kaur has the locus standi to institute the suit even during lifetime of Sh. Ram Sarup?

Question No.1:- Whether the decree dated 09.02.1993 is the result of fraud played upon Sh. Ram Sarup?

The respondent/plaintiff has alleged that consent of Sh. Ram Sarup was obtained by keeping him under confinement and coercion. His consent was not free and spontaneous.

Order 6 Rule 4 of the CPC deals with particulars to be given where necessary. A relevant extract therefrom, reads as follows:-

“In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with date and items if necessary) shall be stated in the pleading.”

The pleadings in the present case are conspicuously silent with regard to the particulars required to be given in compliance with the aforesaid provision. This apart, there cannot be denial that fraud needs to be proved akin to a criminal charge in a civil case as well.

The question for analysis and determination is, whether the respondent/plaintiff has been able to plead and prove essentials of a fraud to assail the consent decree dated 09.02.1993 passed against Sh. Ram Sarup, her father.

Ram Sarup was alive when suit was filed at the behest of her two married daughters namely Brahma Devi and Chand Kaur. The name of Brahma Devi was struck off vide order dated 16.07.1996 passed by the trial Court and suit continued at the behest of Chand Kaur. Chand Kaur herself did not appear in the witness box to establish the allegations raised in the plaint but examined her husband being an attorney. There is no explanation much less tangible from the plaintiff to keep herself away from the witness box, therefore, an adverse inference is liable to be drawn against the respondent/plaintiff. However, Ram Sarup appeared in the witness box to support cause of his daughter that the decree is the result of undue influence. In examination in chief, his statement in Hindi but translated in English, reads as follows:-

“xxx After that Satbir got my thumb impressions by undue influence (drakar) and extending threat to kill me (jaan se marne ki dhamki dekar). I filed the suit. Before the Judge Satbir said that he is mentally upset (iska dimag khrab hai) but I said that I am alright. Satbir told the Judge that he is mad (ye pagal hai) and his signatures should be done (is ke dastkhat kar do). I told the Judge that my signatures have been obtained forcibly and under undue influence (jabardasti drakar dhamakar). I do not want to give my land. I am given roti by my daughters. I live in the field from where Satbir has made me to run away.”

A relevant extract from his cross examination, reads as follows:-

“When Satbir grew up he joined me and his wife (bahu) also joined me. In the beginning wife of Satbir made my roti but after getting the land purpose was served and did not make my roti. They stayed with me for few days. The decree should be set aside otherwise I will not get roti. Until the decree is set aside there would not be provision for my roti. Rs.1000/500/- is not sufficient for my maintenance. I do not want to give my land to anybody.”

The appellate Court has not accepted it correct that Ram Sarup made a statement before the Judge that either he did not want to give the land or his signatures have been obtained under duress or undue influence etc. Even otherwise, it is difficult to accept to reason that if a litigant had disclosed any such fact to the presiding officer, his statement would still be recorded. This apart, Sh. Ram Sarup never filed an application before the Court concerned to assail correctness of his statement recorded on 09.02.1993 or passing of consent decree on the basis thereof. Not only this, Ram Sarup filed the appeal against the judgment dated 09.02.1993 after delay of seven months but the same was dismissed both on the question of limitation and merits rejecting that the decree is vitiated by fraud.

A plain but careful reading of aforesaid extract from cross examination of Ram Sarup leads to an irresistible conclusion that Ram Sarup felt annoyed due to conduct of wife of Satbir after passing of the decree and for that reason, he concocted the story narrated in his examination in chief with active connivance of his daughter to wriggle out

of the decree. However, statement of Ram Sarup makes it evident and certain that he was present in the Court when his statement was recorded on 09.02.1993. As statement aforesaid made by Ram Sarup in examination in chief, cannot be accepted by any stretch of imagination, it is difficult to accept plea of the respondent/plaintiff that decree dated 09.02.1993 is the result of coercion or vitiated by fraud. Accordingly, the aforesaid question is answered against the respondent/plaintiff.

Question No.3:- Whether Chand Kaur has locus standi to institute the suit even during lifetime of Sh. Ram Sarup?

The moment, contention of the respondent/plaintiff that decree dated 09.02.1993 is vitiated by fraud played upon Ram Sarup is rejected, the issue that Chand Kaur could file a suit to assail the decree during lifetime of Ram Sarup assumes greater significance. The appellate Court, on one hand, held that if the impugned decree had not been passed, Chand Kaur was likely to succeed to the property of Ram Sarup who has died during pendency of the suit. At the same time, it has been held that possession could not be delivered to the plaintiff in lifetime of Ram Sarup so no order can be passed to deliver possession to the plaintiff.

The cause of action or locus standi to file the suit relates to the date of institution of suit. The mere fact that if the decree is set aside or the property remained under ownership of Sh. Ram Sarup, the same would not confer a right upon an heir to challenge the decree during lifetime of owner who made disposition of his property more particularly in the circumstances that the plaintiff is not claiming any independent right in the suit property nor she has filed suit on behalf of Ram Sarup. In this view of the matter, findings of the appellate Court with regard to locus of Chand

Kaur to maintain the suit are grossly faulty, thus, cannot sustain. Furthermore, once a consent decree has been passed on the basis of statement of Ram Sarup recorded in the Court, the only remedy that could be availed by Sh. Ram Sarup was to file an application before the Court concerned to withdraw from his earlier statement or attack the decree on grounds available in law. Above all, decree dated 09.02.1993 was challenged in appeal by Sh. Ram Sarup but failed to get any relief and has attained finality. As the decree dated 09.02.1993 has merged in the decree passed by Court in appeal and the same has attained finality, even Ram Sarup was not competent to challenge the decree dated 09.02.1993 without challenging the decree dated 17.05.1994 passed by the Court in appeal. Analysed from any angle, Chand Kaur was not competent to maintain the present suit.

Question No.2:-Whether the decree dated 09.02.1993 can be said to be the result of fraud as the appellant did not comply with the provisions of Order 7 Rule 1(j) of CPC and filed the subsequent suit No.46 of 1993 despite his previous suit No.533 of 1992 had been dismissed as withdrawn and permission to file a fresh suit had been rejected?

Indisputably, the appellant did not comply with the provisions of Order 7 Rule 1(j) of CPC as he did not disclose about previous suit No.533 of 1992 and the result in the said suit namely dismissal of the suit as withdrawn. Similarly, the factum of rejection of his prayer to file a fresh suit was not brought on record.

Order 7 Rule 1 CPC deals with particulars to be contained in complaint. Clause (j) after Clause (i) of Order 7 Rule 1 CPC was inserted for Punjab, Haryana and Chandigarh w.e.f. 15.03.1991. Counsel for the

respondent/plaintiff has failed to point out any provision in law or a precedent that if a litigant has failed to comply with requirements of Order 7 Rule 1 Clauses (a) to (j), it amounts to playing fraud upon the Court. In this view of the matter, it is difficult to affirm findings of the appellate Court that since the appellant did not comply with the provisions of Clause (j) of Order 7 Rule 1 of CPC, he is guilty of playing fraud upon the Court.

So far as rejection of prayer of the appellant to file a fresh suit while withdrawing previous suit No.533 of 1992 on 30.01.1993, the defendant in suit No.46 of 1993 could raise an objection that the suit is not maintainable being barred under Order 23 Rule 1(4) CPC but since he did not raise any such objection, it can be construed that he waived off his right to raise a legal objection qua maintainability of the suit. Even the Court in appeal has not held that impugned decree is vitiated on account of withdrawal of the previous suit and rejection of permission to file a fresh suit. Rather it has been held that had this fact been disclosed in Civil Suit No.46 of 1993, the Court might not have passed the decree dated 09.02.1993. This apart, in the later suit that culminated in the decree dated 09.02.1993, a fresh cause of action has been pleaded with the following allegations:-

“The plaintiff convened the meeting of their relative and possessed the matter before them in order to desist the defendant, alienating the agricultural land in dispute but the defendant is so adamant that he did not budge an inch and he has made up his mind to sell it away and at last he refused to get the entry changed in the name of the plaintiff on 31.01.1993. Hence this suit.”

Ram Sarup filed written statement and denied the allegations contained in paras 4 and 5 of the plaint but at the same time prayed that a decree for declaration be passed in favour of the plaintiff therein declaring the plaintiff to be owner in possession of entire share of agricultural land of the defendant.

The written statement was filed by him through Sh. Ashok Rathee, Advocate. There is nothing on record suggestive of the fact that Ram Sarup ever initiated any action against Sh. Ashok Rathee, Advocate for getting his thumb impressions wrongly much less under undue influence on the written statement, admitting the allegations contained in paras 1 to 3 of the plaint or admitting for passing a decree in favour of Satbir Singh. Not only this, Ram Sarup made a statement dated 09.02.1993 admitting claim of the appellant (plaintiff therein) and was identified by Sh. Ashok Rathee, Advocate. The statement of Ram Sarup, in the present case, is conspicuously silent that either Sh. Ashok Rathee, Advocate was not engaged by him or written statement filed by Sh. Ashok Rathee, Advocate on his behalf admitting claim of the appellant was ever sought to be withdrawn on any ground whatever. As Ram Sarup did not contest the suit on any ground, legal or factual, findings of the appellate Court that impugned decree is obtained by the appellant by playing fraud upon the Court are not legally sustainable and accordingly set aside. The Appellate Court, in my considered opinion got swayed by sympathetic considerations, to set aside the decree dated 09.02.1993. This Court is well alive that affirmation of decree dated 09.02.1993 would deprive the respondent and her sibling of land approximately 8/9 acres which they could inherit on the basis of natural succession had their father continued

to be owner thereof till his life . However, this fact alone is not enough to maintain the judgment of Appellate Court.

Before parting with the judgment, it is pertinent to mention that this Court also referred the parties for mediation so that they can arrive at a settlement but remained unsuccessful. The Court also tried for an amicable settlement but the parties failed in their efforts.

In view of what has been discussed hereinbefore, the appeal is allowed. The judgment and decree dated 19.02.1998 is set aside and that of the trial Court is restored. The suit filed by the respondent/plaintiff is dismissed leaving the parties to bear their own costs.

FEBRUARY 17, 2020

‘D. Gulati’

Whether speaking/reasoned :
Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no
yes/no