

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

RSA-2479-1992 (O&M)

Date of decision: 04.07.2022

Reserved on :26.04.2022

Jagmal and others

....Appellants

Versus

Chhoti (deceased) through her LRs

..Respondents

CORam: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate for the appellants

Mr. P.C.Yadav, Advocate for the respondents

ANIL KSHETARPAL, J

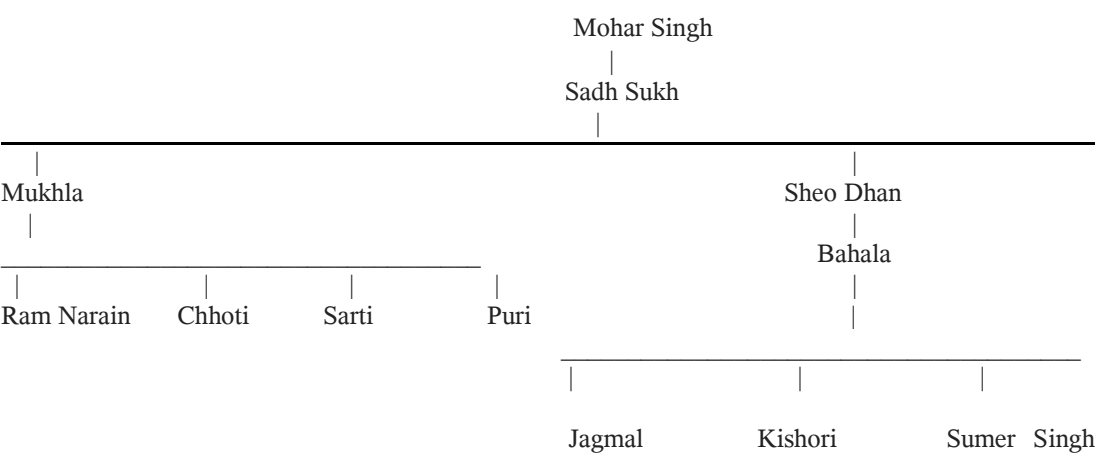
1. While assailing the judgment and decree passed by the First Appellate Court, the defendants have filed the present appeal. In the considered opinion of this Court, the following questions arise for adjudication:-

i) Whether a female can be a member of Joint Hindu Family or not?

ii) Whether a consent decree (judgment and decree passed by the court under Order 12 Rule 6 of the Code of Civil Procedure, 1908) suffered by an aunt in favour of her nephews is liable to be set aside without proving fraud in obtaining the same?

Some particular facts are required to be noticed. A pedigree

table of the family would facilitate understanding the relationship between the parties, which is to the following effect:-



2. Smt. Chotti, aged about 70 years, who is married to Sh. Mohar Singh in Village Java, Tehsil and District Charkhi Dadri suffered a consent decree on 19th January, 1987, with respect of 12 kanals and 9 1/2 marlas of land located in Village Malra, Tehsil and District Mahendragarh. Within 5 months thereof, she filed a suit challenging the aforesaid consent decree claiming that the same is a result of the fraud played by the defendants on her. She inherited some part of the property from her father whereas remaining from her brother- Ram Narain, who is stated to be missing since childhood.

3. A civil suit was filed by Sh. Jagmal Singh, Sh. Kishori Lal and Sh. Sumer Singh sons of Sh. Bahala son of Sh. Sheodhan on 16th/17th January, 1987 claiming that Smt. Chotti, in a family settlement, which took place 15 days before the filing of the suit, acknowledged them to be owners in possession of the suit property. She appeared before the court on 19th January, 1987 through her counsel and filed written statement, which was duly thumb marked by her, while admitting the claim of the plaintiffs in the aforesaid suit. The court, in

accordance with Order 12 Rule 6 of the Code of Civil Procedure, 1908, decreed the suit. Thereafter, Smt. Chotti challenged the correctness of the aforesaid consent decree. In the plaint, while disclosing the alleged fraud she stated that Jagmal, her nephew visited her home located in Village Java, Tehsil Charkhi Dadri, District Bhiwani on 18.11.2017 and stated that a suit is required to be filed against the Canal Department for the supply of water, to the suit land. Hence, she should herself come to Mahendergarh for executing the General Power of Attorney. She alongwith Jagmal travelled to Mahendergarh on 19.01.1987 for the execution of General power of attorney. On 19th January, 1987, Sh. Jagmal took her to the Mahendragarh Court complex and made her to sit on one side. He requested Smt. Chotti to wait till he got the documents prepared and thereafter, he told her that she will have to appear before the court of Magistrate for the execution of documents. Thereafter, Jagmal brought 2-3 plain papers and 2-3 printed forms, on which her thumb impressions were taken. It is claimed that she was misrepresented by Jagmal.

4. The defendants contested the suit and asserted that Smt. Chotti had acknowledged them to be the owners in possession in a gathering in which family settlement was arrived at but subsequently she refused to honour the said settlement, forcing them to file the suit. In the Court, she filed a written statement admitting the claim of the plaintiff. Hence, no fraud was played by them with Smt. Chotti, their aunt.

5. Smt. Chhoti appeared in evidence as PW1. While deposing, she stated that she is married in Village Java and the defendants are her

nephews. She admits that the defendants cultivate her share of land as lessees. She reiterates the stand taken in the plaint. In the cross examination, she admits her relationship with the defendants and states that their land is joint. She states that her brother is missing for quite some time whereas her two sisters have already died. She also examined Rameshwaram and Roop Chand, residents of Village Malra to prove her side of the case. On the other hand, the defendants examined Surjit Singh as DW1, resident of Village Malra and Shri Kishori appeared as DW2 and Shri Sajjan Singh, Advocate who represented Smt. Chotti in the previous case appeared as DW3 in order to prove her Vakalatnama as well as the written statement filed by her in the previous suit. The trial court, on appreciation of the evidence, dismissed the suit while observing that the plaintiff has failed to prove the fraud and misrepresentation.

6. However, the learned First Appellate Court reversed the judgment and decree passed by the trial court while giving the following reasons:-

a) No female can be the member of a Joint Hindu family property.

b) Statement of Smt. Chotti was not recorded in the previous suit.

c) No lady can give an inch of land to anyone.

d) Smt. Chotti is an illiterate lady who lives in the countryside and therefore the fraud must have been played with her due to her illiteracy.

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook as well as the record of the courts below, which has been requisitioned. On the one hand, the learned counsel representing the appellant contends that the First Appellate Court has erred in reversing the judgment and decree passed by the trial court whereas on the other hand the learned counsel representing the plaintiff supports the judgment and decree passed by the First Appellate Court.

8. The first reason recorded by the First Appellate Court is clearly erroneous. In para 2.12 of Mulla's Hindu law, a joint Hindu family consists of all the persons that linearly descend from a common ancestor including their wives and the unmarried daughters. Even otherwise, the term family for the purpose of family settlement has a very wide connotation and could not be confined to a group of persons, who were recognized by law as having the right of succession or claiming to have share in the family property. The courts have always been leaning in favour of upholding the family settlements. In **Sadhu Madhu Dass vs. Mukand AIR 1955 SC 481**, the court recognized the family settlements as a mode to settle the disputes between the family members. Thereafter, consistently, the Supreme Court has held that the term family cannot be understood/interpreted in a narrow sense. In **Ramchandra Das vs Girjanandini Devi AIR 1966 SC 326**, the court held that the expression 'family' for the purpose of family settlement is a very wide term. In that case a family settlement between a widow, her older brother and her son-in-law was upheld. In **Krishna Bihari Lal**

versus Gulabchand (1971) 1 SCC 837 the court held that the expression family has to be construed in a wider sense. In that case the settlement between the widow, daughters, sons and grandsons was upheld. Subsequently, in **Kale and others versus Deputy Director of consolidation (1976) 3 SCC 119**, the court after elaborately discussing the case law, upheld the family settlement, while observing that the courts must lean in favour of upholding the family settlements. The court acknowledged that the expression family for the purpose of family settlement cannot be used in a narrow sense. It is apparent that the First Appellate Court has overlooked the facts while passing the impugned judgment.

9. As regards the failure of the court to record her statement, it may be noticed that she filed the written statement admitting family settlement in the previous suit. The parties were not in issue in the previous suit. The court passed the decree in terms of Order 12 Rule 6 of the Code of Civil Procedure, 1908, which provides that if the court comes to a conclusion that either in the pleadings or otherwise there is an admission of fact, the court may, at any stage of the suit, pass such judgment as it may think fit, which reads as under:-

“6. Judgment on admissions.

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the

judgment and the decree shall bear the date on which the judgment was pronounced.”

10. Thus, the First Appellate Court committed an error while observing that her failure to record her deposition in the court in the previous suit was fatal to the decision of the previous suit.

11. The next reason assigned by the First Appellate court is also erroneous. The court made a sweeping observation that no lady can give an inch of land. It all depends on the facts and circumstances of each case. In the present case, on 26th May, 1988, when Smt. Chotti appeared in evidence, she disclosed her age to be 70 years. In other words, she was around 69 years when she filed her written statement in the previous suit. She admitted that she is married and living in Village Java, District Bhiwani whereas the land in question is located in Village Malra, Tehsil and District Mahendragarh. It is also evident that after her brother went missing since his childhood. It was the defendants who were discharging all the responsibilities of her brother. It has been stated by Shri Kishori Lal, while appearing in evidence that the family settlement took place. He has also stated that his father used to give customary gifts to Smt. Chotti which are known as ‘Bhaat’ or ‘chuchak’. These are the customary gifts, which are given to the daughter by the parents. He states that after her marriage, she used to come and stay with the defendants. Smt. Chotti admits that the land in question is being cultivated by the defendants. In such circumstances, the observations made by the First Appellate Court are clearly erroneous.

12. The next reason assigned by the court is with regard to the

illiteracy of Smt. Chotti. It may be noted here that she has seen/experienced the life. As per her case, she put her thumb impression on the blank documents, however, even the defendants also do not appear to be properly educated. From a perusal of the plaint filed in the previous suit, it is evident that Jagmal as well as Kishori have put their left hand thumb impression whereas Sumer has signed in Hindi. Hence, it cannot be said that the defendants are highly educated or abused the trust the reposed by Smt. Chotti.

13. It may be noted here that Smt. Chotti while filing the suit claimed that Jagmal visited her in Village Jawa on 18.01.1987 where she is married and he misrepresented and persuaded her to execute a power of attorney in his favour. Next day, they both went together to Mahendragarh Courts Complex from Village Java. Jagmal misrepresented her at Village Java. She has not examined any witness including her husband Shri Mohar Singh to prove that fact. She has not corroborated her statement by examining any resident of Village Java. Furthermore, Sh. SS Yadav (Sajjan Singh Yadav), Advocate, represented her in the previous suit. The defendants have examined him in their evidence. Despite the lengthy cross-examination, the credibility of his deposition could not be impeached by the learned counsel representing the plaintiff.

14. Even otherwise, the plaintiff is required to stand on her own legs. As per Order 6 Rule 4 CPC, the fraud has to be specifically pleaded and proved by the plaintiff. In order to prove fraud, only she has deposed. Her statement is not corroborated by any other witness. She

has examined three witnesses from Village Malra who were not present at the time when she filed the written statement admitting the family settlement. On the other hand, the defendants have examined Sh.Surjit Singh son of Sh Kura Ram who was a witness to the family settlement. He was also stated to be present when she filed the written statement. Furthermore, Shri Kishori while appearing as DW2 has submitted that she filed the suit on being prompted by Ranbir and his brother Ishwar, who are residents of Village Malra.

15. As already noticed, the fraud has to be proved beyond the reasonable doubt or nearly absolute terms even in the civil cases. The fraud cannot be easily inferred/presumed only on the basis of some circumstances that are inconsequential to the facts of the case. Even the First Appellate Court has not recorded the finding that the defendants have played the fraud on her. The record of the proceedings of the court are expected to be sacrosanct. The correctness of such proceedings cannot be permitted to be easily doubted.

16. Keeping in view the aforesaid facts, the judgment and decree passed by the First Appellate Court is not sustainable. Consequently the same is set aside and that of the trial court is restored. Resultantly, the suit filed by Smt. Chotti shall stand dismissed.

04.07.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE