

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

RSA No. 1230 of 2006 (O&M)

Reserved on : 26.08.2022

Pronounced on : 05.09.2022

Om Chand and others

...Appellants

Versus

Mahavir Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Kulwant Singh, Advocate,
Mr. Karan Singla, Advocate and
Mrs. Vibuti, Advocate
for the appellants.

Mr. Amit Jain, Sr. Advocate with
Mr. Karanbir Singh, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J.

Challenge in this appeal is laid to the judgment and decree dated 17.03.2006, passed by the lower appellate Court, vide which while allowing the appeal filed by the respondents/plaintiffs, the judgment and decree dated 30.08.2005, passed by the trial Court dismissing the suit, was set aside and a decree of declaration was passed to the effect that the impugned decree dated 15.09.1982 passed in a civil suit No. 151 of 1982 is illegal, null and void and the plaintiff was declared owner to the extent of half share of the suit land measuring 128 Kanals and 02 Marlas, with consequential relief of a decree of possession in favour of the plaintiff regarding suit land as well as a decree of permanent injunction restraining the defendants from alienating the suit land in any manner.

Brief facts of the case are that plaintiff Mahavir Singh filed a suit for declaration with consequential relief of possession and permanent injunction

inter alia on the ground that he and his son Suresh Pal, who was arrayed as defendant No. 6 in the civil suit, were in possession of agricultural land measuring 128 Kanals 02 Marlas in equal share and their possession and ownership were previously held in civil suit No. 319/1978, titled as ***Mahavir Singh etc. vs. Dhumni***, vide decree dated 12.06.1978. Later on, a mutation was also sanctioned and attested on the basis of the same on 30.08.1978. After the decree was passed, the plaintiff and defendant No. 6, being father and son, separated their share and the plaintiff remained in half share of the land. It is also stated that Dhumni Devi had also executed a Will in favour of the plaintiff regarding suit land. It is also stated that defendant Nos. 1 to 5 (the appellants herein) had no concern over the suit land measuring 64 Kanals 8 Marlas and they have obtained the impugned decree dated 15.09.1982 in civil suit No. 151 of 1982 titled as Som ***Chand and others vs. Mahavir and others*** from the civil Court at Karnal by fraud and misrepresentation. The said decree is not binding on the rights of the plaintiff on the grounds that:

- i. it is an outcome of fraud and misrepresentation as plaintiff Mahavir Singh never appeared in civil suit No. 151 of 1982; he never thumb marked any document like power of attorney, written statement or compromise Ex. C-1 and the documents, if any, are forged.
- ii. On an earlier occasion, Shiv Naryan and That Singh had filed a suit against plaintiff Mahavir Singh and his son/defendant No. 6 Suresh Pal on 05.12.1978, in which they have engaged Mr. T. P. S. Bedi, Advocate as their counsel and Mr. S. K. Sehgal, Advocate was the counsel for the defendants. The suit as well as the appeal thereof were dismissed. It is stated that defendant Nos. 1 to 5 played a fraud upon the plaintiff and a compromise was set up in civil suit No. 151 of 1982 and the compromise Ex. C-1 produced in civil suit No. 151 of 1982 was an outcome of fraud.
- iii. It is stated that in para 2 of the plaint filed in civil suit No. 151 of 1982, filed by defendant Nos. 1 to 5 (appellants herein) that they

had purchased the suit land but agreement to sell was not produced, therefore, the averments in para 2 of the plaint are based on fraud and misrepresentation.

- iv. It is also stated that after the filing of the present suit, the defendants have taken forcible possession of the suit land, therefore, plaintiff Mahavir Singh is also entitled to a decree of possession.

The appellants/defendant Nos. 1 to 5 contested the suit, however, defendant No. 6 Suresh Pal/son of plaintiff was proceeded *ex-parte* by the trial Court on 18.07.1996. The appellants/defendant Nos. 1 to 5 filed joint written statement and contested the suit on the ground that it is time barred and is collusive between the plaintiff and his son/defendant No. 6 Suresh Pal. It was also pleaded that the suit is barred by the principle of *res-judicata* and the amendment in para 2 of the plaint is unauthorized amendment, which was never allowed by the trial Court. On merits, it was stated that the decree passed in favour of plaintiff and defendant No. 6, dated 12.04.1976, should be proved in accordance with law that the plaintiff and defendant No. 6 remained in possession of the suit land. It is the case of the defendants that Dhumni Devi was in fact in actual possession of the suit land till the time she entered into the agreement to sell in favour of defendant Nos. 1 to 5 in the year 1965. From 1965 till the filing of the suit, it is the defendant Nos. 1 to 5, who are in actual physical possession of the suit land, which is agricultural land and they are cultivating the same. The averments that plaintiff or defendant No. 6 was in possession of the suit land was specifically denied and it was stated that even the revenue record was corrected after passing of the impugned decree dated 15.09.1982. It was also denied that plaintiff and defendant No. 6 have separated their share by partitioning the land in equal share. It was also stated that defendant Nos. 1 to 5, after passing of the impugned decree dated 15.09.1982, have spent a huge

amount for levelling the suit land for making it worth cultivatable. It was denied that the judgment and decree dated 15.09.1982 passed in civil suit No. 151 of 1982, titled as ***Som Chand vs. Mahavir Singh and others***, is null and void and is liable to set aside on the grounds mentioned in the plaint. It is stated that compromise Ex. C-1 was executed between the parties of their own free will and after the plaintiff and his son voluntarily entered into the compromise dated 11.09.1982, which was exhibited as Ex. C-1 in civil suit No. 151 of 1982, their statement was recorded along with their counsel admitting the case of the present defendant Nos. 1 to 5 (who were plaintiffs in civil suit No. 151 of 1982), therefore, the judgment and decree dated 15.09.1982 was passed in accordance with law and no fraud or misrepresentation was ever exercised.

The plaintiff filed replication and denied the averments made by defendant Nos. 1 to 5 and thereafter, the trial Court framed the following issues:

1. Whether the decree dated 15.09.1982 passed in civil suit No. 151 is null and void ? OPP
2. Whether the plaintiff is entitled to be declared as owner in possession of land mentioned in decree dated 15.09.1982 of his share i.e. half share of total land ? OPP
3. Whether the plaintiff is entitled to permanent injunction restraining the defendants from alienating or interfering in the suit property? OPP
4. Whether the plaint is neither duly signed nor verified nor it bears any date on the verification? OPD
5. Whether the suit of the plaintiff is not maintainable? OPD
6. Whether the suit of the plaintiff is time barred? OPD
7. Whether the plaintiff has no cause of action to file the suit? OPD
8. Whether the plaintiff is estopped from filing the suit? OPD
9. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
10. Relief.

In order to prove the case of the plaintiff, PW-1 Balwinder Singh, PW-2 Satyawar, PW-3 S. K. Sehgal, Advocate, PW-4 Gian Singh and PW-5 Mahavir Singh appeared and tendered documents Ex. P-1 to Ex. P-7, Ex. P-8/Mark A and Mark B.

To rebut the plaintiff's evidence, the defendants examined DW-1 Pawan Kansal, DW-2 Babu Ram, DW-3 Sardar Harnam Singh, Advocate, DW-4 T. P. S. Bedi, Advocate, DW-5 Yashpal Chand, DW-6 Kishan Chand, DW-7 Dial Chand and tendered documents Ex. D-1 to Ex. D-25, Ex. DW-3/A to Ex. DW-3/D, Ex. DW-4/A to Ex. DW-4/C, Ex. DW-5/A to Ex. DW-5/B and Mark A to C.

Thereafter, the trial Court, vide judgment and decree dated 30.08.2005, dismissed the suit by deciding issue Nos. 1 to 3, 5 and 6 against the plaintiff and in favour of defendant Nos. 1 to 5.

Aggrieved, the plaintiff preferred an appeal before the lower appellate Court and vide judgment and decree dated 17.03.2006, which is under challenge in this appeal, the appeal was allowed and the suit of the plaintiff was decreed, while setting aside the judgment and decree passed by the trial Court.

The LCR is requisitioned and learned senior counsel for the appellants has framed the following substantial questions of law:

- I. Whether the findings of the lower appellate Court that a decree passed on the basis of a Compromise Deed executed between the parties requires registration?
- II. Whether the findings of the trial court and lower appellate court given in the earlier judgments (Exs. P-14 and P-16) passed in an earlier Suit filed by respondent No. 6 who is the son of the plaintiff-respondent No. 1, challenging the same impugned decree on the same grounds is binding on the parties?
- III. Whether the separate suit filed by a party to challenge a consent decree passed on the basis of compromise is not

maintainable in view of bar under Order 23 Rule 3-A CPC?

- IV. Whether the provision of Section 68 of Evidence Act have been ignored as no attesting witness has been examined to prove the alleged Will?
- V. Whether the well settled principle laid down by the Hon'ble Supreme Court that plea of fraud has to be proved like any other criminal proceedings beyond all reasonable doubt has been completely ignored by the lower appellate Court?
- VI. Whether the lower appellate court has ignored the material document (Ex. D-22) i.e. Mutation No. 3165 dated 21.6.1985 by which the plaintiff-respondent No.1 had himself exchanged a part of the suit land with the appellants, thus conceding their ownership by virtue of the impugned decree?
- VII. Whether the suit is liable to be dismissed as barred by limitation?
- VIII. Whether the finding regarding possession over the suit land is illegal as it is admitted on record by the plaintiff that the appellants have throughout remained in possession of the suit land?

It is worth noticing that defendant No. 6 Suresh Pal had also filed an independent suit, which was dismissed by both the Courts below and the appeal bearing ***RSA No. 2015 of 2002***, filed by Suresh Pal, is also tagged with the present appeal and arguments in both the appeals have been heard together.

Learned senior counsel for the appellants has argued that the lower appellate Court has erroneously set aside the well reasoned judgment passed by the trial Court. It is argued that it has come in the evidence of defendant Nos. 1 to 5/appellants that initially Dhumni Devi was the owner of the land in dispute measuring 128 Kanals 02 Marlas and by way of an oral agreement to sell, the appellants/defendant Nos. 1 to 5 had purchased the same by making the entire

payment, however, the sale deed could not be executed, though a total of Rs. 13,000/- was paid @ Rs. 1,000/- per acre in the year 1965 to Dhumni Devi as the total sale consideration.

Learned senior counsel has further submitted that it has come in the statement of DW-7 that defendant Nos. 1 to 5 had purchased the land measuring 13 acres by paying Rs. 13,000/- to Dhumni Devi in the year 1965 and since then they are in cultivating possession of the land continuously and peacefully as the owner of the suit land. It has also come in the evidence that the appellants made the land worth cultivable by spending Rs. 2 Lakh on the same. It is further submitted that DW-7 has stated that the entire sale consideration of Rs. 13,000/- was paid by Basawa Ram to Dhumni Devi in his presence and has also given the details, from where Basawa Ram has taken the money before making payment to Dhumni Devi.

Learned senior counsel has further submitted that even it has come in the statement of DW-6/defendant No. 3 Krishan Chand that the land was uneven when it was purchased in the year 1965 and they had spent a huge amount for reclaiming the suit land and had installed two tubewells and taken electricity connection for irrigation. DW-6 further stated that the land was under mortgage and it was redeemed by them and was also orally exchanged by them. The statement of DW-6 was ignored by the trial Court only on the grounds that no specific date or time with regard to agreement to sell has been given by him and he was a minor in the year 1965. It is argued by learned senior counsel that since the statement of DW-6 was recorded after a long time, it was not possible for him to give the exact details as he came to know about the exchange deed from DW-7.

Learned senior counsel has further argued that it has come in evidence that Dhumni Devi died in the year 1978 and prior to her death, the sale

deed could not be executed, despite the fact that the entire sale consideration was paid to Dhumni Devi and since it was an oral agreement to sell, no suit for specific performance could have been filed.

It is further argued that when the plaintiff and his son Suresh Pal succeeded in getting a consent decree dated 12.06.1978 in civil suit No. 317 of 1978, filed against Dhumni Devi, the present suit was filed challenging the aforesaid decree dated 12.06.1978 as a compromise Ex. C-1 was arrived at between the parties and, therefore, the impugned decree was passed in favour of the defendants. This witness also stated that after 1982, the revenue record was corrected in the name of the defendants.

Learned senior counsel has further argued that the plaintiff has challenged the decree dated 15.09.1982 on the ground of fraud and misrepresentation but no particulars of fraud or misrepresentation are given in the plaint to meet the requirements of Order 6 Rule 4 CPC and by taking a plea that the plaintiff never appeared in Court nor signed power of attorney and the compromise deed is not proved on record.

Learned senior counsel has relied upon a judgment of Hon'ble Supreme Court in **1976 AIR (Supreme Court) 712 Union of India vs. M/s Chaturbhai M. Patel and Co.** to submit that fraud like any other charge of criminal offence, whether made in civil or criminal proceedings, must be established beyond reasonable doubt, however suspicious may be circumstances, however strange the coincidences and however grave the doubts, suspicion alone cannot take the place of proof. It is, thus, argued that in the absence of specific plea taken in the plaint, the lower appellate Court has wrongly held that the impugned decree was obtained by way of misrepresentation or fraud.

Learned senior counsel has next argued that defendants have examined Harnam Singh, Advocate as DW-3, who has stated that plaintiff

Mahavir Singh and his son defendant No. 6 Suresh Pal had engaged him as their counsel in civil suit No. 151/1982, titled as *Som Chand vs. Mahavir Singh and others*. This witness identified both Mahavir Singh and Suresh Pal in the Court and further deposed that both of them made statement in the Court regarding entering into compromise Ex. C-1 with defendant Nos. 1 to 5 (plaintiffs in the said civil suit).

Learned senior counsel has referred to the statement of DW-5 Yashpal Chand, Handwriting and Fingerprint Expert, who had compared the thumb impressions of plaintiff on the amended plaint in the present suit with his thumb impressions affixed on the power of attorney, statement, Ex. C-1 in CS-151/1982 and has stated that the thumb impressions are the same and of the same person. It is, thus, argued that once the thumb impressions of Mahavir Singh are proved in the previous suit on the written statement filed by him, statement in support of compromise Ex. C-1 as well as power of attorney, therefore, there was no scope for the lower appellate Court to look into the pleadings in the earlier case to record a finding contrary to the finding recorded by the trial Court.

Learned senior counsel has further argued that the lower appellate Court has failed to record a finding that the appellants were in possession of the land and had installed two tubewells in the suit land, which is a fact admitted by the plaintiff in his own statement while appearing as PW-4. Reliance is placed on electricity bills to prove this fact that the appellants have installed tubewells and even the Electricity Department has released the connection in their favour, which proves that they were in continuous possession of the suit land even during the lifetime of Dhumni Devi.

It is next argued that once the plaintiff himself was a party to the impugned decree passed in civil suit No. 151 of 1982, he cannot re-agitate the same on the ground that the same is not registered. Reliance is placed upon a

judgment of Hon'ble Supreme Court in **2020 (4) Scale 554 Pawan Kumar Arya and others vs. Ravi Kumar Arya and others** to submit that a consent decree cannot be challenged in a separate suit on the ground of non-registration.

Learned senior counsel has further argued that the finding recorded by the lower appellate Court that the counsel for plaintiff Mahavir Singh in the civil suit, i.e. T.P.S. Bedi, Advocate, did not hold any Vakalatnama nor had signed the plaint and, therefore, this is a suspicious circumstance, is erroneous. Reliance is placed upon **2006 AIR (Supreme Court) 269 Uday Shankar Triyar vs. Ram Kalewar Prasad & Anr.**, whereby in terms of Order 3 Rule 4 CPC, Hon'ble Supreme Court has held that mere fact that the Vakalatnama/Power of attorney, executed by the party, in favour of the advocate is not filed, will not result in automatic rejection of the case as it is a curable defect and the Court should give time to the parties to correct the same.

Learned senior counsel has next argued that even the finding recorded by the lower appellate Court that the counsel representing plaintiff Mahavir Singh in civil suit No. 151 of 1982 was in fact representing him in the previous suit and, therefore, there is a possibility of misusing the signed documents, is erroneous. Learned senior counsel has relied upon a judgment of this Court in **1991 (1) RRR 401 Smt. Kapoor Kaur vs. Dalip Singh and others**, wherein it has been held that under Order 23 Rule 3, when the validity of a consent decree, suffered in a Court, is under challenge, mere fact that the advocate was junior to the advocate, who presented the plaint on behalf of the plaintiff, it cannot be held that the consent decree is obtained by producing a wrong person. It is further observed by this Court that when a consent decree is suffered in a Court, the parties engage counsel, who may be one party or one group, mere fact that while issuing summons to the defendants, in short span of

time the consent decree was suffered, is not a ground to hold that the decree is obtained by producing a wrong person.

Learned senior counsel has further relied upon another judgment of Hon'ble Supreme Court rendered in **2009 (6) SCC 194 *Sneh Gupta vs. Devi Sarup & Ors.***, wherein it has been held that mere fact that lawyers were engaged from the same chamber, there cannot be a presumption that they would breach their confidentiality or commit such act which would amount to professional misconduct.

Learned senior counsel has next argued that the lower appellate Court has wrongly held that because the plaintiff has not signed the written compromise, therefore, the same is an outcome of misrepresentation. In this regard, reliance is placed upon a judgment of Hon'ble Supreme Court in **1991 AIR (Supreme Court) 2234 *Bryam Pestonji Gariwala vs. Union Bank of India***, wherein it is held that under Order 23 Rule 3, 1 and Order 3 Rule 1 CPC, a compromise, if signed by a counsel for the parties and not signed by the parties in person, followed by a decree, is valid as the expression in writing and signed by the parties under Order 23 Rule 3 includes duly authorized representative and counsel. Similar view is taken by Hon'ble Supreme Court in **2003 (4) RCR (Civil) 606 *Jineshwardas (D) through LRs and Ors. vs. Smt. Jagrani and Anr.*** that under Order 23 Rule 3 CPC, when a compromise decree is passed, the parties delegate their powers to the counsel and permit them to act on their behalf.

Learned senior counsel has next argued that the lower appellate Court has failed to appreciate that after the impugned decree was passed, even plaintiff Mahavir Singh and his son Suresh Pal have exchanged 16 Kanals of land on 21.06.1985, on the basis of which mutation No. 3165 was sanctioned, vide Ex. D-2. It is further submitted that the trial has considered this aspect of the case that the plaintiff himself has acted upon the impugned decree, when they have

exchanged certain land in Khewat/Khatauni No. 240/441, Khasra No. 65/7-8, measuring 60 Kanals from defendant Nos. 1 to 5. The trial Court has recorded a finding in para 27 of the judgment that these Khasra numbers are part of the decree passed in civil suit No. 152 of 1982 and the mutation was sanctioned on 14.06.1985. Learned senior counsel has, thus, argued that once the plaintiff Mahavir Singh and his son Suresh Pal have acted upon this decree in the year 1985 when the mutation was sanctioned, they came to know about this decree on the said date and, therefore, the present suit, which instituted on 14.09.1994 is hopelessly time barred as the plaintiff had the knowledge of impugned decree and the case set up in the plaint that the plaintiff came to know about the decree just before filing of the suit is factually incorrect.

Learned senior counsel further submitted that in terms of Article 59 of the Limitation Act, 1963, a decree is to be challenged within a period of 03 years, whereas in the present suit, even after knowledge, the decree is challenged after 03 years and, therefore, the suit was liable to be dismissed on account of limitation. Learned senior counsel has relied upon a judgment of this Court in **1994 PLJ 171 Jagjit Singh vs. Pritam Singh** to submit that a suit for declaration to challenge a decree can be filed within 03 years from the date of decree or from the date of knowledge. It is, thus, argued that the trial Court has rightly held that the suit is barred by limitation.

Learned senior counsel further relied upon a judgment of this Court in **2009 (3) RCR (Civil) 672 Kurdia vs. Rameshwar Dass and others**, wherein it has been held that where a suit for possession is filed after limitation under Article 58 of the Limitation Act, the same will be time barred. Reliance is also placed upon a judgment of Hon'ble Supreme Court in **2009 (12) SCC 454 Shyam Lal @ Kuldeep vs. Sanjeev Kumar and others** to submit that it has been held that under Article 58 of the Limitation Act, the limitation to file a suit to challenge a

Will and mutation is 03 years and in the absence of any specific pleading or evidence regarding date when the plaintiff has derived knowledge, the suit is liable to be held as time barred. Learned senior counsel has, thus, argued that in the present case, it has come in evidence that from the date when the exchange took place between Mahavir Singh and appellants/defendant Nos. 1 to 5, when the mutation No. 3165 was sanctioned on 14.06.1985, the plaintiff came to know about the decree and, therefore, the suit is time barred.

Learned senior counsel has next argued that the suit filed by the respondent/plaintiff being an independent suit is not maintainable to challenge a compromise decree in terms of Order 23 Rule 3-A CPC. Learned senior counsel has relied upon **2022 (2) RCR (Civil) 188 M/s Sree Surya Developers and Promoters vs. N. Sailesh Prasad and Ors.** to submit that a party to a consent decree, which is based on a compromise, cannot challenge the said decree in an independent suit and has to approach the same Court, where the compromise was recorded and the separate suit challenging the consent decree is not maintainable under Order 23 Rule 3-A CPC. Reliance is also placed upon another judgment of Hon'ble Supreme Court in **2021 (3) RCR (Civil) 406 R. Janakiammal vs. S. K. Kumarasamy (Deceased) through Legal Representatives and Others**, wherein a similar view has been taken by Hon'ble Supreme Court.

Learned senior counsel for the appellants has next argued that the lower appellate Court erred in setting aside the well reasoned judgment of the trial Court by going into the facts as to whether the impugned decree was passed on right or incorrect facts. Learned senior counsel has relied upon **1981 PLJ 492 Harpal and others vs. Ram Piari and others**, wherein it has been held that the Court in a second suit cannot go behind the earlier decree as the earlier decree settles the right of the parties and cannot find out whether the decree was passed on right or wrong facts. Similar view is taken by a Division Bench of this Court

in *1989 PLJ 182 Gurdev Kaur and another vs. Mehar Singh and others*, wherein it has been 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, i.e. if it is 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 next argued that prior to filing of the present suit by Mahavir Singh, his son Suresh Pal has filed a similar suit challenging the same impugned decree and the said civil suit No. 32 of 1991, which was instituted on 14.01.1991, which was dismissed by the Civil Judge (Jr. Divn.), Karnal, vide judgment and decree dated 15.01.2000. The appeal filed by Suresh Pal was also dismissed by the lower appellate Court, vide judgment and decree dated 05.03.2002. It is further submitted that both these judgments and decrees, which came in existence prior to the decision of the present civil suit by the trial Court on 30.08.2005, were duly exhibited in the present case as Ex. D/14 and Ex. D/15 as well as Ex. D16 and Ex. D/17. It is, thus, argued that once with the same of evidence, the civil Court has held that the suit filed by Suresh Pal, who is son of the present plaintiff Mahavir Singh, is not maintainable and the same was dismissed by both the Courts below, the lower appellate Court wrongly reversed the well reasoned findings recorded by the trial Court.

Learned senior counsel for the appellants has next argued that the finding recorded by the lower appellate Court in reversing the well reasoned findings of the trial Court on issue Nos. 1 and 2 is erroneous and not based on the

correct appreciation of evidence. It is further submitted that issue No. 1 as to whether the decree dated 15.09.1982 passed in the previous civil suit No. 151 of 1982 is null and void on the grounds mentioned in the plaint, which do not meet the requirements of Order 6 Rule 4 CPC as no fraud or misrepresentation has been specifically pleaded, should have been decided in favour of the defendants and the lower appellate Court, without recording a cogent finding on this aspect as to how the second suit was maintainable as plaintiff Mahavir Singh was himself a party to the decree, has erroneously reversed the finding on issue Nos. 1 and 2, however, in terms of Order 23 Rule 3-A CPC, the second suit was not maintainable.

Learned senior counsel has next argued that the lower appellate Court has wrongly recorded a finding under issue No. 6 that the suit is within limitation. It is further submitted that once the consent decree dated 12.06.1978 was challenged in civil suit No. 151 of 1982, as a compromise was arrived at between defendant Nos. 1 to 5 and plaintiff Mahavir Singh and his son Suresh Pal, therefore, the suit was time barred under Article 58 of the Limitation Act, as the very fact that after passing of the decree dated 15.09.1982, the mutation was sanctioned in favour of the appellants and the revenue entries qua the ownership and possession were changed in favour of the appellants/defendant Nos. 1 to 5, is a notice to general public as noticed by the trial Court. Even subsequent thereto, further exchange took place between the plaintiff and defendant Nos. 1 to 5 with regard to 16 Kanals of land and thereafter, mutation No. 3165 was sanctioned on 14.06.1985 i.e. three years after passing of the impugned decree, which also reflects that both, Mahavir Singh and his son Suresh Pal, had the knowledge about the impugned decree in the year 1985, when part of the land was exchanged and a subsequent mutation was sanctioned as held by the trial Court.

Learned senior counsel has further argued that even otherwise, Suresh Pal has filed the civil suit on 14.01.1991, whereas the present suit was instituted on 14.09.1994 by his father Mahavir Singh and, therefore, even in the year 1991, plaintiff Mahavir Singh was aware that his son has already filed a civil suit as he was arrayed as defendant No. 6 in said suit. It is further submitted that since the suit filed by Suresh Pal, as noticed above, was dismissed by the both the Courts below and the arguments in the RSA filed by him i.e. connected appeal bearing RSA-2015-2002 have been heard together, Suresh Pal never contested the suit or made a statement in favour of Mahavir Singh, though he was arrayed as defendant No. 6 in this suit.

In reply, learned senior counsel for the respondent/plaintiff has argued that Dhumni Devi has executed a Will Ex. P-1 in favour of plaintiff Mahavir Singh, being her paternal aunt and thereafter, she suffered a consent decree dated 12.06.1978 in civil suit No. 319 of 1978 Ex. P-7 in favour of Mahavir Singh and in terms of the same, Mahavir Singh and his son Suresh Pal became owner of the agricultural land in equal share, which is land in dispute.

Learned senior counsel for the respondents has further submitted that this decree was challenged by Shiv Naryan and That Singh by filing civil suit No. 237 of 1978, however, the same was dismissed on 16.12.1980. It is further submitted that defendant Nos. 1 to 5 filed civil suit No. 151 of 1982 claiming ownership of the land in dispute, on the basis of the agreement to sell of the year 1965, executed by Dhumni Devi, orally in their favour and also claimed adverse possession against Mahavir Singh and Suresh Pal and this suit was decreed while passing impugned decree dated 15.09.1982 on the ground that a compromise Ex. C-1 has taken place between the parties on 11.09.1982.

Learned senior counsel for the respondents has next argued that both, Mahavir Singh and his son Suresh Pal, have stated in their respective

statement that they are in continuous possession of the suit land as owner and the impugned decree was obtained by fraud and misrepresentation. It is further submitted that it is the candid case of Mahavir Singh and Suresh Pal that after filing of the suit, defendant Nos. 1 to 5/appellants have taken forcible possession of the suit land.

Learned senior counsel for the respondents has further argued that the lower appellate Court has appreciated that there is no date or written arguments on record to support the claim of defendant Nos. 1 to 5 that in the year 1965, they had paid Rs. 13,000/-, as full and final sale consideration for purchasing 13 acres of land, to Dhumni Devi. It is further argued that DW-6 Krishan Chand was about one year old at that time and, therefore, the lower appellate Court has rightly declined to believe the evidence led by the defendants.

Learned senior counsel for the respondents has further submitted that in the written statement, the claim of the defendants is that the land was orally exchanged between the parties but no details of exchange are given in the compromise Ex. C-1 or plaint Ex. P-3 and there is no reference to any such exchange.

Learned senior counsel for the respondents has next argued that defendant Nos. 1 to 5 have set up a case that they are in actual physical possession of the suit land since since the time they purchased the same from Dhumni Devi, however, the oral sale was never reflected in the revenue record and, therefore, it is not proved that they are in old possession since 1965. It is further submitted that as per the case of defendant Nos. 1 to 5, plaintiff Mahavir Singh and his son Suresh Pal made statement on oath during the pendency of civil suit No. 151 of 1982, which was thumb marked by them and the decree was passed on the basis that both of them have voluntarily signed the compromise as well as they have made their statement on oath before the Court.

Learned senior counsel further argued that when the earlier decree was in the suit filed by Mahavir Singh against Dhumni Devi in the year 1978, aforesaid Shiv Naryan and That Singh filed a suit challenging the said decree against Mahavir Singh and their counsel was T. P. S. Bedi, Advocate, who represented Mahavir Singh and Suresh Pal, vide Ex. P-8, statement of the counsel in the said suit. Even DW-4 T. P. S. Bedi, Advocate admitted this fact, however, later on, he became the counsel for defendant Nos. 1 to 5 in civil suit No. 151 of 1982, therefore, there is every possibility that *Vakalatnama* and thumb impressions, which he got signed from Mahavir Singh and Suresh Pal were used for preparing a fake compromise deed in the present case.

Learned senior counsel for the respondents further submitted that Harnam Singh, Advocate, who appeared on behalf of the plaintiff in civil suit No. 151 of 1982 was admittedly junior advocate in the office of T.P.S. Bedi, Advocate. It is further submitted that in the statement of DW-3 Harnam Singh, it has come that neither he nor Baljinder Singh were the advocate of the defendants and the compromise deed was already written, when it was brought to him as it has come in the statement of DW-6 that the compromise was written by T.P.S. Bedi, Advocate and Harnam Singh, Advocate together.

It is next argued on behalf of the respondents that from the statement of DW-5-Yashpal Chand, Handwriting and Fingerprint Expert, who produced the report DW-5/A, it has come that the thumb impression of plaintiff Mahavir Singha and his statement recorded in the Court was fade and unfit for comparison. It is further submitted that all these suspicious circumstances lead to a conclusion that the decree was obtained by playing fraud.

Learned counsel for the respondents has lastly argued that in the earlier suit, no notice or summon was issued to plaintiff Mahavir Singh or his son Suresh Pal and since defendant Nos. 1 to 5 had no pre-existing right, in the

absence of the registration, the decree is inadmissible in evidence. Learned senior counsel has relied upon a judgment of Hon'ble Supreme Court in **1994 (1) RRR 253 S. P. Changalvaraya Naidu vs. Jagannath** to submit that where the decree is obtained by playing fraud upon the Court, it is a fraud in the eyes of law and can be challenged in any Court, even in collateral proceedings. Learned counsel for the respondents has also relied upon another judgments of Hon'ble Supreme Court in **2013 (1) RCR (Civil) 821 Smt. Badami (Deceased) By her L.R. vs. Bhali** and **2010 (2) RCR (Civil) 206 Santosh vs. Jagat Ram & Anr.**, wherein a similar view has been taken by Hon'ble Supreme Court.

It is further submitted that in **Santosh's** case (supra), Hon'ble Supreme Court has observed that where a suit is filed on a day when the written statement is filed and the statement of defendant is examined on the same day and the decree is also passed on the same day, such circumstances prove the fraudulent nature of the decree.

In reply, learned senior counsel for the appellants has argued that it is not a case, where simplicitor a judgment and decree is passed on the basis of a compromise entered into between the parties, rather the same was acted upon as subsequently, an exchange took place between the parties, in which 16 Kanals land was transferred in favour of Mahavir Singh and his son Suresh Pal by defendant Nos. 1 to 5 in a public meeting/Jalsa Aam, which was followed by sanctioning of mutation No. 3165 on 14.06.1985 and, therefore, the decree was duly acted upon between the parties. It is also submitted that the lower appellate Court has wrongly held that the limitation will be governed by the Article 59 of the Limitation Act and not by Article 68 as the appellants were in possession of the with effect from when the impugned decree was passed and the plaintiff failed to prove that he was dispossessed after filing of the suit.

Learned senior counsel for the appellants has further argued that Will Ex. P-1, relied upon by the plaintiff, was in fact produced in an illegal manner as when an application for amendment of the plaintiff was filed by the plaintiff to incorporate the prayer of possession alleging that he was dispossessed after filing of the suit, without there being any permission from the Court or any such mentioning in the Will Ex. P-1, executed by Dhumni Devi, which otherwise was not proved. It is further submitted that it has come in the evidence that Dhumni Devi died somewhere in the year 1978 and from 1978 till filing of the suit, the Will Ex. P-1 has never seen the light of the day; it was never produced before any revenue authority for sanctioning of mutation on the basis of the same, therefore, no reliance can be placed on the said Will.

After hearing the learned senior counsels for the parties and going through the findings of the Courts below as well as record and on re-appreciation of evidence, the present appeal is accepted, for the following reasons:

(a) Admittedly, prior to filing of the present suit by plaintiff Mahavir Singh, his son Suresh Pal has filed a civil suit, bearing No. 32 of 1991, which was instituted on 14.01.1991, challenging the same impugned decree dated 15.09.1982. The said suit was contested by the appellants and plaintiff Mahavir Singh was defendant No. 6 in the said suit. The civil Court, vide its judgment and decree dated 15.11.2000, dismissed the suit holding that the mutation Ex. D-17, on the basis of the decree dated 15.09.1982, was passed in the presence of plaintiff Mahavir Singh and, therefore, he (Suresh Pal) had the knowledge of passing the decree as he along with his father-defendant No. 6 Mahavir Singh (who is plaintiff in the present suit) appeared in the Court when impugned decree was passed and suffered his statement, hence, the suit, which was filed after the period of 03 years of limitation, was held to be time barred. The appeal filed by

Suresh Pal was also dismissed by the lower appellate Court, vide its judgment and decree dated 11.03.2002, Ex. D-16.

The lower appellate Court in said appeal (Ex. D-16) held that Suresh Pal had no cause to challenge the impugned decree, which was suffered by him and his father Mahavir Singh (defendant No. 6 in the said suit) as he has failed to prove the allegations of fraud. The lower appellate Court also recorded a finding even in the said suit that from the statement of DW-4 Yashpal Chand, it is proved that the compromise and *Vakalatnama*, which were Ex. D-1 and Ex. D-2 in the said suit, were having the thumb impressions of plaintiff Suresh Pal and his father Mahavir Singh, therefore, the decree was passed on the basis of the compromise in a legal manner. The lower appellate Court also recorded a finding that once the impugned decree was passed on the basis of the compromise, the second suit was barred by the principle of estoppel. It is also held that under Section 17 of the Limitation Act, the impugned decree did not require registration as it did not create any title in favour of defendant Nos. 1 to 5 for the first time, rather defendant Nos. 1 to 5 proved that their claim was based on the basis of an agreement to sell with Dhumni Devi and being the prospective vendees, they had filed the suit on the basis of the compromise with plaintiff Suresh Pal and his father Mahavir Singh. Therefore, the decree dated 15.11.2000 Ex. D-14, in which present plaintiff Mahavir Singh was defendant No. 6 as well as the judgment of the lower appellate Court Ex. D-16 are binding in the present litigation and the lower appellate Court has ignored this important aspect of the case. In view of the same, the **Question of Law** under point “(II)” is answered in favour of the appellants/defendant Nos.1 to 5.

(b) In both the civil suits, filed by respondent/plaintiff Mahavir Singh as well as his son Suresh Pal, they were arrayed as ‘defendant No. 6’/respectively

and had the knowledge about the pendency of the suit, though they were proceeded *ex-parte* later on.

The present suit was instituted on 14.09.1994 i.e much after filing of the civil suit by his son Suresh Pal on 14.01.1991, therefore, for all intent and purposes, the knowledge of passing of the impugned decree was well with the plaintiff, when his son Suresh Pal filed the suit in the year 1991, wherein after notice, plaintiff Mahavir Singh was proceeded *ex-parte*.

Since the LCR of civil suit filed by Suresh Pal, titled as ***Suresh Pal vs. Som Chand and others***, is also tagged with the connected appeal i.e. RSA-2015-2002, a perusal of the same shows that on 16.05.1991, defendant No. 6 Mahavir Singh appeared in person in pursuance to notice issued by the trial Court in the said case and thereafter, defendant No. 6 Mahavir Singh again appeared on 08.08.1991 and prayed for time to file written statement. It is only 15.05.1992, when the trial Court passed an order proceeding *ex-parte* against (defendant No. 6), who is plaintiff in the present suit, therefore, once Mahavir Singh was appearing in person in the said suit for a considerable long time as reflected in the zimini orders of the said civil suit and was ultimately proceeded against *ex-parte* in 1992, he had every knowledge about passing of the impugned decree, therefore, the present suit, which is instituted in the year 1994, is hopelessly time barred and this aspect of the case was never appreciated by the lower appellate Court.

In view of the judgments in ***Jagjit Singh's*** case (supra), ***Kurdia's*** case (supra) and ***Shyam Lal's*** case (supra), the declaratory suit filed by the respondent/plaintiff challenging the impugned decree and the mutation after 12 years of the passing of the impugned decree, despite having knowledge to the same is rightly held time barred by the trial Court and the lower appellate Court, while reversing the findings, has wrongly held that the suit is within limitation.

Even otherwise, the appellants/defendant Nos. 1 to 5 have succeeded in proving the knowledge of passing of the decree and mutation from the fact that out of the suit land, plaintiff Mahavir Singh and Suresh Pal got 16 Kanals of land in exchange, vide mutation No. 3165 dated 14.06.1985 and, therefore, once plaintiff Mahavir Singh and Suresh Pal have themselves acted upon the said decree as they got 16 Kanals of land from defendant Nos. 1 to 5, after passing of the impugned decree dated 15.09.1982, the knowledge of passing of the impugned decree and sanctioning of mutation was well with the plaintiff and his son Suresh Pal in the year 1985 itself. Therefore, the suit was hopelessly time barred. Accordingly, **Question of Law** under point Nos. (VI) and (VII) are decided in favour of appellants/defendant Nos. 1 to 5.

(c) The finding recorded by the lower appellate Court that the decree requires registration in terms of Section 17 of the Registration Act is also erroneous and liable to be reversed.

It was the case of defendant Nos. 1 to 5, who were the plaintiffs in civil suit No. 151 of 1982, that they are the prospective vendees in view of an oral agreement to sell with previous owner Dhumni Devi, whom they have paid Rs. 13,000/-, however, the sale deed could not be executed and since plaintiff Mahavir Singh and Suresh Pal started claiming title over the suit land, the said suit was filed that they are owner in possession of the suit land as a compromise Ex. C-2 was effected between the parties, therefore, defendant Nos. 1 to 5, being the plaintiffs in the said suit, did not claim that they have become owner of the suit land for the first time, rather they have claimed that their right to ownership, being prospective vendees, is recognized by Mahavir Singh and Suresh Pal, who were defendants in the said suit, on the basis of the compromise arrived at between them. Therefore, the compromise decree did not require registration.

Needless to say, in the earlier judgment and decree Ex. C-14, wherein the civil suit filed by Suresh Pal was dismissed, a similar finding was recorded that the same impugned decree does not require registration. Accordingly, **Question of Law** under point No. (I) is decided in favour of the appellants.

(d) The trial Court has recorded a finding that there is no specific pleading in the plaint meeting the requirement of Order 6 Rule 4 CPC qua the plea regarding taking of grounds of fraud or misrepresentation by giving details and particulars and even from the evidence of the parties, the trial Court recorded a finding that the fraud could not be proved by the respondent/plaintiff Mahavir Singh.

It is held by Hon'ble Supreme Court in *Chaturbhai M. Patel's* case (supra) that fraud like any other charge of criminal offence, whether made in civil or criminal proceedings, must be established beyond reasonable doubt, even if the suspicious circumstance and strange coincidences are there but the same is to be proved beyond doubt. The lower appellate Court has not assigned any specific reason to reverse this finding of the trial Court.

Even otherwise, the second suit filed under Order 23 Rule 3-A CPC, challenging the compromise decree, in which respondent/plaintiff Mahavir Singh was a party, is not maintainable. Reliance is placed upon the judgment of Hon'ble Supreme Court in *Sree Surya Developers and Promoters's* case (supra) and *R. Janakiammal's* case (supra) as it well settled proposition of law that a party to a consent decree, which is based on a compromise, cannot challenge the said decree in an independent suit and has to approach the same Court, where the compromise was recorded, therefore, the instant suit is not maintainable under Order 23 Rule 3-A CPC. Accordingly, **Question of Law** under point No. (III) is decided in favour of the appellants/defendant Nos. 1 to 5.

(e) The lower appellate Court did not appreciate the statement of DW-7, who stated that after defendant Nos. 1 to 5 purchased 13 acres of land by paying Rs. 13,000/- to Dhumni Devi in the year 1965, they came in possession of the same and continued as such and the revenue record was also corrected after passing of the impugned decree dated 15.09.1982 in favour of the appellants/defendant Nos. 1 to 5, therefore, the lower appellate Court completely ignored an important aspect of the case that the present suit, filed after 12 years of passing of the impugned decree when the revenue record ownership and possession of defendant Nos. 1 to 5, after filing of the suit, an amendment application was filed that the plaintiff has been dispossessed during the pendency of the suit, therefore, consequential relief of possession was also granted, whereas in the original written statement of defendant Nos. 1 to 5, it is specifically stated that they are in long settled possession of the land in dispute and the amendment sought was only to set up a plea that the plaintiff has been ousted of the possession, after filing of the suit.

The evidence, which was produced by defendant Nos. 1 to 5 in the shape of revenue records i.e. jamabandi and Khasra Girdawari, Ex. D-3 to Ex. 13, shows that defendant Nos. 1 to 5 are in possession of their share of land. With regard to possession over the suit land, a specific case was set up by defendant Nos. 1 to 5 that they have installed two tubewells after the land was transferred in their name and even electricity connection was released by HSEB and certain bills of electricity connection were also produced on record, which were marked, however, no contrary evidence has been led by plaintiff Mahavir Singh that he had any tubewell in his name, through which he was cultivating the land in dispute to prove his possession and this aspect was correctly appreciated by the trial Court, while dismissing the suit.

A perusal of the LCR reflects that on 23.07.1998, while allowing an application for amendment of plaint, filed by Mahavir Singh, the following observations were made by the trial Court:

“As far as the application under Order 6 Rule 17 is concerned, the amendment is not of any new fact nor the defendant has taken it as surprise. The plaintiff is only incorporating separate paras of cause of action, jurisdiction and valuation. The present amendment will not cause any hardship to the defendant nor it is an attempt to take away the valuable right if any occurred to the defendant. Therefore, in view of my above findings, the application under Order 6 Rule 17 is hereby allowed. Now to come upon 16.09.98 for w.s. of amended plaint.”

Thereafter, again an application was filed for amendment of the plaint with regard to cause of action, which was allowed on 21.02.2002. The proposed amendment was that during the pendency of the suit, appellants/defendants have dispossessed the plaintiff and he was permitted to take plea on that account, however, neither in the plaint or amended plaint, there is any reference to Will Ex. P-1, which was produced by the respondent/plaintiff for the first time in evidence nor any specific issue was framed in this regard.

The lower appellate Court, while relying upon the said Will Ex. P-1, has appreciated the evidence, which is not based on the pleadings of the parties and even no specific issue was framed in this regard. Even otherwise, Will Ex. P-1 was never produced on record by the plaintiff in the earlier suit, which they have filed against Dhumni Devi in 1978, when a decree was passed on 01.05.1978. Even subsequently, this Will never saw the light of the day when the appellants/defendants filed the civil suit No. 151 of 1982, in which a compromise was arrived at between the parties and the same was decreed on the basis of the said compromise. It has come in evidence that Dhumni Devi died somewhere in

1978 and the plaintiff never produced the said Will Ex. P-1 before any revenue authority for sanctioning the mutation, therefore, the Will Ex. P-1 is liable to be ignored. Even otherwise, the same is not proved in terms of Section 68 of the Evidence Act, as no attesting witness was examined.

Accordingly, **Question of Law** under point No. (IV) is decided in favour of the appellants.

(f) The lower appellate Court has failed to appreciate that as per revenue record, produced by the appellants, the portion of the land in dispute was mortgaged and the subsequent revenue record reflects that the mortgage was got redeemed by the appellant/defendant No. 1. The arguments raised by learned senior counsel for the respondents that in the previous litigation, the plaintiff and his son Suresh Pal were represented by T.P.S. Bedi, Advocate and thereafter his junior advocate represented defendant Nos. 1 to 5 in the proceedings of civil suit No. 151 of 1982 is of no consequence.

It has been held by Hon'ble Supreme Court in **Uday Shankar Triyar's** case (supra) and in **Sneh Gupta's** case (supra) as well as by this Court in **Kapoor Kaur's** case (supra) that mere fact that the advocate appearing for one party is junior advocate to the advocate engaged by the other party is no ground to hold that the decree is obtained by fraud.

The findings recorded by the lower appellate Court that it is not proved that the plaintiff has signed written compromise and, therefore, it is an outcome of the fraud, is also erroneous. It has been held in **Bryam Pestonji Gariwala's** case (supra) and **Jineshwardas's** case (supra) that where a compromise is signed by the counsel for the party, which is followed by a statement on oath before the Court and the written is also signed/thumb marked by the consenting party, which followed by expression of compromise under Order 23 Rule 3 CPC, the parties delegate their power to their respective counsels

to act on their behalf, therefore, the finding recorded by the lower appellate Court is reversed. Thus, **Question of Law** under point No. (V) is decided in favour of appellants/defendant Nos. 1 to 5.

Accordingly, for the reasons given in the foregoing paragraphs, the present appeal is allowed and the judgment and decree dated 17.03.2006, passed by the lower appellate Court, is set aside and the judgment and decree dated 30.08.2005, passed by the trial Court, is upheld. Consequently, the suit filed by plaintiff Mahavir Singh stands dismissed.

It is worth noticing that connected appeal bearing RSA-2015-2002, filed by respondent No. 2 Suresh Pal, who is son of respondent No. 1/plaintiff Mahavir Singh, stands dismissed, vide order of the even date.

05.09.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No