

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

RSA No. 338 of 2013(O&M)

Date of decision: 22.1.2020

Kala Devi

.....Appellant

VERSUS

Balbir Dass and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mrs. R.K. Thind, Advocate for the appellant.

Mr. Rakesh Chopra, Advocate for respondents No.1, 2 and 5.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against judgments and decrees passed by the Court whereby suit for declaration that appellant/plaintiff is joint owner in joint possession of suit property mentioned in headnote –A of the plaint by assailing judgment and decree dated 04.12.1976 passed in Civil Suit No.1005/19.11.1976 and title deed No.1570 dated 08.07.2002 with relief of permanent injunction restraining defendants No.2 to 6 from alienating the suit property was dismissed by the trial Court vide judgment and decree dated 17.11.2011 that came to be affirmed in appeal by the Additional District Judge, Fatehgarh Sahib.

Kala Devi wife of Baldev Singh is daughter of Arjan Dass. She assailed the judgment and decree dated 04.12.1976 primarily on the following grounds:-

1. Arjan Dass never executed any decree in favour of Teja Ram and others and the same is result of fraud, undue influence and is not binding on the plaintiff.

2. Arjan Dass resided with the plaintiff upto his death and she was serving him during his lifetime and performed last rites of her father.
3. No family settlement took place between father of the plaintiff and Teja Ram etc. as nephews of her father never resided with Arjan Dass.
4. Father of the plaintiff never appeared in the Court and did not engage any counsel nor admitted claim of his nephews. The decree is collusive and does not create any right in favour of the respondents/defendants as the same is not registered as per law.

Challenge to the transfer deed No.1570 dated 08.07.2002 was opened with the allegations that Ram Nath – defendant No.1, real uncle of the plaintiff, is blind, deaf and dumb and was not in a position to give his consent to any document. The transfer deed in favour of Balbir Dass – defendant No.2 is the result of fraud and liable to be set aside.

Defendant No.1 filed the written statement and admitted relationship between the plaintiff and Sh. Arjan Dass but denied remaining allegations on the basis whereof the plaintiff challenged the decree and judgment dated 04.12.1976 and transfer deed 08.07.2002.

Defendants No.2, 3, 5 and 6 filed joint written statement controverting the allegations to assail the aforesaid documents or entitlement of the plaintiff to 1/3rd share in suit land on the basis of natural succession to Sh. Arjan Dass.

The trial Court framed the following issues for determination:-

1. Whether the plaintiff is entitled for declaration as prayed for? OPP
2. Whether the judgment and decree dated 04.12.1976 is illegal, null and void? OPP
3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
4. Whether the suit is not maintainable? OPD
5. Whether the plaintiff has no cause of action to file the suit? OPD
- 5A. Whether the transfer deed No.1570 dated 08.07.2002 is illegal, null and void and is liable to be set aside? OPP
6. Relief.

As has been noticed hereinbefore, the trial Court dismissed the suit and the Appellate Court affirmed findings of the trial Court without variance.

Counsel for the appellant would fairly inform that appeal filed by the appellant is limited to attack on decree dated 04.12.1976 and entitlement of the appellant to 1/3rd share in the suit property being successor in interest of Sh. Arjan Dass.

Counsel for the appellant has assailed the decree dated 04.12.1976 primarily by making three submissions. It is argued that neither in the previous suit No.1005/19.11.1976, there was reference as to what was the nature of family settlement between father of the appellant and defendants No.2 to 6 nor the said fact has been revealed in the written statement filed in present lis. It is further argued that suit was instituted on 19.11.1976. Admitted written statement was purportedly filed by Sh. Arjan

Dass on 04.12.1976 and on the same very day, the suit was decreed which creates a suspicion qua correctness of decree dated 04.12.1976. Another submission made by counsel is that defendants No.2 to 6 did not have any antecedent right in the land to the extent of share of Arjan Dass prior to decree dated 04.12.1976 was passed, therefore, the said decree cannot hold the field for want of registration. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Smt. Badami (Deceased) by her LR Vs. Bhali, 2012(6) Law Herald (SC) 4637** and judgments of this Court **Jai Narain Vs. Smt. Sona Devi, 2006(2) RCR (Civil) 212** and **Jagdish Vs. Rajwanti, 2008(1) RCR (Civil) 677.**

Counsel representing the respondents, on the contrary, has supported concurrent findings recorded by the Courts negating plea of the appellant that decree dated 04.12.1976 suffered by Sh. Arjan Dass in favour of defendants No.2 to 6 suffer from any legal flaw much less being the result of fraud and undue influence. Counsel would argue that facts elicited in cross examination of appellant – Kala Devi and Surjit Kaur – PW2 are more than sufficient to prove that the appellant did not approach the Court with clean hands and her case is based upon falsehood. He would further state that one of the issues raised in the case is with regard to the suit being barred by limitation to assail the decree and judgment dated 04.12.1976 and the same has been answered against the appellant but counsel for the appellant has not made any submissions to assail findings of the Courts on this vital aspect of the matter.

I have heard counsel for the parties, perused the paper-book and records.

The appellant/plaintiff appeared in the witness box to support her contention that decree dated 04.12.1976 is the result of fraud, misrepresentation etc. In her cross examination, she would state that she did not know that Arjan Dass appeared and file written statement. She did not know that Arjan Dass suffered a correct decree. Surjit Kaur PW-2 also made vital admissions prejudicial to the cause of the appellant as she deposed that she was present when Arjan Dass executed the decree. It was correct that decree was suffered by Arjan Dass in the year 1976. Kala Devi was also present with her when the decree was suffered by Arjan Dass. After the decree was suffered, they returned to their house at 6/7 PM. Decree came into existence after death of Arjan Dass but they had come by bus for the decree. The aforesaid facts elicited in cross examination of material witnesses examined by the appellant leads to an irresistible conclusion that Kala Devi knew about the decree since it was suffered by Sh. Arjan Dass but the same was challenged by filing the suit in the year 2003. There is no clear evidence on record as to when Sh. Arjan Dass passed away. However, in view of facts elicited in cross examination of witnesses, it can be inferred that Sh. Arjan Dass died some time in 1989/90. Sh.Arjan Dass never challenged correctness of the decree during his lifetime. The appellant did not challenge the decree for more than 12 years after death of Arjan Dass. These facts go a long way to show that suit filed by the appellant/plaintiff is not based upon correct facts nor her plea that decree is the result of fraud or misrepresentation is well-based.

This apart, one of the plea raised by the appellant is that Arjan Dass resided with her upto his death, she served her father and performed

his last rites being daughter. Counsel for the appellant, in response to a query, would fairly concede that there is no evidence adduced by the appellant in respect of Arjan Dass residing with her or he was rendered services by his daughter. On the contrary, it has been proved on record that since the appellant performed marriage at the age of 16 with Baldev Singh resident of village Bhedopura against wishes of Arjan Dass, he was not happy with the plaintiff/appellant.

The appellant miserably failed to prove that the decree impugned is the result of fraud, misrepresentation or impersonation etc. The mere fact that decree was passed on the same very day when admitted written statement was filed, ipso facto, is not sufficient to accept contention of the appellant. There is no denial that essentials of fraud are required to be detailed in the plaint and proved akin to a criminal charge. Counsel for the appellant has failed to point out if there is any materials to establish the same. The plaintiff has not claimed any independent right in the property and she is claiming right through her father Arjan Dass. Since Arjan Dass never raised an issue with regard to family settlement rather admitted claim of the respondents/defendants No.2 to 6 in the previous litigation, it is not open for the appellant to challenge that either there was no family settlement between Arjan Dass and defendants No.2 to 6 or the decree does not hold good for want of registration. If Arjan Dass himself could not impugn the decree for want of registration, how can the appellant/plaintiff claiming through Sh. Arjan Dass assert any such contention. This apart, a consent decree in respect of subject matter of suit does not require registration. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Som Dev and others Vs. Rati**

Ram and another, 2006(4) RCR (Civil) 303, wherein it has been held in para 12, quoted thus:-

“ 12. We shall now examine the decision in Bhoop Singh Vs. Ram Singh, AIR 1996 SC 196. What was involved therein was a decree based on admission. It is to be noted that in that case it was a decree that created the right. The decree that is quoted in paragraph 2 of that judgment was to the effect:

"It is ordered that a declaratory decree in respect of the property in suit fully detailed in the heading of the plaint to the effect that the plaintiff will be the owner in possession from today in lieu of the defendant after his death and the plaintiff deserves his name to be incorporated as such in the revenue papers, is granted in favour of the plaintiff against the defendant,.....”

Therefore, it was a case of the right being created by the decree for the first time unlike in the present case. In paragraph 13 of the Judgment, it is stated that the Court must enquire whether a document has recorded unqualified and unconditional words of present demise of right, title and interest in the property and if the document extinguishes that right of one and seeks to confer it on the other, it requires registration. But with respect, it must be pointed out that a decree or order of a Court does not require registration if it is not based on a compromise on the ground that clauses (b) and (c) of Section 17 of the Registration Act are attracted. Even a decree on a compromise does not require registration if it does

not take in property that is not the subject matter of the suit. A decree or order of a Court is normally binding on those who are parties to it unless it is shown by resort to Section 44 of the Evidence Act that the same is one without jurisdiction or is vitiated by fraud or collusion or that it is avoidable on any ground known to law. But otherwise that decree is operative and going by the plain language of Section 17 of the Registration Act, particularly, in the context of sub-clause (vi) of sub-section (2) in the background of the legislative history, it cannot be said that a decree based on admission requires registration. On the facts of that case, it is seen that their Lordships proceeded on the basis that it was the decree on admission that created the title for the first time. It is obvious that it was treated as a case coming under Section 17(1)(a) of the Act, though the scope of Section 17(2)(vi) of the Act was discussed in detail. But on the facts of this case, as we have indicated and as found by the courts, it is not a case of a decree creating for the first time a right, title or interest in the present plaintiff and his brother. The present is a case where they were putting forward in the suit a right based on an earlier transaction of relinquishment or family arrangement by which they had acquired interest in the property scheduled to that plaint. Clearly, Section 17(1)(a) is not attracted. It is interesting to note that their Lordships who rendered the judgment in Bhoop Singh themselves distinguished the decision therein in **S. Noordeen Vs. V.S. Thiru Venkita**

Reddiar and Ors. [(1996) 2 S.C.R. 261] on the basis that in the case of Bhoop Singh there was no pre-existing right to the properties between the parties, but a right was sought to be created for the first time under the compromise. Their Lordships proceeded to hold that in a case where the plaintiff had obtained an attachment before judgment on certain properties, the said properties would become subject matter of the suit and a compromise decree relating to those properties came within the exception in Section 17(2)(vi) of the Act and such a compromise decree did not require registration. Merely because the defendant in that suit in the written statement admitted the arrangement pleaded by the plaintiff it could not be held that by that pleading a right was being created in the plaintiffs and a decree based on such an admission in pleading would require registration. The Lordship were satisfied that the decision in Bhoop Singh (supra) is clearly distinguishable on facts and noticed once again that all the courts have found that it was as a part of a family arrangement that the defendant in the earlier suit relinquished his interest in favour of the present plaintiff and his brother and such a family arrangement has been held even in Bhoop Singh (supra) not to require registration.”

Similarly, Hon’ble the Supreme Court in **Bachan Singh Vs. Kartar Singh and others, Civil Appeal No.9991 of 1995, decided on 31.07.2001** has held that a consent decree passed by the Court is not required to be registered under the provisions of Indian Registration Act.

A Division Bench of this Court in **Gurdev Kaur and another Vs. Mehar Singh and others, 1989(2) RRR 499** has held that a compromise or consent decree does not require registration even if it creates title in respect of immovable property of the value of Rs.100/- or more provided that it is subject matter of suit. Further held that a compromise or consent decree can be got set aside on one of the grounds on which a contract can be set aside, namely if obtained by ‘fraud, misrepresentation’ or ‘coercion’ with an additional ground in favour of the minors or persons of unsound mind (not relevant in the present context).

In view of the above, contention raised by the appellant to assail the decree for want of registration is not meritorious and accordingly rejected. That being so, I do not find any reason to interfere in concurrent findings recorded by the Courts.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

JANUARY 22, 2020

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no