

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

**RSA-906-1993 with
IOIN-RSA-906-1993**

**Pronounced on : 27.09.2023
Reserved on 02.08.2023**

Chanan Singh

..... Appellant

Versus

Swaran Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Ms. Seema Pasricha, Advocate for the appellant.
Ms. Aashna Gill, Advocate for the respondent.

VIKRAM AGGARWAL, J

1. This is plaintiff's appeal against the judgment and decree dated 21.01.1993, passed by the Court of Additional District Judge, Karnal vide which the appeal filed by the respondent-defendant Swaran Singh against the judgment and decree dated 30.07.1988, passed by the Senior Sub Judge, Karnal was allowed and the suit filed by the plaintiff was dismissed. The trial Court had decreed the suit filed by the plaintiff.

2. For the sake of convenience, parties shall be referred as per their their original status.

3. The dispute revolves around 8 kanal 2½ marlas of land situated at Village Newal, Tehsil & District Karnal (fully described in the plaint) (hereinafter referred to as 'the disputed land'), owned by the plaintiff Chanan Singh. The parties to the lis are unfortunately, real brothers. A decree dated 02.12.1978 was suffered by Chanan Singh, who was the owner of the disputed land, in favour of Swaran Singh upon a suit having been filed

by the defendant Swaran Singh. By way of the decree, the defendant

became the owner of the disputed land. This decree dated 02.12.1978 was challenged by the plaintiff. A suit for declaration was filed claiming that the decree dated 02.12.1978 was illegal and was the result of a fraud. The decree was also challenged on ground that the same had not been registered. It was the case of the plaintiff that he was the owner in possession of the disputed land. Two or three months prior to the institution of the suit, the defendant threatened the plaintiff to dispossess him forcibly from the disputed land. Upon asking, the defendant showed him the decree dated 02.12.1978 and claimed that by virtue of the said decree, he (defendant) had become the owner of the disputed land.

4. The case set up by the plaintiff was that 5-6 years prior to the institution of the suit, the defendant told the plaintiff that he should obtain a loan from the B.D.O. Office, Karnal for the purposes of Dairy Farming on account of lesser rate of interest. The thumb impressions of the plaintiff, who was illiterate, were obtained by the defendant, who was well educated, on a plain blank paper and one thumb impression was also obtained on a printed form. Subsequently, a suit for declaration was filed by the defendant in the Court of Sh. V.K.Jain, the then Senior Sub Judge, Karnal wherein the thumb impressions of the plaintiff were mis-utilized by presenting a power of attorney and written statement. It was claimed that the suit was filed through Sh. Kuldeep Singh Bajwa, Advocate on 01.12.1978 and on 02.12.1978, an admitted written statement was filed through Sh. Vinod Kumar Jain, Advocate on the basis of which the suit was decreed. It was asserted by the plaintiff that he had never gone to the Court, never engaged any counsel, never filed any admitted written statement, no statement was recorded by the then Senior Sub Judge, Karnal, no thumb impression was

divested of his land. The decree was further challenged on the ground of non-registration since immovable property of the value of more than Rs.100/- had been transferred by way of a decree.

4(i) On the basis of the decree, requisite entries were also made in the revenue record in favour of the defendant and in collusion with the Patwari Halqa. As per the plaintiff, he came to know about the said decree on 21.12.1982 when the defendant showed it to him. Under the circumstances, the suit was filed.

4(ii) The suit was resisted by the defendant. Preliminary objections with regard to locus standi, cause of action, the suit being time barred, the suit being not maintainable, estoppel, the suit not having been valued for the purposes of Court fee and jurisdiction, the plaintiff being a person with bad intentions as he had cheated many persons etc. were raised. On merits, all averments were denied and it was asserted that the plaintiff himself had suffered the decree with his free will.

4(iii) In the replication, averments made in the written statement were denied and those made in the plaint were reiterated.

4(iv) From the pleadings of the parties, the following issues were framed for adjudication:-

1. Whether the decree dated 02.12.1978 was obtained fraudulently by the defendant as alleged ? OPP
2. Whether the suit is time barred ? OPD
3. Whether the plaintiff has no locus standi to file and maintain the present suit ? OPD
4. Whether the plaintiff is estopped from filing the present suit on account of his act and conduct ? OPD
5. Whether the suit is not maintainable in its present form ? OPD
6. Whether there is no cause of action in favour of plaintiff to file the present suit ? OPD

7. Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction. If so what is the correct valuation and correct court fee to be affixed on the plaint ? OPD
8. Whether the defendant is entitled to special costs U/S 35-A C.P.C. ? OPD
9. Relief.

4(v) It would be essential to notice here that subsequently, during the pendency of the appeal, an application for amendment of the written statement was moved by the defendant wherein it was claimed that the plaintiff had executed an agreement to sell with regard to the disputed land in favour of the defendant on 31.07.1978. The said application for amendment of the written statement was allowed and the following additional issue 8-A was framed:-

8-A Whether the plaintiff executed an agreement to sell the suit land dated 31.07.1978 in favour of the defendant, if so its effect ? OPD

4(vi) The parties led their respective evidence.

4(vii) The trial Court decreed the suit filed by the plaintiff. It was held that the decree dated 02.12.1978 had been obtained by playing fraud upon the plaintiff. The trial Court came to the conclusion that the plaintiff had never appeared in the Court and that his thumb impressions had been misused by his real brother i.e. the defendant. The trial Court discussed the evidence of both sides including the statements given by the advocates who had appeared in the case at the relevant time, and came to the aforementioned conclusion.

4(viii) On the ground of registration, the trial Court held that the decree was compulsorily registrable since it transferred rights in immovable

property of the value of more than Rs.100/-.

4(ix) On the ground of limitation, it was held that since the plaintiff was not aware about the fraud having been played upon him, the limitation would start running from the date of knowledge and, it was, therefore, held that the suit was not barred by limitation.

5. In appeal, the First Appellate Court reversed the decision of the trial Court. It came to the conclusion that no fraud had been played upon the plaintiff and that he had duly appeared before the Court of the then Senior Sub Judge, Karnal. On the ground of registration, it was held that the decree was not compulsorily registrable. The ground of limitation was not discussed.

6. In so far as issue No.8-A is concerned (which was framed at the appellate stage and the matter was remanded to the trial Court for decision on the same after giving opportunity to the parties to lead evidence), the trial Court had observed that no such agreement to sell had been executed. This finding was reversed by the First Appellate Court and it was held that the agreement to sell had duly been executed. The appeal filed by the defendant was allowed and the suit was consequently dismissed.

7. Aggrieved by the decision of the First Appellate Court, the present appeal was preferred.

8. It would be essential to mention here that vide judgment dated 01.03.2018, a Coordinate Bench of this Court allowed the appeal, set aside the judgment of the First Appellate Court and upheld the judgment of the trial Court. An appeal was preferred by the defendant before the Hon'ble Apex Court stating that he had not been heard by the High Court. Finding that the counsel for the defendant was not present when the arguments were

pleased to set aside the judgment of the Coordinate Bench. The matter was remanded to this Court for a fresh decision after hearing both sides.

9. I have heard learned counsel for the parties and with their assistance, have perused the record.

10. Learned counsel for the plaintiff submitted that the decision of the First Appellate Court is not sustainable. Reference was made to the oral and documentary evidence led on the record of the case including the statements of Sh. V.K.Jain, Advocate who appeared as DW1, Swaran Singh, defendant, who had appeared as DW2 and other witnesses. Reference was also made to the judgment dated 02.12.1978 Ex.PX, plaint Ex.PY and the statement of Chanan Singh, who appeared as PW1. It was submitted that the very fact that the suit was filed on 01.12.1978 and was decreed on 02.12.1978 would show that the same was the result of a fraud. Reference was made to the cross-examination of Sh.V.K.Jain Advocate who had filed the written statement on behalf of the plaintiff. It was submitted that while appearing in the witness box he admitted that he had not personally met the present plaintiff and that he could not tell as to whether Chanan Singh had come to him of his own or had been sent by someone. He also could not tell other vital details and as to whether the present plaintiff Chanan Singh had given him the copy of the plaint or the summons. Learned counsel submitted that the details of the fraud were duly pleaded and proved by the plaintiff on record and, therefore, the decree dated 02.12.1978 cannot sustain.

10(i) With regard to the ground of registration, it was submitted that the decree was required to be compulsorily registered since rights in a property of the value of more than Rs.100/- were transferred.

contended that the trial Court had rightly come to the conclusion that the same had not been proved in accordance with law. It was submitted that the defendant took mutually destructive pleas since on one hand he took the plea of the decree having been suffered on the basis of a prior family settlement and on the other hand he took the plea of an agreement to sell having been executed by the plaintiff in favour of the defendant.

10(iii) On the ground of limitation, it was submitted that since the plaintiff was not aware of a fraud having been played with him, the limitation would begin to run from the date of knowledge which was duly mentioned in the plaint and, therefore, the suit would not be barred by limitation.

10(iv) In support of her contentions, learned counsel placed reliance upon the judgments of Hon'ble Supreme Court of India in *S.P.Changalvaraya Naidu (dead) by L.Rs. Versus Jagannath (dead) by L.Rs. 1994 AIR (Supreme Court) 853, Bhoop Singh Versus Ram Singh Major (1995) 5 Supreme Court Cases 709 and the judgments of Coordinate Benches of this Court in Chand Kaur Versus Raj Kaur 1996 (3) R.C.R. (Civil) 512 and Chalti Devi and others Versus Rajinder Kumar and another 2003 (4) R.C.R. (Civil) 527.*

11. On the other hand, learned counsel representing the respondent-defendant strenuously urged that the decision of the First Appellate Court does not call for any interference. It was submitted that fraud had to be pleaded and proved by leading cogent evidence which the plaintiff had failed to do. Learned counsel also referred to the record and pointed out that no finger could be raised on the proceedings having been conducted in the Court because the decree was passed after the satisfaction of the Presiding

the grounds of challenge of a contract i.e. fraud etc. and it cannot be challenged on the ground of non-registration. Reference was made to the provisions of Order 6 Rule 4 CPC to contend that a fraud is to be pleaded and proved by leading cogent evidence. It was submitted that the plaintiff could also not plead that no family settlement had been arrived at between the parties.

11(i) On the ground of registration, it was submitted that the decree was not compulsorily registrable because the same was passed on the basis of a family settlement.

12(ii) On the ground of limitation, it was submitted that the suit was barred by limitation since the decree of 1978 was challenged in the year 1983. Reference was made to the provisions of Article 59 of the Limitation Act and it was contended that the suit would be barred by limitation.

12(iii) In support of her contentions, learned counsel for the defendant placed reliance upon the judgments of Hon'ble Supreme Court of India in **Union of India versus M/s Chaturbhai M. Patel & Co. (1976) 1 Supreme Court Cases 747, Ripudaman Singh Versus Tikka Maheshwar Chand (2021) 7 Supreme Court Cases 446, Ravinder Kaur Grewal and others versus Manjit Kaur and others (2020) 9 Supreme Court Cases 706**, the judgment of a Division Bench of this Court in **Gurdev Kaur and another Versus Mehar Singh and others 1989 (2) R.C.R. (Rent) 625** as well as the judgments of Coordinate Benches of this Court in **Parveen Kumar Versus Shiv Ram alias Sheo Ram 2000 (1) R.C.R. (Civil) 122, Jai Lal Versus Chhattar Singh and others 2004 (4) R.C.R. (Civil) 775, Rajjo Versus Jawahar Singh 2007 (2) R.C.R. (Civil) 62, Smt. Ramesh Versus Sheo Narayan and another 2011 (52) R.C.R. (Civil) 801, Zehro Versus Balbir**

SCC online P&H 3058, Smt. Chameli Versus Prem Kumar and another 2012 SCC online P&H 7351, Lichhami Devi and other Versus Bharpai and other 2012 (5) R.C.R. (Civil) 628, Dilbagh Singh v. Umed Singh 2013 (25) R.C.R. (Civil) 854.

13. I have given my thoughtful consideration to the submissions made by learned counsel for the parties.

14. Before advertng to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial question of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) and Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92 respectively.

15. Reverting to the present appeal, it is extremely unfortunate that litigation is going on between two real brothers with regard to 2 kanals 8 ½ marlas of land for the last 30 years. Gone are the days when a brother would not even make a reference of partition of land amongst brothers and litigation would be considered to be a taboo especially amongst the siblings related by blood. Be that as it may, the fact remains that the parties are

litigating with regard to the disputed land for the last 30 years.

15(i) It all began with the passing of the decree dated 02.12.1978 suffered by the plaintiff in favour of the defendant. The basis of that suit was a family settlement alleged to have been arrived at between the parties. However, the defendant did a somersault during the pendency of the appeal and took a stand that an agreement to sell dated 31.07.1978 had been executed by the plaintiff in his favour and that the decree had been suffered by him (plaintiff) in pursuance to the said agreement. The defendant, therefore, took mutually destructive pleas, which as per law, a defendant is not forbidden to take. However, it does reflect upon the conduct of the parties and the real intention behind the suit instituted at that point of time.

15(ii) Coming first to the issue of the decree dated 02.12.1978 having been obtained by fraud, this Court is of the considered opinion that the same was not proved. No doubt, Sh. V.K.Jain, Advocate while appearing as DW2 faltered on certain issues. However, it has to be borne in mind that an Advocate cannot be expected to remember everything in detail and that too after a lapse of many years. Still further, a decree was passed by a Court of law and the same would have been passed after duly satisfying itself. Merely because this suit was instituted on 01.12.1978 and was decreed on 02.12.1978, would not, in itself, be an indicator that the decree was obtained by fraud. It is too well known that consent decrees were passed in this fashion only wherein a plaint would be instituted, notice would be issued for the next day, a written statement admitting the claim of the plaintiff would be filed and a suit would be decreed. It is on account of this reason only that the Courts were cautioned time and again to pass such decrees after being sure of the factual situation failing which parties would end up in a long drawn legal battle as is being witnessed in the present case. This Court is,

not the result of a fraud. No doubt, fraud was duly pleaded and evidence was also led to prove the same but, in the considered opinion of this Court, the same was not established. The decree dated 02.12.1978 cannot, therefore, be held to be the result of a fraud.

15(iii) Coming to the ground of registration of the decree, the decree was passed on the basis of a family settlement having been arrived at between the parties. The law governing this aspect would be the judgment of the Hon'ble Apex Court in the case of **Bhoop Singh Versus Ram Singh Major** (supra) wherein it was laid down as under:-

18. The legal position qua Clause (vi) of Section 17 (2) can, on the basis of the aforesaid discussion, be summarised as below:-

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100/- upwards in favour of any party to the suit, the decree or order would require registration.

(3) If the decree were not to attract any of the Clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of compromise in question.

(5) If the property dealt with by the decree be not the "subject matter of the suit or proceeding", Clause (vi) of sub-section (2) would not operate, because of the

amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated.”

15(iv) The test would, therefore, be as to whether a right had been conferred “in-praesenti” or there was a pre-existing right. Before going into this aspect, another thing which needs to be noticed here is the additional ground raised by the defendant with regard to the agreement to sell dated 31.07.1978 having been executed by the plaintiff in his favour. The First Appellate Court duly found the same to have been executed. The scribe and the attesting witness duly stepped into the witness box to prove the agreement. The plaintiff did not step into the witness box to deny its existence and to face the test of cross-examination with regard to the same. No doubt, the defendant also did not step into the witness box but an adverse inference would not be drawn against him since he led other evidence to prove that the agreement to sell had been executed. However, an adverse inference would definitely be drawn against the plaintiff for not stepping into the witness box. It also came on record that the plaintiff had executed agreements in favour of many other persons and had subsequently duped them. It, therefore, means that the consent decree was passed to give effect to the agreement to sell and it was, therefore, essentially a sale and the consent decree was passed only with a view to avoid the payment of stamp duty. The Hon’ble Apex Court clearly held in the case of **Bhoop Singh versus Ram Singh Major** (supra) that where such an effort has been made, the decree would be compulsorily registrable. Nobody can be permitted to defeat the provisions of law by playing such kind of friendly matches. The argument raised by learned counsel for the defendant that the decree cannot

be challenged on the ground of non-registration by the party who suffered it would not come to the aid of the defendant because the challenge by the plaintiff was on the ground that it conferred rights of more than Rs.100/- whereas it has been held by this Court that the decree was compulsorily registrable because it was infact a sale and once it was a sale, the decree was obtained with a view to evade the payment of stamp duty and the decree would, therefore, be compulsorily registrable.

15(v) Coming to the point of limitation, Article 59 of the Limitation Act provides for a limitation of three years where a suit seeks the cancellation or setting aside of an instrument or a decree or for the rescission of a contract. It also provides that the time from which the period would begin to run would be when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to the plaintiff. In the present case, once it has been held that the decree was not the result of a fraud, the limitation would start running from the day on which the decree was passed i.e. 02.12.1978 and the plaintiff would not be entitled to take a stand that he acquired the knowledge of the decree having been passed at a later stage. The suit was filed on 17.02.1983 which is much after the lapse of the period of 03 years. The suit would, therefore, be barred by limitation.

16. I have gone through the judgments relied upon by the learned counsel for the parties.

17. In so far as the judgments relied upon by learned counsel for the plaintiff are concerned, reference was made to the judgment of the Hon'ble Apex Court in the case of *S.P.Changalvaraya Naidu (dead) by L.Rs. versus Jagannath (dead) by L.Rs.* (*supra*) wherein it was held by the Hon'ble

and is nonest in the eyes of law. It was further held that a person whose case is based on falsehood has no right to approach this Court. This judgment would not come to the aid of the plaintiff in view of the finding recorded by this Court that the judgment and decree in question had not been obtained by fraud. The judgment of **Bhoop Singh versus Ram Singh Major** (supra) has already been relied upon by this Court and, therefore, the same is not being referred to again. In the case of **Chand Kaur versus Raj Kaur** (supra), a Coordinate Bench of this Court spelled out the differences between a compromise decree and a consent decree. This judgment would also not come to the aid of the plaintiff since it is not in issue as to whether the judgment and decree dated 02.12.1978 was a compromise decree or a consent decree. The judgment in the case of **Chalti Devi and others versus Rajinder Kumar and another** (supra) is also with regard to registration and it holds that a consent decree would require registration unless there is a pre-existing right in favour of the decree-holder. This judgment relied upon the judgment of the Hon'ble Apex Court in the case of **Bhoop Singh versus Ram Singh Major** (supra). No further reference is, therefore, required to the said judgment.

17(i) In so far as the judgments relied upon by learned counsel for the defendant are concerned, reliance was placed upon the judgment of the Hon'ble Division Bench of this Court in the case of **Gurdev Singh versus Mehar Singh (supra)** wherein it was held that a compromise decree wherein title in a property of the value of more than Rs.100/- for the first time would require registration and it was further held that a compromise decree or a consent decree can be got set aside on one of the grounds on which a contract can be set aside namely fraud mis-representation, coercion etc. and

not on any other ground. This judgment would not come to the aid of the

defendant in view of the judgment of the Hon'ble Apex Court in the case of **Bhoop Singh versus Ram Singh Major** (supra). In the case of **Smt. Chameli versus Prem Kumar and another**, a Coordinate Bench of this Court held that a party to a consent decree could not be challenged on the ground of non-registration. However, this judgment would also not come to the aid of the defendant since the ground which was raised by the plaintiff was that the decree conferred rights in an immovable property above the value of Rs.100/-. This Court has held the same to be registrable since the decree was passed with a view to avoid the payment of stamp duty. It is the duty of the Court to lift the veil and to determine the real intention of the parties and, therefore, technical objections would not come in its way. The judgments on the point that fraud has to be proved beyond reasonable doubt do not call for any discussion once it has been held that the decree dated 02.12.1978 had not been obtained by fraud. Reference to the remaining judgments would not be essential in view of the findings recorded in the preceding paragraphs.

18. To sum up, this Court holds that the decree dated 02.12.1978 was not the result of a fraud. It was compulsorily registrable and without registration, it would not confer any rights. However, the suit was barred by limitation. In essence, therefore, the suit filed by the plaintiff would have to fail.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

27.09.2023
mamta

(VIKRAM AGGARWAL)
JUDGE