

RSA-3788-1987 (O&M)

1

2023:PHHC:136275

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

RSA-3788-1987 (O&M)

Date of decision: 17.10.2023

Reserved on: 06.10.2023

Ram Kumar and another

..Appellants

Versus

Amir Singh and another

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Som Nath Saini, Advocate for the appellants

Mr. Vishal Nehra, Advocate for the respondents

ANIL KSHETARPAL, J

1. The correctness of the judgment and decree passed by the First Appellate Court is challenged by defendants no. 1 and 2 in this Regular Second Appeal. In fact, the plaintiffs' suit for grant of decree of declaration to the effect that they are owners in possession of the suit property was dismissed by the trial court, which, in appeal, has been reversed by the First Appellate Court.

2. After having heard the learned counsel representing the parties at length, the following question arises for consideration:-

i) Whether a consent decree, passed by the civil court between nephews and their father's sister (aunt) acknowledging the family settlement is required to be set aside on the ground that neither the family settlement is legally permissible nor, due to the absence of

registration, such decree results in transfer of ownership of an immovable property valued at more than Rs.100/-?”

Facts:-

3. The plaintiffs are children of Smt.Mam Kaur (sister of late Sh.Bujan). Sh. Bujan was owner in possession of 194 kanals and 1 marla land. He died issueless in 1950s, leaving behind his widow; Smt.Shiv Kauri. Defendant no.3 is son of another sister of Sh.Bujan. Defendant no.1 and 2 (appellants) are the two sons of Smt. Shiv Kauri's brother. In substance, on the one hand, the plaintiffs are children of Sh.Bujan's sister's sons whereas the defendants are Smt.Shiv Kauri's brother's children. On the death of Sh.Bujan, Smt. Shiv Kauri became the absolute owner of 194 kanals and 1 marla land. During her lifetime, on 06.04.1981, she suffered a consent decree of the entire land as well as two residential houses, in favour of her nephews (defendants no.1 and 2). The plaintiffs filed a suit for declaration challenging the correctness of the aforesaid judgment and decree dated 06.04.1981. The plaintiffs also sought a decree for permanent injunction restraining the defendants no. 1 and 2 from interfering into their peaceful possession. In the evidence, the copy of the plaint in the previous suit was produced and proved as Ex.PA whereas the copy of the written statement filed by Smt. Shiv Kauri was produced and proved as Ex.PB. The judgment and decree passed by the Court in the year 1981 were produced and proved as Ex.PC and PD.

4. The trial court, on the appreciation of evidence, held that the judgment and decree dated 06.04.1981, is valid and the plaintiffs are not entitled to the decree of declaration. However, the court held that it is the plaintiffs, who are in possession of the property and they can be dispossessed by the defendant no.1 and 2 in accordance with law. However, the First Appellate Court has reversed the judgment and decree passed by the trial court, primarily on the following grounds:-

i) The suit property was never jointly owned by Smt.Shiv Kauri alongwith Sh. Ram Kumar and Sh. Ram Mehar and therefore, they have no legal right in the property. Thus, no family settlement is possible between Sh. Ram Kumar and Sh. Ram Mehar on one side and Smt. Shiv Kauri on the other side.

ii)Sh. Ram Kumar and Sh. Ram Mehar have no pre-existing right in the property.

iii)Compromise decree between Sh. Ram Kumar and Sh. Ram Mehar on one side and Smt. Shiv Kauri on the other side is against the public policy.

iv)The decree is alleged to have been suffered by Smt. Shiv Kauri in lieu of the services rendered by the plaintiffs; Sh. Ram Kumar and Sh. Ram

Mehar, while taking care of her and therefore, it amounts to gift, which cannot be bestowed without a registered document.

v)The court further held that the judgment and decree dated 06.04.1981 are collusive.

5. The present appeal was admitted for final hearing and now it has come up for final disposal.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the requisitioned record. The learned counsel representing the appellants has also filed a written note of his submissions, which was permitted to be taken on record, while reserving the judgment.

7. On the one hand, the learned counsel representing the appellants while criticizing the judgment and decree passed by the First Appellate Court has contended that the decree acknowledging the family settlement passed by the Court did not require registration. He relied upon the judgment passed in **Ripudaman Singh vs. Tikka Maheshwar Chand 2021 (3) RCR (Civil) 428, Korukonda Chalapathi Rao & Another vs. Korukonda Annapurna Sampath Kumar 2021 (4) RCR (Civil) 433 and Bishundeo Narain and another vs. Seogeni Rai and others 1951 AIR (SC) 280**. It was further contended that no injunction against the true owner can be granted.

8. On the other hand, the learned counsel representing the respondents contended that the judgment and decree passed by the First Appellate Court is the correct enunciation of law and is therefore, not liable to be interfered with by this Court.

9. In view of the aforesaid submissions made by the learned counsel representing the parties, the first issue that arises for consideration is “whether a family settlement between nephew and their father’s sister (aunt) is permissible or not?” Recently, the Hon’ble Supreme Court has held exactly on the same issue in **Khushi Ram and others vs Nawal Singh and others 2021 (SCC online) SC 128** that the descendants of brother of widow are the members of the same family and they can constitute a joint Hindu Family. The Supreme Court, while relying upon the judgment passed in **Ram Charan Dass vs. Girjanandini (1965) 3 SCR 841** held that every party taking benefit under a family settlement must be related to one another in some way and shall have a possible claim to the property or a claim or even a semblance of a claim. The Supreme Court laid down the following :-

“.....In the first place once it is held that the transaction being a family settlement is not an alienation, it cannot amount to the creation of an interest. For, as the Privy Council pointed out in Mst. Hiran Bibi case [[AIR 1914 PC 44](#)] in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent

by the other parties. It is not necessary, as would appear from the decision in Rangasami Gounden v. Nachiaopa Gounden [(1918-19) 46 IA 72] that every party taking benefit under a family settlement must necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection.....”

10. Similarly, the Supreme Court also relied upon a judgment passed by the Three Judge Bench in **Kale and others vs. Deputy Director of Consolidation and others (1976) 3 SCC 119.**

11. In view of the aforesaid detailed judgment, no further elaboration is considered necessary as it has been held by the Supreme Court that the nephews can constitute a joint Hindu Family with their aunt (father's sister) for the purpose of family settlement.

12. The second issue that requires adjudication is with regard to the requirement of registration of the judgment and decree. Before answering this question, it would be appropriate to analyze the reasons given by the First Appellate Court. The First Appellate Court has erred in recording a finding that the suit property was never jointly owned by Smt. Shiv Kauri alongwith Sh. Ram Kumar and Sh. Ram Mehar. It also erred in recording a finding that Sh. Ram Kumar and Sh. Ram Mehar had no right and in the absence of

a pre-existing right, no family settlement is permissible. In fact, this question has already been answered in detailed in **Khushi Ram's case (supra)** and therefore, it needs no further elaboration.

13. As far as the observations of the First Appellate Court that such consent decree is against public policy, is without substance as the expression public policy is a well known concept enunciated under Section 23 of the Indian Contract Act, 1872, which provides that in a case where the consideration and objects are not lawful, then such contracts are considered against the public policy. It includes the contracts forbidden by law as well as the fraudulent contracts. The said contracts are of such a nature, that if permitted would defeat the provisions of any law and such contracts involve any injury to the person or property of the another and lastly, if the court regards such contracts as immoral or opposed to the public policy. The courts have always been leaning in favour of upholding the family settlement. It was in the year 1955, the Court held that through a family settlement, acknowledgment of ownership of a family member is permissible even in the absence of a pre-existing right, but only if he has some semblance of a right. This issue has already been answered by the Supreme Court in **Ram Charan's case (supra)** which has now been reiterated in **Khushi Ram's case**. Hence, question with respect to the family settlement as against the public policy is answered in negative.

14. The last reason assigned by the First Appellate Court is also without substance because it is not the case of the appellants (Sh. Ram Kumar and Sh. Ram Mehar) that Smt. Shiv Kauri gifted the property in their favour. On reading of plaint of the previous suit, Ex.PA, it is evident that Sh. Ram Kumar and Sh. Ram Mehar claimed that there was a family settlement between them and their aunt (father's sister), which was acknowledged before the Civil Court, resulting in passing of the consent decree. Such decree does not result in gift of the immovable property that requires registration.

15. The last reason given by the First Appellate Court is to the effect that the previous suit has resulted in a collusive decree. In simpler terms, "collusive" refers to an agreement or consent, and it often has a negative connotation. However, the expression 'collusive' unless it is forbidden by law, as provided under Section 23 of the Indian Contract Act, 1872, is valid. In this case, the property was admittedly owned by Smt. Shiv Kauri. She suffered a decree in favour of her nephews. The aforesaid decree is not proved to be forbidden by law. In fact, the First Appellate Court has relied upon **Sukh Nandan Singh etc. vs. Jamiat Singh and others (1971) 1 SCC 707** to hold that a collusive suit cannot be decreed. This Court has carefully read the aforesaid judgment. In that suit, the allegations were that in a pre-emption suit filed by the son of the vendor, the vendor was helping his son. Such allegations were not

held sufficient to prove the collusive nature of the suit, particularly when it is based on a statutory right of preemption. Hence, the aforesaid judgment has no application to the facts of the present case.

16. Similarly, the First Appellate Court has relied upon **Nachhattar Singh vs. Smt. Jagir Kaur AIR 1986 (P&H) 197**. In that judgment, the court held that the collusive decree that results in transfer of the immovable property valued at more than Rs.100/-, unless registered cannot be result in transfer of the property. In fact, this judgment cannot be relied upon, particularly in view of the judgment passed in **Khushi Ram's case (supra)**.

17. It may be noted here that the trial court has recorded a finding of fact that the plaintiffs are in possession of the suit property. From a careful reading of the judgment of the trial court, it is evident that the court relied upon the admission of DW1 Ram Kumar, DW2 –Gidara and DW8 Kishni. The correctness of the aforesaid finding has not been challenged in this appeal. Learned counsel representing the appellants contends that the injunction against the true owner cannot be granted, however, the plaintiffs are in the settled possession during all this while. They are in the continuous possession for sufficiently long time. Defendants no.1 and 2 cannot be permitted to take law into their own hands. In such circumstances, the defendants shall be entitled to file a suit for the possession of the property, however, their shall be a limited

RSA-3788-1987 (O&M)

10

2023:PHHC:136275

injunction in favour of the plaintiffs against the forcible dispossession at the hands of the defendants no.1 and 2.

18. With these observations, the judgment passed by the First Appellate Court is set aside and that of the trial court is restored. The appeal stands allowed.

19. All the pending miscellaneous applications, if any, are also disposed of.

17.10.2023

rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No