

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RENU
2023.01.20 16:52

RSA No.382 of 1992
Date of Decision: 18.01.2023.

Sh. Siri BhagwanAppellant
Vs.
Smt. Murti Devi (dead) through LRs and othersRespondents

CORAM:-HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Piyush Aggarwal, Advocate for the appellant.
Mr. K.S. Dadwal, and Mr. Sahil Koundal, Advocates
for the respondents.

DEEPAK GUPTA, J.

Defendant No.1 of the case is in this appeal against the judgment of reversal. In fact this RSA No.382 of 1992 was disposed of by a co-ordinate Bench of this Court vide judgment dated 13.12.2006 but on the appeal filed by the plaintiff before Hon'ble Supreme Court, the matter was remanded for fresh decision with the direction to formulate substantial question of law and then to decide it afresh. In order to avoid confusion, parties shall be referred as per their status before learned trial Court.

2. Data Ram alias Kalu had three sons namely Lalia, Kirpa Ram and Richhpal. Lalia had one son, namely, Ram Lal. Defendant No.1 Siri Bhagwan (appellant before this Court) is the son of Ram Lal. Kirpa Ram on his death left behind his widow, namely, Smt. Murti Devi (plaintiff No.1) and two daughters, namely, Bholi (plaintiff No.2) and Dhan Kaur (defendant No.2). Richhpal had two sons, namely, Khem Chand and Banwari Lal, who are not parties to this litigation.

3. Smt. Murti along with one of her daughter Bholi filed Civil Suit No.315 of 1981 before the learned Sub Judge, Rewari, challenging the judgment and decree dated 11.11.1980 passed in Civil Suit No.638 of 1980 titled "Siri Bhagwan Vs. Smt. Murti Devi", with regard to 37 kanal 14 marlas of land situated in Village Khera, Alampur detailed in para No.2 of

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the plaint to declare it as null and void. It was claimed that she (Murti) was the owner in possession of the suit land; that she is a simpleton, illiterate and *pardanashin* lady and that the impugned decree was obtained by defendant No.1 Siri Bhagwan and his father by playing fraud and misrepresentation. It was alleged that Ram Lal, the father of defendant Siri Bhagwan, had brought her to the Court at Rewari on the pretext that suit land shall be willed away in favour of her two daughters and got filed an admitted written statement and also got recorded her statement on the basis of some alleged family settlement, although no such family settlement ever took place between her (plaintiff Murti Devi) and contesting defendant Siri Bhagwan nor could take place in the absence of her daughters and other sons of her brother-in-law. Besides, defendant No.1 was minor at that time and so there could be no question of family settlement and so, the impugned decree was the result of fraud and misrepresentation.

4. Defendant No.2 – Dhan Kaur did not contest the suit and was proceeded ex parte on 21.10.1981.

However, defendant No.1 Siri Bhagwan contested the suit and pleaded the impugned decree date 11.11.1980 to be legal and valid, having been voluntarily suffered by plaintiff – Smt. Murti Devi.

5. It will not be out of place to mention here itself that plaintiff No.2 – Bholi withdrew her suit by moving an application and making the statement on 22.10.1982 and admitting the correctness of the decree dated 11.11.1980.

6. Following issues were framed for adjudication by the learned trial Court:-

- 1) Whether the plaintiff is owner of the suit land?OPP
- 2) Whether the decree dated 11.11.80 passed in Civil Court

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No.638 of 1980 is void as based on mis-representation and as alleged in para no.3 of the plaint?OPP

- 3) Whether the plaintiff is estopped from filing the present suit by her act and conduct?OPD
- 4) Whether the suit is barred by the principle of res-judicata?OPD
- 5) Relief.

7. After taking into consideration the evidence produced by the parties, the matter was heard by learned trial Court. Under issue No.2, it was held that plaintiff had failed to prove the allegation of misrepresentation or fraud and so, the said issue was decided against the plaintiff. Under issue No.1, it was held that though plaintiff- Murti Devi was earlier owner in possession of the suit property but with the passing the impugned judgment and decree dated 11.11.1980 and in view of the finding on Issue No.2 that the said decree was found to be valid, therefore, ownership and possession stood passed in favour of defendant No.1 – Siri Bhagwan. As such, issue was decided against the plaintiff. Issues No.3 and 4 were taken up together and it was held that though the suit was not barred by the principle of res-judicata but plaintiff was estopped by her act and conduct to file the suit. Consequent to all these findings, suit was dismissed vide judgment dated 16.05.1984 followed by a decree of the even date.

8. In the first appeal (CA N: 83 of 1984), as preferred by the plaintiff, the finding on Issue No.2 with respect to factual position that decree in Civil Suit No.638 of 1980 had not been passed on account of misrepresentation or fraud as was alleged in the suit, was not questioned and, as such, said finding was upheld. The only question raised before the First Appellate Court was that decree in question amounted to gift of the suit property, inasmuch as there was no evidence

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on record to show that there had been a family settlement between plaintiff Smt. Murti Devi and defendant Bhagwan nor in fact, there could be any such family settlement because Siri Bhagwan was a minor and, moreover, the transfer of the property being in the nature of gift, it could not be effected except by way of registered instrument and so, in the absence of due registration, the decree did not confer any right upon defendant Siri Bhagwan. Learned First Appellate Court upheld this contention and held that neither any family settlement took place nor it could have been taken place and that transfer in fact amounted to gift, which in this case was nullity in the absence of registration. As such, the appeal was accepted. The judgment and decree of the trial Court was set aside and suit of the plaintiff Smt. Murti Devi was decreed vide judgment dated 13.11.1986 followed by decree of the even date.

9. The aggrieved defendant Siri Bhagwan approached this Court by filing present Regular Second Appeal No.382 of 1992 under Section 100 of the Code of Civil Procedure. During pendency of this appeal, one Surat Singh purchased the suit property from plaintiff Smt. Murti Devi vide registered sale deed dated 30.07.1988. His application under Order 1 Rule 10 read with Order 22 Rule 10 of the Code of Civil Procedure praying to become a respondent- party along with original plaintiff - respondent Smt. Murti Devi as a subsequent purchaser of the suit land, was allowed. In the meanwhile, respondent- plaintiff Murti Devi expired. Since one of her daughter was already on record as plaintiff No.2 and other defendant was on record as respondent No.2, so the lis involved in the appeal, continued.

10. Vide judgment dated 13.12.2006, a co-ordinate Bench of this Court allowed the second appeal and set aside the judgment/ decree of the First

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Appellate Court and restored that of the trial Court, which resulted in dismissal of the suit filed by Smt. Murti Devi and her daughter. The subsequent purchaser Surat Singh approached Hon'ble Supreme Court by filing Civil Appeal No.9118-9119 of 2010. Hon'ble Supreme Court noticed that no substantial question of law had been framed by the High Court at the outset and rather, the same had been framed in the concluding part of the judgment dated 13.12.2006. So, the case was remanded to this Court for deciding the second appeal afresh on merits, after framing proper substantial question of law. It is how the appeal is again before this Court.

11. It is contended by learned counsel for the appellant- defendant that there is concurrent finding that impugned judgment and decree dated 11.11.1980 passed in Civil Suit No.638 of 1980 titled "Siri Bhagwan Vs. Murti" was not the result of fraud or misrepresentation. The said issue having been confirmed by the First Appellate Court, the judgment of the trial Court dismissing the suit, could not be reversed on the solitary ground that the impugned decree dated 11.11.1980 was on account of alleged oral gift requiring registration and for want of registration, the decree in question was invalid. It is contended that no finding on this question could be returned on account of complete lack of pleadings. Learned First Appellate Court picked up the contents of the earlier plaint to hold that it amounted to gift, though there was no pleading to that effect. The deposition of the witnesses did not at all make it out a case of gift and so the First Appellate Court completely misread the evidence resulting into gross justice. It is contended further that one of the daughters of the respondent- plaintiff Murti, namely, Dhan Kaur did not contest the suit at all, whereas the other daughter Bholi not only withdrew the suit but later on appeared as a witness to support the case of

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defendant Siri Bhagwan. Both of them had an existing right of succession but they conceded the claim of the appellant- defendant to the effect that impugned decree dated 11.11.1980 was result of family settlement and that this circumstance was enough to hold that impugned decree was by virtue of a family settlement and was not a gift. It is further inter-alia contended that the Court could not reopen the contents of the plaint of the earlier suit.

12. On the other hand, learned counsel for the respondent – plaintiff/ subsequent purchaser defended the judgment of the First Appellate Court and contended that it has been rightly held on the basis of evidence on record that impugned decree dated 11.11.1980 was on account of an oral gift and in the absence of registration, it was illegal and so, the decree dated 11.11.1980 was rightly set aside.

13. Following substantial question of law arises in the case: -

“Whether a consent decree is liable to be set aside on the ground that there was no family settlement and that the consent decree in fact amounted to oral gift, which was impermissible under law in the absence of registration?”

14. I have heard learned counsel for both the parties at length and with their able assistance, have appraised the entire record carefully.

15. Civil Suit No.638 of 1980 was filed on 28.10.1980 as evident from the certified copy of the plaint Ex.DW1/1. The said suit was filed by Siri Bhagwan minor son of Ram Lal through his father Ram Lal. It was pleaded therein that plaintiff used to reside with the defendant Murti and render the services to her; that 2-3 years prior to the filing of the suit, pleased with his services, defendant by way of a family settlement had given the suit property to

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him and handed over the possession and ever since then plaintiff was owner in possession thereof. The said claim of the plaintiff of the case Siri Bhagwan was admitted by defendant of the suit Smt. Murti vide written statement dated 30.10.1980 Ex.DW2/1. She also made a statement Ex.DW2/3 on the same date before the Court admitting the contents of the plaint and praying for decreeing the suit. It resulted into passing the impugned judgment dated 11.11.1980 (Ex.DA/Ex.PC) followed by decree of the same date (Ex.DB).

16. In present case, Ram Lal, the father of defendant Siri Bhagwan appeared in the witness box as DW6 and examined on 29.03.1984, he disclosed during cross-examination that age of Siri Bhagwan is 5 years/8 years and that at the time of filing of the suit, he was three years old. Meaning thereby, when the alleged family settlement took place 2-3 years prior to the filing of the suit N: 638 of 1980 on 27.10.1980 as pleaded in plaint Ex.DW1/1, defendant Siri Bhagwan was either yet to be born or was newly born. In such circumstances, it was just not possible that there could be any family settlement between Smt. Murti Devi and Siri Bhagwan. It was not pleaded in the plaint Ex.DW1/1 that family settlement was effected between Smt. Murti Devi and Siri Bhagwan through his father Ram Lal.

17. Apart from above, learned First Appellate Court rightly noticed that DW3 Chet Ram had deposed that he was told by Murti Devi that she had given her land to Siri Bhagwan. Smt. Bholi, one of the daughters of plaintiff Murti, who initially joined her in filing of the suit but later on withdrew the suit and appeared as DW4, deposed that Murti had given her land to Siri Bhagwan with the consent of everybody. In answer to a specific question, she categorically stated that Smt. Murti Devi had asserted that she would get her land entered in the name of Siri

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Bhagwan and she had even told the said fact to her daughters and their respective husbands that she was adopting the boy and would get the land entered in his name.

18. From the above said evidence, it has been rightly concluded by the learned First Appellate Court that in fact, no family settlement ever took place nor it could have taken place, as Siri Bhagwan was minor at the time of alleged family settlement pleaded in the Civil Suit No.638 of 1980. In fact, he was either yet to be born or was newly born as noticed above.

19. Proceeding further, based on the evidence available on record, both the Courts below have given a concurrent finding that impugned decree dated 11.11.1980 is not the result of fraud or misrepresentation and that it was voluntarily suffered by Smt. Murti Devi in favour of Siri Bhagwan. Now the question arises that in case, there was no family settlement between Murti Devi and Siri Bhagwan but Murti Devi suffered the decree in favour of Siri Bhagwan on the basis of alleged family settlement, then what will be the legal effect of the decree dated 11.11.1980.

20. The contention of learned counsel for the appellant to the effect that there being no pleading regarding any oral gift and so, the First Appellate Court could not make out a new case, has no merit. As has been noticed above that it was specifically pleaded by plaintiff – Smt. Murti Devi that no family settlement had taken place between her and Siri Bhagwan, as had been claimed in Civil Suit No.638 of 1980. Her said contention has been found to be correct to the effect that in fact there was no family settlement. Once it is found by the Court that no family settlement in fact took place nor could have taken place and consent decree was suffered by Murti Devi voluntarily, the Court is bound to see the legal effect

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of such a decree and it cannot be stated that if the decree amounted to oral gift, the Court is making out a fresh case without pleading.

21. The evidence on record as has been referred above, clearly makes out that there was no family settlement between Smt. Murti Devi and Siri Bhagwan-defendant and in fact Murti Devi had given the land to Siri Bhagwan on account of an oral gift. The suit property being immovable valuing more than ₹100/-, so oral gift could not be effected without registration in view of Section 17 of the Registration Act. Whenever a decree or any other document creates or extinguish right for the first time, it requires registration, as has been held by Hon'ble Supreme Court in ***Bhoop Singh Vs. Ram Singh Major, AIR 1996 SCC 196***, and consistently followed in plethora of judgments by various High Courts.

22. In ***Ranbir Singh Vs. Shri Chand, 1984 PLJ 562***, it has been held by this Court as under:-

“4. It is well established that a decree passed on compromise remains essentially a contract between the parties with seal of the Court superimposed thereon and is open to challenge on all grounds on which a contract can be vitiated. Consequently the consent decree can be challenged not only on the grounds available under the Contract Act such as fraud, mistake or misrepresentation but also on any of the grounds available under any other law which prohibits such a contract or declares it to be ineffective so far as the transfer of any rights in immoveable property are concerned. The plea of res judicata including the one of constructive res judicata, therefore, has no relevancy or bearing on the question of the efficacy of the decree in dispute.

5. It was next contended by the learned counsel that a decree based a compromise even though it has the effect of transferring the land in

*dispute, is covered by clause (vi), sub-section (2) of section 17 of the Registration Act and, therefore, does not require registration. This argument, again, has no basis and is wholly misconceived because sub-section (2) exempts any decree or order of a Court from the operation of clauses (b) and (c) only of sub-section (1) of section 17 which necessarily means that if a decree operates as an instrument of gift of immoveable property it would not be exempt from registration under this provision. It is not disputed that in the earlier suit the appellant claimed title on the basis of an alleged gift which obviously means that the consent decree under challenge operated by way of instrument of gift of immoveable property which is the subject-matter of dispute in the present suit. The consent decree was consequently, compulsorily registrable and in the absence of its registration, no valid title thereunder could pass to the appellant. As a matter of fact this question of law stands concluded by the judgment of the Supreme Court in **State of Punjab (now Haryana) and others v. Amar Singh and another, 1974 PLJ 74**, which is evident from the following observations contained in paragraph 36:-*

“Another argument was suggested that the order even though passed on a compromise was as valid and binding as one passed on contest. May be, that as a broad proposition one may assent to it. But where compromise goes against a public policy, the prescription of a statute or a mandatory direction to the Court to decide on its own certain foundational facts, a razi cannot operate to defeat the requirement so specified or absolve the Court from the duty. The resultant order will be ineffective. After all, by consent or agreement parties cannot achieve what is contrary to law and

decree merely based on such agreement cannot furnish a judicial amulet against statutory violation. For, by private agreement, converted into a decree, parties cannot empower themselves to do that which they could not have done by the private agreement alone.”

It is not disputed by the learned counsel for the appellant that the suit property could not be transferred by way of gift except through a registered document because the provisions of the Transfer of Property Act relating to gifts were in force when the alleged gift was made or the consent decree passed in favour of the appellant. Passing of the title by way of oral gift thus being prohibited by law could not be achieved by the device of consent decree in view of the authoritative pronouncement of the Supreme Court in Amar Singh's case (supra).”

23. In the present case, as it has been found that no family settlement had taken place and rather giving of the property by Smt. Murti Devi to the defendant Siri Bhagwan amounted to an oral gift, which could not be effected without registration, therefore, the decree dated 11.11.1980 has been rightly held by the First Appellate Court to be null and void and not binding on the rights of the plaintiff - Smt. Murti Devi.

24. Consequent to the aforesaid discussion, the substantial question of law is answered accordingly. The present appeal fails and the same is dismissed. The judgment and decree passed by the First Appellate Court is upheld. In the peculiar circumstances of the case, parties are left to bear their own costs.

January 18, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No