

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

Date of Decision: January 05, 2023

1)RSA No. 407 of 1995

Siri Chand and others

-----Appellants

vs.

Ram Gopal and others

-----Respondents

2)RSA No. 1550 of 1995

Smt. Biro and another

-----Appellants

vs.

Ram Gopal and others

-----Respondents

Coram: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

**Present: Mr. Manish Soni, Advocate and
Mr. Amit Kumar Boken, Advocate
for the appellants in RSA-407 of 1995**

**Mr. Manu K.Bhandari, Advocate
for the appellants in RSA No. 1550 of 1995**

**Mr. Ashok Verma, Advocate
for respondents No. 1 to 4 in RSA No. 407 of 1995
for respondents No. 1, 2, 6 and 7 in RSA No. 1550 of 1995**

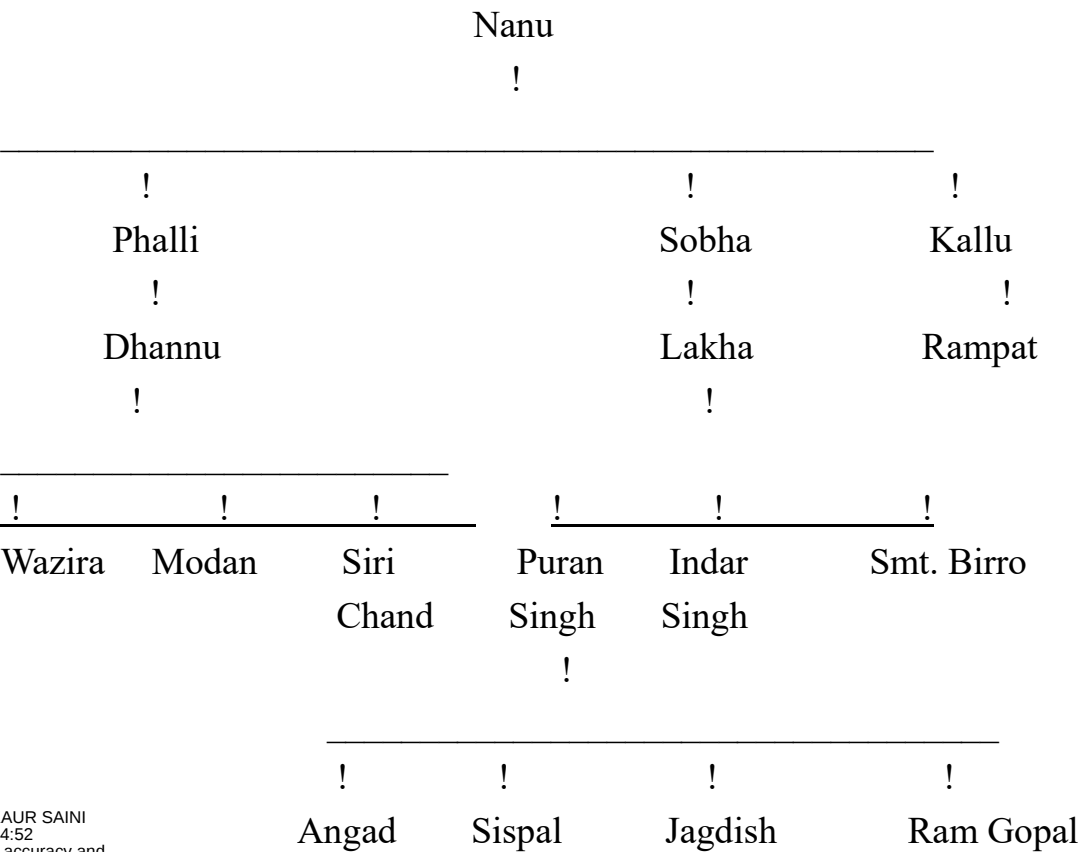
JAGMOHAN BANSAL, J.

1. By this order, RSA No. 407 and 1550 of 1995 which are arising out of common judgment and decree dated 16.12.1994 passed by Additional District Judge, Sirsa are hereby disposed of. For the sake of brevity and convenience, facts are borrowed from RSA No. 407 of 1995.

With respect to distribution of land of one relative (Rampat) who died issueless, parties are contesting since 1976 and it is second round of litigation before this court. In RSA No. 407 of 1995, there are three appellants namely Siri Chand, Madan and Wazira who are real brothers. In RSA No. 1550 of 1995, there are two appellants namely Smt. Biro and Inder Singh. Puran Singh is centre point of litigation because on the one hand there are cousins i.e. Wazira, Madan, Siri Chand of Puran Singh plus brother/sister i.e. Inder Singh & Biro of Puran Singh and on the other hand are his sons namely Angad, Sispal, Jagdish and Ram Gopal.

2. The appellants through instant second appeal are seeking setting aside of judgment and decree dated 16.12.1994 whereby Additional District Judge, Sirsa has reversed judgment and decree dated 12.2.1990 passed by Senior Sub Judge, Sirsa and further declared compromise decrees dated 01.05.1980 & 06.08.1985 illegal, null and void and not bindings on the rights of plaintiffs/appellants therein.

3. Before advertng with the issues involved and arguments of both sides, it would be inevitable to look at pedigree of the disputing parties. The pedigree table is reproduced as below:-



Appellants : Siri Chand, Madan, Wazira (in RSA-407 of 1995)

Smt. Biro and Inder Singh @ Inder Ram (in RSA-1550-1995)

Respondents: Angad, Sispal, Jagdish, Ram Goapl, Puran Singh, Inder Singh and Smt. Birro (in RSA- 407 of 1995)

Ram Gopal, Jagdish, Siri Chand, Modan, Waziram Sishpal, Angad and Puran Singh @ Puran (in RSA-1550 of 1995)

4. The brief facts emerging from the record and necessary for the adjudication of present appeals are that one person named as Rampat was owner of 170 kanal and 2 marla of agriculture land. He was issueless. He executed Will dated 19.2.1968 with respect to his aforesaid land in favour of Angad, Sispal, Jagdish and Ram Gopal who were sons of his one cousin namely Puran Singh. Inder Singh is real brother and Biro is real sister of Puran Singh. Wazira, Modan, and Siri Chand, children of Dhannu (cousin of Puran Singh) who are appellants in present appeal challenged aforesaid Will by way of a civil suit which came to be decreed in their favour vide judgment and decree dated 29.8.1979. Civil Judge vide judgment and decree dated 19.8.1979, declared aforesaid Will invalid and made appellants herein entitled to half share of the land in question.

An appeal by respondents herein came to be filed before Additional District Judge, Sirsa assailing decree dated 29.8.1979. During the pendency of the appeal, a **compromise came to be arrived at between the contesting parties. According to** compromise dated 6.8.1980, 62 kanal land came in the share of present appellants. The respondents No. 6 and 7 herein were parties to appeal before Appellate Court but were not party to compromise. They preferred RSA No. 2330 of 1981 before this Court which came to be allowed vide judgment and decree dated 25.9.1984. This Court upheld the compromise decree, however, remanded the matter to the extent of rights of respondents No. 6 and 7. The operative portion of the order dated 29.10.1984 passed by this

“Adverting to the merits of the appeal, I find that the judgment and decree of the trial court could not be displaced on the basis of compromise between some parties. It is not disputed before me that the compromise was arrived at by some of the parties and not all. If that is so, Order 23, rule 3, of the Code of Civil Procedure, provides that if a compromise is of part then only that part shall be decided in accordance with law. The dispute between the plaintiffs, Puran Singh and the Legatees stood settled on the basis of the compromise. Under the decree of the trial Court 2/3rd of half came to the share of Inder Singh and Smt. Beero. Since they were not parties to the compromise the appeal to the aforesaid extent had to be decided on merits. In fact, the appellants could go before the learned lower appellate court.

Instead of coming to this court and could urge that the appeal stood disposed of only to the extent of the interest of the parties to the compromise and the appeal qua them remained undecided. Anyhow, since they have come to this court, a similar direction deserves to be issued.

For reasons recorded above, this appeal is allowed, the judgment and decree of the learned lower appellate is modified and it shall remain confined to the half share of the plaintiffs for which they compromised with Puran Singh and legatees. As regards the share of Inder Singh and Smt. Beero as found in their favour by the trial court, the appeal shall be decided on merits. No costs.”

The Additional District Judge, Sirsa after remand passed judgment and decree dated 6.8.1985 and according to which, half share of the suit land came in the share of respondents No. 5 to 7 and 62 kanal land came in the share of present appellants. The rest 23 kanal and 01 marla came in the share of respondents No. 1 to 4 herein.

6. The respondents No. 1 and 2 vide Civil Suit dated 12.09.1985 challenged compromise judgment(s) and decree(s) dated 1.5.1980 and 6.8.1985 passed by Additional District Judge on the ground that compromise decree has been passed in violation of mandate of Order 32 Rule 7 of the Code of Civil Procedure (for short “CPC”) because at the time of compromise, respondents

No. 1 to 2 herein were minor.

6.1 Senior Sub Judge dismissed suit of respondents No. 1 and 2 vide judgment and decree dated 12.2.1990. The respondents No. 1 and 2 filed appeal before Additional District Judge which came to be allowed vide impugned judgment and decree dated 16.12.1994. The operative portion of impugned judgment dated 16.12.1994 reads as:

“22. Resultantly, this appeal is accepted. The impugned judgment and decree dated 1.05.1980 (Ex. P.2 and Ex. P3) passed on the compromise are declared illegal and null and void and not binding on the rights of the plaintiff-appellants. Consequently, the judgement and decree Ex. P- 4 and Ex. P-5 dated 6.8.1985 are also not binding upon the rights of the plaintiffs-appellants. In the peculiar circumstances of the case the parties are left to bear their own costs. Decree-sheet be prepared and file be consigned to records.”

6.2 The present regular second appeal is assailing judgment and decree dated 16.12.1994 whereby compromise, judgment and decree dated 01.05.1980 and 06.08.1985 passed by Additional District Judge have been set aside.

Contentions of the appellants

7. Learned counsel for the appellants submitted that compromise decrees dated 1.5.1980 and 6.8.1985 were passed with the consent of all the disputing parties. The father of present respondents have entered into compromise and there is nothing on record disclosing that they have acted contrary to the interests of their children. The respondents could have challenged compromise decree before the same court i.e. Additional District Judge who passed decrees dated 1.5.1980 and 6.8.1985 whereas respondents had challenged compromise decree before Senior Sub Judge, thus, suit and subsequent proceedings were contrary to mandate of law governing compromise decree. The respondents were major at the time of passing of decree dated 6.8.1985 and they opted to

remain silent at that point of time, however, challenged said decree subsequently by way of independent suit.

Learned counsel for the appellants further submits that the respondents herein had challenged compromise decree which has been set aside by the impugned judgment, however, decree dated 29.8.1979 has not been set aside. The decree dated 29.8.1979 had declared the Will in question invalid and the present appellants were declared entitled to half share i.e. 85 kanal of land in dispute. The setting aside of compromise decree which was passed in appeal of respondents herein, does not automatically amount to setting aside of decree dated 29.8.1979 passed by Civil Court.

The respondents had filed suit for simple declaration without seeking relief of possession and respondents had admitted in their cross examination that appellants herein are in possession of the suit land, thus, suit for simple declaration was not maintainable.

Learned counsel for the appellants cited judgments of Hon'ble Supreme Court of India in **Pushpa Devi Bhagat (D) Through LR. Smt. Sadhna Rai vs. Rajinder Singh and others 2006(5) SCC 566, M/s Sree Surya Developers and Promoters vs. N. Sailesh Prasad and others 2022(5) SCC 736, Mahila Bajrangi (Dead) Through Lrs. and others vs. Badribai and another (2003) 2 SCC 464**, judgments of this Court in **Jai Ram and others vs. Jagdish and others 2015 (47) RCR (Civil) 703, Tapinderjit Kaur Grewal and others vs. Rattanjit Kaur and others 2015 (8) RCR (Civil) 682, Smt. Sunita and others vs. Rajender Singh and another 2019 (2) PLR 471** and Judgment of Delhi High Court **Narinder Kumar and another vs. Tilak Raj and others 2002(4) AD (Delhi) 135**.

Contentions of the respondents

8. Learned counsel for the respondents submits that question of filing independent suit before Senior Sub Judge instead of assailing compromise

decree before the same court has been raised at this belated stage. Though

question of *res judicata* was raised before Courts below yet the question of non-maintainability of suit before a court other than a court which passed compromise decree was not raised. The consent decree was passed on the basis of compromise arrived at between the present appellants and father of minor respondents, however, it was contrary to interest of minors because they were entitled to 170 kanal of land on the basis of Will executed by Rampat whereas they have got very small share and present appellants have received 62 kanals of land out of total 170 kanal and 2 marla of land. The compromise was arrived at between the present appellants and father of the minor respondents, however, it was prejudicial to the interest of respondents, thus, Order 32 Rule 7 CPC was applicable. Learned Additional District Judge has passed speaking and reasoned order warranting interference. Learned counsel for the respondents relied upon judgments of this court in **Gupreet Singh vs. Chatterbhuj Goel 1991 PLJ 570, Mukhtiar Singh vs. Arjun Singh 1992 (2) HLR 696**, judgment of Orissa High Court **Bhagabat Sahu vs. Parbati Samal and others 1982 AIR (Orissa) 186** and judgment of Gujarat High Court **Malek Bavaji Amarkhan vs. The heirs of deceased amirkhan Salimkhan and others 1978 AIR (Gujarat) 42**.

9. Appeal was admitted on 09.03.1995, without framing substantial questions of law, however, from the above narrated facts and arguments of both sides, I find that following substantial questions arise for consideration of this Court:-

- (i) Whether respondents could challenge consent/compromise judgments and decrees passed by Additional District Judge before Senior Sub Judge i.e. a Court different from Court which passed consent/compromise decree?
- (ii) Whether act of parents was prejudicial to the interest of respondents herein?
- (iii) Whether suit for simple declaration without relief of possession was maintainable?

10. Question No. 1: Whether respondents could challenge compromise judgments and decrees passed by Additional District Judge before Senior

Sub Judge i.e. a Court different from Court which passed compromise decree?

The first appellate court vide impugned order dated 16.12.1994 has set aside compromise judgment(s) and decree(s) dated 01.05.1980 and 06.08.1985 invoking Order 32 rule 7 CPC. For the convenience Order 32 Rule 7 is reproduced as below:-

“7. Agreement or compromise by next friend or guardian for the suit.- (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

A) An application for leave under sub-rule (1) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor:

Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is for the benefit of the minor

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.”

A two Judge Bench of Hon'ble Supreme Court in **Pushpa Devi Bhagat (D) Through LR. Smt. Sadhna Rai (supra)** has dealt with question of setting aside of compromise decree. The Hon'ble Supreme Court has clearly held that

only remedy available to an aggrieved party is to approach the same Court.

Hon'ble Supreme Court applying Order 23 qua compromise decree has held:-

12. The position that emerges from the amended provisions of Order 23, can be summed up thus :

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of

the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21.8.2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27.8.2001), filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by second defendant was not maintainable, having regard to the express bar contained in section 96 (3) of the Code.”

A two judge Bench of Hon'ble Supreme Court in a recent judgment in **M/s Sree Surya Developers and Promoters (supra)**, after considering plethora of judgments has held that consent decree based upon compromise can be challenged before the same court which recorded the compromise. A separate suit challenging the consent decree is not maintainable. The relevant extracts of the judgment read as:-

“8. -----That thereafter it is specifically observed and held that a party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful i.e., it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable.

9. In view of the above decisions of this Court, the Trial Court was absolutely justified in rejecting the plaint on the ground

that the suit for the reliefs sought challenging the Compromise Decree would not be maintainable.

10 & 11 XXXXX

12. As observed hereinabove and it is not in dispute that as such the respondent No.1 – original plaintiff has already moved an appropriate application before the concerned Court, which passed the decree setting aside the compromise Decree by submitting an application under Order XXIII Rule 3A CPC therefore the said application will have to be decided and disposed of in accordance with law in which all the defences / contentions which may have been available to the respective parties on the validity of the Compromise Decree would have to be gone into by the concerned court in accordance with law and on its own merits.”

From the above cited judgments, it is quite evident that a consent decree based upon compromise can be challenged before the same court which passed consent decree. Learned counsel for the respondents has cited afore-mentioned judgments which do not deal with question of assailing consent decree before a court other than a Court which passed consent decree.

In view of the afore-cited judgments of Hon'ble Supreme Court, this Court is of the considered opinion that suit before Senior Sub Judge assailing the consent decree was not maintainable. The respondents herein, if had any grievance, were supposed to approach the same court i.e. the Court of Additional District Judge which passed consent decree on the basis of compromise. It is apt to mention here that Rampat had executed Will in favour of Angad Shishpal, Jagdish and Ram Gopal and at the time of passing consent decree dated 6.8.1985, none of them was minor. Ram Gopal and Jagdish had

filed Civil Suit No. 819 of 1985 dated 12.9.1985 before Senior sub Judge, Sirsa challenging judgments and decrees dated 1.5.1980 and 6.8.1985. Angad had filed Civil Appeal No. 345 of 1980 assailing decree dated 29.8.1979 passed by Civil Judge whereby Will was declared invalid and present appellants were declared entitled to half share of suit land. The initial compromise decree dated 1.5.1980 was challenged before this court in RSA No. 2330 of 1981 and this Court remanded the matter back to Additional District Judge, Sirsa who passed decree dated 6.8.1985 and on the said date, none of the plaintiff was minor.

The appellants before courts below have raised question of principle of res judicata. Question of maintainability of suit is a pure question of law which can be raised at any stage, thus, appellants were well within their right to raise question of maintainability of suit before incorrect forum.

There is another aspect of the matter. The Will was challenged by appellants herein and decree was passed in their favour. The Will was in favour of four persons. Two persons were party qua compromise decree upto this court and two persons have challenged compromise decree before Civil Court and Appellate Court. If compromise decree is set aside, it would amount to adjudication of suit in favour of four persons in whose favour Will was executed though two of them have already settled their dispute way back in 1984-85. It would also amount to declaration of earlier adjudication by different courts including this court a futile exercise.

The present appeal deserved to be allowed on the sole ground that consent decree was not challenged before the same court which passed consent decree, however, this Court finds it appropriate to advert with other issues raised by both sides.

11. Question No. 2: Whether act of parents was prejudicial to the interest of respondents herein?

Learned counsel for the respondent has submitted that as per Will, the

respondents were entitled to entire land in dispute whereas they got 23 kanal 01

marla in terms of compromise decree. 62 Kanal came in the share of appellants herein and 85 kanal 01 marla came in the share of father of the respondent and his brother/sister. The compromise arrived at by father of the respondents was prejudicial to the interest of the respondents who were minor at the time to execution of compromise, thus, compromise and consent decree was contrary to mandate of Order 32 Rule 7 of CPC.

Learned counsel for the appellants contended that Civil Court vide judgment and decree dated 29.8.1979 declared Will invalid and appellants became entitled to half share of land in dispute. The respondents herein preferred appeal before Appellate Court and entered into compromise which made appellants entitled to 62 kanal land whereas they were entitled to 85 kanal and 01 marla in terms of judgment and decree of Civil Judge. The father of the respondents consciously entered into compromise which entailed 23 kanal 01 marla land extra to family of the respondents. 23 Kanal and 01 marla land was specifically allotted to legatees i.e. Angad, Sispal, Jagdish and Ram Gopal (respondents herein).

The Courts time and again has clearly held that a compromise which is founded on fraud, suppression or coercion is bad in the eye of law. A decree based upon fraud may be set aside because fraud nullifies everything. If a compromise decree is based upon fraud and is contrary to interest of a minor, he has every right to challenge consent decree on attaining majority. In the judgments cited by Ld. Counsel for the respondents, courts have set aside compromise decree where it was found that parties to compromise acted contrary to the interest of the minor.

In the case in hand, the compromise was arrived at between father and respondents herein were represented by none else than their father. The Civil Court passed decree in favour of appellants herein and father of respondents had compromised the matter before Appellate Court. In compromise, the family of respondents got 23 kanal and 2 marlas land extra than decreed by Civil Judge.

As per respondents compromise decree was contrary to their interest because they were entitled to entire 170 kanal and 2 marlas land whereas they got small share out of total land. By impugned judgment, compromise decree passed by earlier appellate court stands set aside, however, judgment and decree dated 29.08.1979 passed by Civil Judge has not been set aside by Appellate court. The judgment(s) and decree(s) dated 1.5.1980 and 6.8.1985 were passed by appellate court on the basis of compromise and matter was not decided on merits qua validity of Will. This court while remanding the matter arising out of RSA No. 2330-1981 did not disturb compromise arrived at between the parties and only persons not party to compromise were permitted to be heard by Appellate Court. The first Appellate Court considered claim of two family members who were party to litigation but not party to compromise. The appellate court awarded them their share. The second time compromise decree was passed on 6.8.1985 and by said date, all the contesting respondents were major, however, they did not opt to raise objection. It is also relevant that Angad (brother of minors) filed appeal against decree dated 29.8.1979 before first Appellate Court.

In view of peculiar facts and findings, this court does not find that parents of respondents acted in prejudice to the interest of the respondents herein, thus, it cannot be concluded that compromise was against the interest of minors or first Appellate Court passed consent decree contrary to the interest of minors. The respondents are unnecessarily trying to disturb the settled litigation. It is contrary to principle of res judicata. Every matter deserves to be put to rest. Parties cannot repeatedly raise their grouse on the basis of one or another ground. Such type of litigation is against the public policy.

12. Question No. 3: Whether suit for simple declaration without relief of possession was maintainable?

Learned counsel for the appellants would submit that suit for declaration

Learned counsel for the respondents would submit that land in question was in the possession of appellants, however, respondents were having remaining land in their possession. The respondents would have approached revenue authorities for possession after getting decree in their favour declaring their ownership.

Learned counsel for the respondents did not cite any judgment in support of his contention, however, counsel for the appellants have cited judgment of co-ordinate bench of this Court in **Jai Ram and others (supra)**.

A two Judge bench of Hon'ble Supreme Court in **Union of India v. Ibrahim Uddin, (2012) 8 SCC 148** while dealing with similar issue has held that simple suit for declaration of title of ownership without seeking possession is not maintainable. It is barred by proviso to Section 34 of Specific Relief Act, 1963. The Apex Court has held:

Section 34 of the Specific Relief Act, 1963

55. The section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.

56. In *Ram Saran v. Ganga Devi* (1973) 2 SCC 60 this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of Section 34 of the Specific Relief Act, 1963 (hereinafter called "the Specific Relief Act") and, thus, not maintainable. In *Vinay Krishna v. Keshav Chandra* 1993 Supp (3) SCC 129 this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that

34 of the Specific Relief Act. (See also *Gian Kaur v. Raghubir Singh* (2011) 4 SCC 567.

57. In view of the above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief.

58. In the instant case, the suit for declaration of title of ownership had been filed, though Respondent 1-plaintiff was admittedly not in possession of the suit property. Thus, the suit was barred by the provisions of Section 34 of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground. The High Court though framed a substantial question on this point but for unknown reasons did not consider it proper to decide the same.

A co-ordinate Bench of this Court in **Jai Ram and others (supra)** has held that suit for declaration and permanent injunction is not maintainable if possession of suit land is not claimed. This Court while dealing with question of suit for declaration without claim for possession has held:-

“The matter does not end here. Appellant Jai Ram admitted that the impugned decree was suffered by his mother in favour of his brother Jagdish 16 years ago and that a mutation was sanctioned on the basis of the decree. It was further his admission that presently the suit land is owned and possessed by the persons in whose favour it had been alienated by his brother Jagdish by executing registered sale deeds. Once it was admitted by the appellants that the possession of the suit land was with the subsequent purchasers, their simplicitor suit for declaration and permanent injunction challenging the impugned decree dated 10.11.1994 and the subsequent sale deeds dated 06.11.1995 and

06.03.1998 in favour of respondents No.2 to 5 without claiming possession was not maintainable.”

12. Indubitably, in the case in hand, the land in question was in the possession of appellants. The respondents herein filed various applications under Order 39 Rules 1 and 2 of CPC for restraining the appellants from selling the land or restraining them from dispossessing from the suit land which came to be dismissed. Learned counsel is not disputing the fact that land in question, at the time of filing suit assailing compromise decree, was in the possession of appellants.

13. In view of above-cited judgment of this Court and undisputed fact that land at the time of filing suit was in the possession of the appellants herein and respondents did not seek relief of possession of land, the suit seeking declaration was not maintainable.

14. In view of the above findings, this court is of the considered opinion that impugned judgment and decree dated 16.12.1994 passed by Additional District Judge, Sirsa deserves to be set aside and accordingly set aside. Appeals arising out of impugned judgment and decree dated 16.12.1994 are hereby allowed.

(JAGMOHAN BANSAL)
JUDGE

January 05, 2023
paramjit

Whether speaking or reasoned: Yes
Whether reportable :Yes