

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

RSA No. 1503 of 1992 (O&M)

Reserved on : 21.10.2022

Pronounced on : 29.10.2022

Gurdial Singh (since deceased) through LR's and another

...Appellants

Versus

Raja Narinder Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Ashish Aggarwal, Senior Advocate with
Mr. Parunjeet Singh, Advocate and
Mr. Karan Singla, Advocate
for the appellants.

Mr. R. S. Randhawa, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J.

It is worth noticing that this appeal is pending since 1992 and stands admitted on 29.07.1993 and as interim measure, it was directed that the appellants will deposit cash security to the tune of Rs. 2500/- per year with the trial Court. In the meantime, a period of about 30 years has passed and the appellants are continuing in possession of the property. The lower court record is already requisitioned.

During the pendency of the appeal, a miscellaneous application was also filed for vacating the stay on the ground that the appellants have not deposited the cash security, however, on 02.12.2014, it was noticed that the appellants have produced on record the receipt with regard to deposit of

the security amount and the said application was rendered infructuous.

CM-18680-C-2018

This application was filed by the appellants for leading additional evidence to produce on record the report of a handwriting expert, which, vide order dated 18.07.2019, was ordered to be heard with the main case.

Learned senior counsel for the appellants has argued that in order to prove that the present plaint, filed by six plaintiffs, the thumb impressions of Rattan Singh are forged/fabricated, therefore, appellants have got his thumb impressions on the plaint examined with his standard thumb impression on a sale deed dated 19.07.1976 executed by Rattan Singh.

Learned senior counsel for the appellants has placed on record the report dated 14.12.2018, submitted by the Handwriting and Fingerprint Expert, according to which, it is opined that the disputed thumb impressions on the plaint are not identical with the standard thumb impressions of Rattan Singh. Along with the report, a copy of the said sale deed is also placed on record.

Learned senior counsel for the appellants has referred to a judgment of Hon'ble Supreme Court rendered in ***2008 AIR (Supreme Court) 1541 Thiruvengada Pillai vs. Navaneethammal and another*** to submit that the Court has the power to compare the disputed signature with the admitted signature so as to reach its own conclusions. Learned senior counsel has referred to the thumb impressions of Rattan Singh on the plaint before the trial Court to submit that the ridges are in circular in nature, whereas in the standard thumb impression, the same are other way around.

In reply, learned counsel for the respondents has submitted that additional evidence at the appellate stage should not be allowed as the same was not produced earlier when the suit was pending or during the pendency of the appeal before the lower appellate Court.

After hearing learned counsel for the parties, I am of the view that though it is not disputed that the additional evidence can be allowed at any appellate stage and primarily, the proposed additional evidence contains an opinion of the Handwriting and Fingerprint Expert that the thumb impressions of Rattan Singh on the plaint in the instant suit do not tally with his standard thumb impression on a registered sale deed, however, considering the fact that the suit was instituted in the year 1983 and a period of about 40 years has passed, I do not deem it appropriate to allow the application seeking to lead additional evidence. Therefore, the application bearing *CM-18680-C-2018* is dismissed.

Main Appeal

Challenge in this appeal is laid to the judgment and decree dated 27.07.1990, passed by the trial Court, vide which the suit filed by the respondents/plaintiffs was decreed as well as for setting aside the judgment and decree dated 05.05.1992, passed by the lower appellate Court, whereby the appeal filed by the appellants/defendants was dismissed.

From the pleadings of the parties, certain undisputed facts emerge, which are as under:

1950 Rattan Singh, whose estate is under dispute, performed marriage to one Naurati and out of this wedlock, appellant/defendant No. 2 Jagir Kaur was born, who was married to appellant/defendant No. 1

Gurdial Singh. After the death of Naurati, Rattan Singh performed second marriage with one Gurdev Kaur.

24.11.1971 Vide a gift deed, Gurdial Singh transferred half share of agricultural land measuring 98 Bigha and 7 Biswa in favour of Gurdev Kaur i.e 49 Bigha 3 Biswa and mutation No. 4297 dated 24.03.1972 was sanctioned.

22.05.1977 Gurdev Kaur died.

FIR No. 82 dated 22.05.1977 was registered against Gurdial Singh/defendant No. 1 under Sections 302, 120-B of the IPC alleging murder of Gurdev Kaur and Rattan Singh was cited as a witness but he never appeared in Court to support the prosecution case.

13.08.1977 The disputed Trust was created by Rattan Singh, at the instance of the MLA Raja Narinder Singh, plaintiff No. 1.

31.03.1978 Gurdial Singh was acquitted in the FIR case after full length trial and the judgment of acquittal attained finality.

31.07.1978 Vide mutation No. 4873, sanctioned by Assistant Collector, First Grade, Ludhiana, by passing a detailed order, qua the estate of Gurdev Kaur transferred land in favour of Rattan Singh and Jagir Kaur in equal share. This order has also attained finality.

1970-1982 As per revenue record, defendants are in continuous possession.

15.12.1981 Jagir Kaur filed a suit bearing No. 228/1981 for declaration against Rattan Singh that she be declared owner in possession of land measuring 49 Bigha 5 Biswas. This suit was instituted through Sh. Kamaljit Singh Gill, Advocate (Ex. DW-2). Rattan Singh appeared and filed written statement through Sh. Harnek Singh, Advocate (Ex. DW-3/2) admitting the claim of Jagir Kaur.

15.12.1981 On the basis of admission statement of Rattan Singh, the Sub-Judge, First Class, Ludhiana passed the judgment decreeing the suit. Para 3 of this judgment reads as under:

“On notice of the Court, the defendant appeared and filed written statement in which he admitted the claim of the plaintiff and stated that the defendant has no objection if the suit of the plaintiff is decreed. The defendant is the father of the plaintiff in this case and as the defendant has admitted the claim of the plaintiff even in his statement made in the Court on 09.12.1981, the suit of the plaintiff as admitted by the defendant is decreed. A decree-sheet be prepared accordingly and the file be consigned to the Record Room. Parties are left to bear their own costs.

Announced.

Sd/-

15.12.1981 Sub Judge Ist Class, Ludhiana.”

The aforesaid judgment was followed by a decree dated 15.12.1981 Ex. D-3 observing that the suit of the plaintiff, as admitted by the defendant, is decreed.

The instant suit was filed on 10.09.1983 with a prayer that plaintiff Nos. 1 to 5 are the Trustees of plaintiff No. 6-Trust and are the owners in possession of 98 Bigha 7 Biswa of land, which was owned by Rattan Singh and the judgment and decree dated 15.12.1981 passed in civil suit No. 228 in favour of defendant No. 2 Jagir Kaur is liable to be set aside, having been procured by fraud and misrepresentation and further the mortgage deed executed by defendant No.1 in favour of defendant Nos. 3 and 4 be also declared null and void. As per grounds in the plaint, it is stated that the Trust was created prior to passing of the decree and the Trustees were not made party to the same. The second ground taken is that plaintiff No. 2 was not served in the said case and never engaged Sh. Harnek Singh, Advocate as his counsel. Third ground is that it is wrongly written in that plaint that Jagir Kaur is the only daughter of Rattan Singh and Gurdev Kaur, whereas she is the daughter of the first wife of Rattan Singh, who had died. In para 6 of the plaint, it is stated that the defendants have taken forcible possession of the land on procurement of judgment and decree dated 15.12.1981 and, therefore, the possession of Gurdial Singh and Jagir Kaur is illegal.

The appellants/defendants contested the suit by filing the written statement. The factum of gift deed in favour Gurdev Kaur was

disputed, however, it was denied that Gurdev Kaur was murdered as alleged by the plaintiffs. It was also denied that plaintiff No. 2 ever created any Trust regarding property and if there is any Trust Deed, the same is sham transaction, which is created to cause loss to the defendants. It was further stated that the judgment and decree dated 15.12.1981 passed by the Sub-Judge, Ludhiana is legal and valid. It was further stated that it is plaintiff No. 2 Rattan Singh, who engaged Sh. Harnek Singh, Advocate as his counsel and filed written statement and appeared in Court. In para 7 of the written statement, it was specifically denied that the plaintiff-Trust was ever in possession of the land in dispute, therefore, there was no occasion for the defendants to take its forcible possession from the plaintiffs.

Original defendant No. 4-Bank, with whom the property was mortgaged, also supported the case of defendant Nos. 1 and 2 and stated that the alleged Trust Deed never came to the knowledge of the Bank. It was specifically stated by defendant No. 4-Bank that no mutation was ever sanctioned in favour of the plaintiffs on the basis of the Trust Deed and upon verification of the revenue record, the Bank created a simple mortgage in lieu of the loan of Rs. 70,000/-.

In para 7 of the written statement, filed by defendant No. 4-Bank, again it was denied that the plaintiffs ever came in possession of the property and stated that it was the defendant Nos. 1 and 2, who thoroughly remained in possession of the land. Separate replication was filed by the plaintiffs, in which the submissions made in the plaint were reiterated.

The trial Court framed the following issues:

1. Whether the suit is not maintainable as alleged in preliminary objection Nos. 1 and 3? OPD 1 & 2.

2. Whether the suit is bad for non-joinder of necessary parties? OPD 1 & 2.
3. Whether the suit is barred by the principle of res-judicata? OPD 1 & 2.
4. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD 1 & 2.
5. Whether the suit property was declared as Trust property vide a valid Trust Deed dated 13.10.1977 in the name of plaintiff No. 6? OPP
6. Whether plaintiff Nos. 1 to 5 are Trustees of the Trust in the name of plaintiff No. 6? OPP
7. Whether decree dated 15.12.1981 passed by Sh. B. C. Gupta, SJIC, Ludhiana is illegal, ineffective and not binding on the plaintiffs as alleged in para 5 of the plaint? OPP
8. Whether the mortgages created by defendant No. 1 in favour of defendant Nos. 3 and 4 are illegal, void, arbitrary without consideration and not binding on the plaintiffs as alleged in para 9 of the plaint? OPP
9. If issue No. 8 is proved in the affirmative, whether defendant No. 4 is a bona fide mortgagees for consideration without notice of the Trust? OPD 4.
10. Whether the plaintiffs are entitled to declaration prayed for ? OPP
11. Whether the plaintiffs are entitled to the possession of the suit property as prayed for ? OPP

12.Relief.

In evidence, the plaintiffs produced the original Trust Deed of Gurdev Kaur Memorial Trust, Nabha as Ex. PA/A and its certified copy as Ex. P-1. As per clause 4 of this Trust Deed, the Trustees were given the power to sell the premises/buildings with the consent of the donor during his life time as well as thereafter with a clause that the income of the Trust will be used for Baba Ajay Pal Singh Khalsa High School, Nabha. The *jamabandis* were produced as Ex. P-2 and Ex. P-3 and the impugned judgement as Ex. P-4. Other revenue record i.e. *Khasra Girdawari* was also produced along with copy of FIR as Ex. PW-8.

The original Trust Deed of Gurdev Kaur Memorial Trust, Nabha was produced as Ex. PA/A and its certified copy as Ex. P-1 and the same were proved by PW-1 Ashok Kumar, Registration Clerk of the Office of Sub-Registrar, Nabha. Sukhwant Singh, Advocate and Charan Dass were the attesting witness to the Trust Deed dated 13.10.1977 and PW-2 supported the execution of the Trust Deed by Rattan Singh and by other Trustees. PW-3 Rakesh Kumar, the deed writer, also proved that he had written the Trust Deed by producing his register. Plaintiff No. 1 Raja Narinder Singh also appeared and supported the execution of Trust Deed.

The defendants, in their evidence, produced the revenue record i.e. *jamabandis* and *girdawaris*, Ex. D-1 to Ex. D-4, for the years 1971 to 1981/1982 i.e. immediately prior to filing of the suit, as well as the impugned decree as Ex. D-5 and the order of revenue Officers sanctioning the mutation No. 4873 as Ex. D-6. The copy of the plaint in the previous suit No. 228 dated 15.10.1981 was produced as DW-1 by examining DW-2 Kamaljit Singh Gill, Advocate. Similarly, Harnek Singh, Advocate proved

the written statement as Ex. DW-4, which was thumb marked by Rattan Singh. The appellant Gurdial Singh himself appeared as DW-1. Thereafter, the trial Court decreed the suit and the appeal filed before the lower appellate Court was dismissed.

Learned senior counsel for the appellants has framed the following substantial questions of law:

1. Whether in a subsequent suit, the Court can examine the validity of the pleadings made in a previous suit in view of the limited scope as per Order 23 Rule 3-A CPC?
2. Whether mere fact that two advocates are practising in the same office and appearing for the plaintiffs and defendants independently can be a ground to set aside the decree, when the identification of the defendant making the admission is not in dispute?
3. Whether mere fact that one of the defendants in the previous suit, at one point of time, faced a criminal trial under Section 302 IPC followed by his acquittal by the Court can be a circumstance to set aside the decree passed in his favour?
4. Whether sanctioning of mutation by the Court followed by incorporation and correction in the revenue record amounts to knowledge to the plaintiffs?
5. Whether in the absence of the terms and conditions of the Trust Deed, being complied with by plaintiff

No. 6, it becomes non-existent in terms of Section 77(c) of the Trust Act, especially when a right to sell the Trust property is given and no rules are framed?

6. Whether the absence of possession, ever given to the Trust, creates a suspicious circumstance that it is a sham and paper document and never acted upon?

Learned senior counsel for the appellants has argued that both the Courts below have not applied judicial mind in not referring to pleadings of the parties.

Learned senior counsel has referred to para 7 of the plaint to submit that it is stated that after the Trust was created, the possession was handed over and the defendants have taken the forcible possession of the land in dispute prior to filing of the suit. It is further submitted that it has come not only in the evidence but also as per revenue record produced by both the parties that much prior to creation of the Trust, the appellants remained in possession of the property, therefore, a false averment has been made in para 7 of the plaint.

Learned senior counsel has further referred to the written statement filed by the Bank (though at later stage, the Bank/defendant No. 4 was proceeded *ex-parte*), wherein it is stated that neither any mutation of the Trust was sanctioned in the revenue record nor its possession was reflected in favour of the plaintiffs.

Learned senior counsel has further submitted that aforesaid verification was done by the Bank prior to sanctioning of loan in favour of Jagir Kaur/defendant No. 2 by executing a simple mortgage, which reflects that prior to filing of the suit, neither there was change in possession at the

spot or in the revenue record nor there was any entry of the Trust Deed in the revenue record and both the Courts below have ignored this important aspect of the case.

Learned senior counsel has next argued that both the Courts below have noticed a fact that it is stated in the plaint that Rattan Singh along with Gurdev Kaur were attacked by Gurdial Singh and others but he saved himself, whereas Gurdev Kaur died. It is further submitted that Rattan Singh neither appeared as a witness in the criminal trial, where Gurdial Singh was acquitted nor any evidence like MLR is brought on record to show that Rattan Singh ever suffered any injury. It is further submitted that not only this, even in the present case, Rattan Singh never appeared as a witness in support of other plaintiffs and these important facts have also been ignored by both the Courts below.

Learned senior counsel has next argued that both the Courts below, while setting aside the impugned decree, have travelled beyond the scope of Order 23 Rule 3-A CPC. It is submitted that three circumstances have been taken by the Courts below to set aside the impugned decree passed in civil suit No. 228; Firstly that it is incorrectly mentioned in the previous suit Ex. DW-2/A that Jagir Kaur was the only daughter of Rattan Singh and Gurdev Kaur, whereas she was the daughter of the first wife of Rattan Singh; Secondly that both the counsels for the plaintiff as well as defendant in the said suit, i.e. Jagir Kaur as plaintiff and Rattan Singh as defendant, were practising in the same office of a senior advocate and this is a suspicious circumstance; Thirdly that no notice in the said suit was issued and the written statement was allegedly filed by Rattan Singh without his knowledge.

Learned senior counsel has assailed these findings of the Courts below; Firstly on the ground that it is not disputed at any stage that Jagir Kaur is the only daughter of Rattan Singh, however, the Courts below have wrongly interpreted that she has alleged that she is the only daughter of Rattan Singh and Gurdev Kaur as at the time when the suit was filed, Gurdev Kaur had already died.

Learned senior counsel further argued that even otherwise, these observations of the Courts below in looking into the pleadings of the previous case are beyond the scope of Order 23 Rule 3-A CPC.

Learned senior counsel has further relied upon the judgments passed by the Division Bench of this Court in ***1989 PLJ 182 Gurdev Kaur and another vs. Mehar Singh and others*** and ***1989 PLJ 38 Tej Singh and others vs. Jagrup Singh and others***, wherein it has been held that under the scope of Order 23 Rule 3-A CPC, a compromise decree can be set aside only if it is obtained by fraud. The operative part of the judgment passed in ***Gurdev Kaur's*** case (supra) reads as under:

“28. For the reasons recorded above, we hold :

(i) that a compromise or consent decree does not require registration, even if it creates title in respect of immoveable property of the value of Rs. 100/- or more, provided it is subject matter of suit.

(ii) 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, if they are able to prove that the next friend or the guardian, who acted on their behalf, was negligent in concluding the proceedings. If none of these grounds is

established, the Courts in a subsequent suit will have no jurisdiction to go behind the consent decree to find out whether the facts stated in the plaint, which culminated into compromise decree were right or wrong.”

Learned senior counsel has further relied upon a judgment of Hon'ble Supreme Court rendered in **2008 (3) RCR (Civil) 601 Ranganayakamma and another vs. K. S. Prakash (D) by L.Rs. and others**, wherein it is held that the decree passed on the basis of the compromise in a previous suit, if otherwise lawful, can be set aside only on the ground of fraud and it cannot be permitted to be reopened in a subsequent suit, where the property was self acquired or there was no valid settlement.

Secondly, learned senior counsel has further relied upon a judgment of Hon'ble Supreme Court in **2009 (6) SCC 194 Sneh Gupta vs. Devi Sarup & Ors.** to submit that mere fact that two lawyers are practising in the same chamber, it cannot be a circumstance to set aside the decree.

Thirdly, learned senior counsel has further submitted that the Courts below have miserably failed to look into the impugned judgement Ex. P-4, wherein in para 3, it is specifically stated that **“on notice of the Court, the defendant appeared and filed a written statement in which he admitted the claim of the plaintiff”** and, therefore, both the Courts below have erroneously held that no notice was given to Rattan Singh, who was defendant in the said suit as this fact has come in the impugned judgment itself that the Court has issued notice and he has put in appearance before the Court through his counsel. Even a perusal of the second para of the impugned judgment would show that apart from appearing and filing a written statement, Rattan Singh has also made a statement before the Court on 09.12.1981 admitting the claim of the plaintiff, therefore, the suit was

decreed. Learned senior counsel further argued that at no point of time, identity of Rattan Singh in previous suit was challenged, rather it is alleged that his written statement was filed without his knowledge.

Learned senior counsel has next argued that the Courts below have ignored the order dated 31.07.1978, passed by the Assistant Collector, First Grade, Ludhiana (Ex. D-6) sanctioning the mutation No. 4873 regarding mutation of inheritance qua the property of Gurdev Kaur and vide this order, half share of land measuring 49 Bigha 11.5 Biswa was given to Rattan Singh and half share was given to Jagir Kaur and this order was never challenged by Rattan Singh and it has attained finality and has been duly incorporated in the revenue record, which further falsifies the stand of the plaintiffs that the Trust Deed was created in the year 1977 and the possession was delivered.

Learned senior counsel has then referred to the impugned decree, which was not produced by the plaintiffs and was produced by the defendants as Ex. D-3, wherein it reflects that the decree is passed on the basis of the admission made by the defendant. It is further submitted that once this document was never exhibited by the plaintiffs, the trial Court had no occasion to set aside the impugned decree passed in the earlier suit.

Learned senior counsel has further referred to two Trust Deeds, Ex. P-1/A and Ex. P-1, which are in fact original and its certified copy, to submit that there are lots of cutting and interpolations in the same and it raises suspicion. It is further submitted that even otherwise, it is provided under Clause 4 of the Trust Deed that the Trustees shall have the power during the life time of the donor to sell the property with his consent in writing and afterwards at their discretion to sell the said premises and

buildings thereon or any part thereof, therefore, this condition is contrary to the provisions of Section 77(c) of the Trusts Act, 1882, which reads as under:

“77. Trust how extinguished.—A Trust is extinguished-

- (a) xxx xxx xxx
- (b) xxx xxx xxx

(c) when the fulfilment of its purpose becomes impossible by destruction of the Trust property or otherwise.”

Learned senior counsel has further submitted that once there is a condition in the Trust Deed itself to sell off the property, it makes the Trust as non-existent. The clause 4 of the Trust Deed reads as under:

“The Trustees shall have the power during the life time of the Donor with his consent in writing, and afterwards at their discretion, to sell the said premises and buildings thereon or any part thereof or exchange the same for other land or building, with liberty to give or receive money for equality of exchange, or to raise any sum or sums by mortgage of the said premises or any part thereof, and to apply the money to arise from any such sale, to be received for equality of exchange, or to be raised by any such mortgage as aforesaid, for adding to the general funds of the Trust or for the purchase of other land or buildings or for erection of new or additional buildings or for repairs, alteration or improvements or for any other purpose for which the general funds of the Trust shall be applicable under the existing rules and regulations, thereof.”

Learned senior counsel has further submitted that even as per Trust Deed, no rules and regulations were framed to manage the property, therefore, this Trust was never acted upon in accordance with law.

Learned senior counsel has further argued that plaintiff No. 1 Raja Narinder Singh was an MLA at the relevant time and he has exercised his influence on Rattan Singh, who was an illiterate person and his thumb impressions were taken by misleading him, whereas plaintiff No. 2 Jagir Kaur was given the property by way of impugned decree as Gurdial Singh was acquitted of the criminal charge as Rattan Singh never supported the prosecution case.

Learned senior counsel has lastly submitted that the pleadings and evidence clearly show that the Trust Deed was a sham and a paper document just to grab the property of Rattan Singh, qua which appellant Jagir Kaur, being the daughter of Rattan Singh, had a right to inherit and was rightly accorded her right by Rattan Singh in terms of judgment and decree dated 15.12.1981.

In reply, learned counsel for the respondents/plaintiffs has argued that Jagir Kaur is the daughter of Rattan Singh and Naurati, who had died. It is further submitted that the marriage of Rattan Singh and Naurati was performed in the year 1950 and thereafter, after the death of Naurati, Rattan Singh performed second marriage with Gurdev Kaur. It is further submitted that while obtaining impugned consent decree, an incorrect statement was made by plaintiff Jagir Kaur that she is the only daughter of Rattan Singh and Gurdev Kaur.

Learned counsel for the respondents/plaintiffs further submitted that the previous suit (civil suit No. 228) was instituted on 03.10.1981 and it was decreed on 15.12.1981, however, there is no evidence on record to show that Rattan Singh was ever served in the said suit.

Learned counsel for the respondents further submitted that

Rattan Singh made a gift deed in favour of Gurdev Kaur regarding 49 Bigha 03 Biswa of land in the year 1971, which was followed by a mutation, therefore, after the death of Gurdev Kaur, sanction of mutation by the Assistant Collector, First Grade, Ludhian as per order dated 31.07.1978 was factually incorrect as Jagir Kaur could not inherit the half share of the property.

Learned counsel for the respondents has further submitted that in para 2 of the plaint, the fact regarding Jagir Kaur being the only daughter of Rattan Singh and Gurdev Kaur was wrongly admitted by Rattan Singh in corresponding para 2 of the written statement.

Learned counsel for the respondents has further argued that even in para 3 of the plaint, it has wrongly been mentioned that the property in dispute is Jagir Kaur's *istridhan* as well as the maintenance given to her with intention to accelerate the succession and the same has been admitted by Rattan Singh.

Learned counsel for the respondents further submitted that Gurdial Singh faced the full length criminal trial under Section 302 IPC in the aforesaid FIR on account of murder Gurdev Kaur and was acquitted of the charge and on this count, Rattan Singh created the Trust.

Learned counsel for the respondents has further argued that trust deed came in existence on 30.10.1977, therefore, when civil suit No. 228 was filed on 05.10.1981, Rattan Singh was not the owner of the property and had no occasion to file the consent written statement.

Learned counsel for the respondents has further submitted that after the Trust came in existence, the possession was handed over by Rattan Singh to the Trust and defendants have taken the forcible possession and

that is why the suit was filed. It is also argued that in the present suit, Jagir Kaur never appeared and it is only defendant Gurdial Singh, who has put in appearance. It is further submitted that PW-2/deed writer also proved execution of Trust Deed by producing the register and its corresponding entry.

Learned counsel for the respondents has further submitted that Rattan Singh, who was the Manager of Baba Ajay Pal Singh Khalsa High School, Nabha, has appeared and stated that his house at Nabha was given to Trust, where he was residing. It is further submitted that PW-5 and PW-6, being the daughters of Gurdev Kaur, have also admitted the version of the respondents/plaintiffs.

Learned counsel for the respondents has relied upon a judgment of Hon'ble Supreme Court rendered in ***2017 AIR (SC) 1524 Neeraj Kumar Sainy and others vs. State of U.P. and others*** to submit that it is held that no one should suffer any prejudice because of the act of the Court. However, this judgment has no applicability to the dispute in the present case.

Learned counsel for the respondents has further submitted that both the Courts below have rightly recorded a finding that the decree was obtained by defendant Nos. 1 and 2 by playing fraud and misrepresentation with Rattan Singh and prayed for dismissal of the appeal.

In reply, learned senior counsel has reiterated the arguments and submitted that it could not be disputed by the respondents/plaintiffs that the Trust Deed was never produced before the revenue authorities for sanctioning the mutation and this fact is also admitted in the written statement of defendant No. 4-Bank. It is also reiterated that Trust Deed

stands vitiated in terms of Section 77(c) of the Trust Act as a right to alienate the property is given. It is further submitted that though there was a provision for framing rules regarding Trust, however, such rules were never framed, therefore, the Trust is just a paper document as no efforts were made to take the possession of the property, which as per revenue record continuously remained with the appellants and, therefore, it amounts to non-existence of the Trust.

After hearing learned counsel for the parties and going through lower courts' record as well as impugned judgments and decrees, I find merit in the present appeal, for the following reasons:

(a) Both the Courts below have re-appreciated the pleadings of the previous suit beyond the scope of Order 23 Rule 3-A CPC.

As noticed above, three reasons have been assigned to hold that the impugned decree was obtained by fraud; **Firstly**, no notice was issued to Rattan Singh; **Secondly** that it is incorrectly mentioned that in the previous plaint that Jagir Kaur was the only daughter of Rattan Singh and Gurdev Kaur and; **Thirdly** that the advocates representing Rattan Singh and Jagir Kaur were practising in the same office and lastly that the decree required compulsory registration.

It is well settled principle of law that a compromise/consent decree passed in a previous suit can be set aside in a subsequent suit only if it is obtained by fraud and the allegations of fraud are to be specific and proved like a criminal charge. In view of ration of law laid down by the Division

Bench of this Court in *Gurdev Kaur's* case (supra) and *Tej Singh's* case (supra), both the Courts below in the subsequent suit had no jurisdiction to go beyond the consent decree to find out whether the facts which culminated in the compromise decree were right or wrong.

(b) The findings recorded by the Courts below that no notice was issued to Rattan Singh is apparently misreading of the impugned judgment and decree passed in civil suit No. 228. In para 3 of the impugned judgment, it is clearly observed that **“On notice of the Court, the defendant appeared and filed written statement in which he admitted the claim of the plaintiff and stated that the defendant has no objection if the suit of the plaintiff is decreed.”** Therefore, on the face of it, it is apparent that notice was issued to Rattan Singh and only thereafter, he appeared through his counsel and filed written statement. A perusal of the finding recorded by the trial Court shows that it is held that the impugned judgment is not binding on the rights of the plaintiff-Trust because its existence is proved, whereas the consent decree could only be set aside on the ground of fraud. Similar is the finding recorded by the lower appellate Court. Therefore, in the absence of any finding that the impugned decree was obtained by way of playing fraud, the same is a valid and legal decree. Hence, **Question of law No. 1** is decided in favour of the appellants.

(c) The second reasoning given by the Courts below is that Rattan Singh was represented by Sh. Harnek Singh, Advocate,

whereas Jagir Kaur was represented by Sh. Kamaljit Singh Gill, Advocate and they were junior to one senior advocate, therefore, it is a suspicious circumstance, however, in view of the ratio of law laid down by Hon'ble Supreme Court in *Sneh Gupta's* case (supra), the same cannot be a circumstance to set aside a consent decree. Accordingly, **Question of law No. 2** is answered in favour of the appellants.

(d) Another circumstance taken by the Courts below against the appellants was that Gurdial Singh, husband of Jagir Kaur and son-in-law of Rattan Singh, was involved in FIR No. 82 dated 22.05.1977 under Section 302 IPC and in para 7 of the plaint, it is mentioned that even Rattan Singh was injured in the said incident. However, it is a matter of fact that Rattan Singh never appeared as a witness in the criminal trial nor any MLR is produced on record to substantiate the said claim. It is also a matter of fact that Gurdial Singh was acquitted after facing full length trial and the alleged Trust came in existence in between the period when the FIR was registered and Gurdial Singh was acquitted. Therefore, **Question of law No. 3** is decided against the respondents/plaintiffs.

(e) Even in the present case, Rattan Singh has never appeared as a plaintiffs's witness to support the case of the plaintiffs that he voluntarily executed the Trust Deed in favour of plaintiff No. 6 or has thumb marked the plaint, therefore, the plaintiffs have withheld the best evidence of personal knowledge of Rattan Singh in voluntary execution of Trust Deed qua suffering the consent

decree and an adverse inference is required to be taken against the plaintiffs.

Therefore, there is a substance in the arguments raised by learned senior counsel for the appellants that the Trust Deed is only a sham and paper transaction and never came in existence as it has come in the evidence as admitted by plaintiff No. 1 Raja Narinder Singh PW-2 that at no point of time, any application was moved before revenue authorities for sanctioning of mutation in favour of the Trust. Secondly, it has come in the written statement of defendant No. 4-Bank (who later on opted not to contest the case as the loan of Rs. 70,000/-, which was sanctioned to Jagir Kaur by creating a simple mortgage, was cleared) that at the time of verification of the revenue record by the bank officials, it was found that neither there is any mutation in favour of the plaintiff/Trust nor there is any change of entry in the revenue records regarding possession in favour of the Trust. Both the Courts below have ignored this important aspect of the pleadings as per written statement filed by defendant No. 4-Bank as even replication was filed by the plaintiffs to this written statement. Therefore, **Question of law No. 4** is decided in favour of the appellants.

(f) From the pleadings of the plaintiffs as well as from the admission of PW-2, it is apparent that at no point of time, Rattan Singh transferred the possession of disputed land in favour of the Trust, therefore, there is nothing on record to suggest that after the registration of the Trust, it was implemented by Rattan Singh

himself in favour of the Trust. Therefore, **Question of law No. 6** is decided in favour of the appellants.

(g) Yet another circumstance which was ignored by the Courts below is that as per provisions of Section 77(c) of the Trust Act, 1882, it is provided that Trust is extinguished when the fulfilment of its purpose becomes impossible by destruction of the Trust property or otherwise. Clause 4 of the Trust Deed itself provides that a right was given to the Trust to sell the property, which is contrary to the very basic purpose of creating the Trust and, therefore, the Trust became non-existent, as it loses the character of a charitable trust, when it was never acted upon by Rattan Singh. Therefore, **Question of law No. 5** is decided in favour of the appellants.

(h) Even otherwise, it is admitted case of the parties that appellant No. 2 Jagir Kaur is the real daughter of Rattan Singh and vide mutation No. 4873 sanctioned by the Assistant Collector, First Grade, Ludhiana, half share of the property of Gurdev Kaur was given to Jagir Kaur and half share was given to Rattan Singh. This order has attained finality and the revenue record was changed and the same has never been challenged.

(i) From the pleadings and evidence, it is apparent that Rattan Singh did not appear as a plaintiffs' witness, therefore, an adverse inference is to be drawn against the respondents/plaintiffs with regard to facts:

(i) that possession was never delivered to the Trust;

- (ii) that he never moved any application for sanctioning the mutation in favour of the Trust;
- (iii) whether he never appeared as a witness in the criminal case to support the reason given in the Trust Deed for ousting his daughter Jagir Kaur;
- (iv) that he voluntarily put his thumb impressions on the Turst Dedd and the plaint/suit as it is contested in appeal by the defendants that his thumb impressions do not tally with his standard thumb impression;
- (v) that he never challenged the order dated 31.07.1978, passed by the Assistant Collector, First Grade, Ludhiana, sanctioning mutation No. 4873 Ex. D-5 regarding inheritance of Gurdev Kaur giving half share to Jagir Kaur and half share to Rattan Singh.

All the aforesaid facts show that Rattan Singh has never acted upon the Trust Deed created by plaintiff No. 1 Raja Narinder Singh, who was the then MLA and the Courts below have failed to draw an adverse inference in this regard.

(j) From the above discussion, it is apparent that the Trust allegedly created by Rattan Singh never came in possession of the suit land and it was never acted upon by Rattan Singh. The reasoning given for creating the Trust that Gurdial Singh has committed murder of Gurdev Kaur is not proved as even the judgment of acquittal of Gurdial Singh has not been placed on record by the respondents/plaintiffs though the onus is on them

and only the copy of the FIR is placed on record, qua which a inference has been wrongly drawn by both the Courts below. Except registration of the said FIR, no reason has been given as to why Jagir Kaur, the only daughter of Rattan Singh, has been debarred from inheriting the property, when Rattan Singh has already given the suit land to Jagir Kaur by way of impugned consent decree.

In view of the above and as per finding on all the questions of law, the present appeal is allowed and the impugned judgments and decrees, passed by both the Courts below, are set set aside. The suit filed by the respondents/plaintiffs is dismissed.

The mesne profit, deposited by the appellants in terms of interim order(s) passed by this Court, shall be returned to the appellant, after four months of passing of this judgment.

29.10.2022*Waseem Ansari***(ARVIND SINGH SANGWAN)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*