

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

Sr. No.209

RSA No.299 of 2014 (O&M)

Date of Decision: 10.02.2023

Chetan Kaur through LRS

.... Appellant

Versus

Jaspreet Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Amit Jain, Senior Advocate with
Ms. Aeshna Jain, Advocate for the appellant.

Mr. Akshay Jindal, Advocate and
Mr. Gopal Soni, Advocate for respondents No.1 and 2.

TRIBHUVAN DAHIYA, J.

This is plaintiff's appeal against the judgment of reversal.

2. The facts of the case as pleaded are, the appellant/plaintiff (hereinafter referred to as 'plaintiff') being represented through LR, filed a suit for possession of 1/3rd share pertaining to Ajaib Singh, son of Sucha Singh in the total land measuring 225 *bighas* 19 *biswas*, and for permanent injunction restraining the defendants from selling or encumbering the suit land as well as the houses. Ajaib Singh son of Sucha Singh was real brother of the plaintiff, who died a bachelor on 18.09.2004 leaving behind plaintiff as his only legal representative. The other sister of Ajaib Singh, namely,

Amarjit Kaur @ Jeeto predeceased him in the year 1992. After Ajaib Singh's

death, the plaintiff is the only successor-in-interest to him. His mother had also predeceased him. When the plaintiff approached *halka patwari* for entering of mutation in her name, she came to know that suit land already stood entered in the name of defendants No.1 and 2 on the basis of a decree passed in civil suit No.56 of 09.02.1996, decided on 12.03.1996. Ajaib Singh was made to suffer the decree by paying a fraud and he, actually, did not consent to passing of the same. The counsel who represented defendants No.1 and 2 as well as Ajaib Singh before the trial Court were real brothers and were practicing jointly at that time. These facts, it was alleged, clearly established that the decree was got passed by defendants No.1 to 3 in a fraudulent manner without disclosing true facts to Ajaib Singh, and, therefore, the same was illegal, null and void.

3. The suit was contested by the respondents/defendants (hereinafter referred to as 'defendants'), admitting that Ajaib Singh died a bachelor. It was denied that plaintiff was the only legal representative of Ajaib Singh. The plaintiff was married, living with her husband at a village in Patiala. She was not successor of Ajaib Singh since during his lifetime, defendants No.1 and 2 used to take care and serve him. It was only on account of the deceased's love and affection to them that he willingly suffered the decree dated 12.03.1996 in their favour pertaining to his share. Therefore, defendants No.1 and 2 have become owners in possession of suit land; the plaintiff has no concern with it. The mutation with regard to transfer of ownership was in the knowledge of the plaintiff, and the suit was accordingly barred by limitation.

4. On the pleadings of the parties, the following issues were settled by the trial Court:

1. Whether plaintiff is entitled for possession of 1/4 share pertaining to Ajaib Singh in the suit land?
OPP
2. Whether judgment and decree dated 12.03.1996 is illegal, null and void qua the rights of the plaintiff?
OPP
3. Whether the plaintiff entitled for permanent injunction? OPP
4. Whether the suit is not legally maintainable? OPD
5. Whether suit is time barred? OPD
6. Whether plaintiff has no locus standi to file this suit? OPD
7. Relief.

5. Issues No.1, 2 and 3 were decided together by the trial Court holding that there was no misrepresentation or fraud, as alleged by the plaintiff. There was no evidence on record to doubt the validity of the judgment and decree, dated 12.03.1996 (Ex.P-4), suffered by Ajaib Singh. The proceedings were on the basis of documents signed by Ajaib Singh himself. More importantly, Ajaib Singh died only in the year 2004, i.e., after about eight years of suffering the decree. Had there been any fraud played upon him by his uncle or anyone else as alleged by plaintiff, he could have challenged the decree himself during his lifetime, which was not done by him. Therefore, the plaintiff has no right to challenge the decree.

5.1. The second ground of challenge to the decree was that defendants No.1 and 2 did not have any pre-existing rights in the suit property, therefore, the decree required compulsory registration under the

Indian Registration Act, 1908. Since that was not done, the decree could not be acted upon, nor could it confer any rights upon the defendants. The Trial Court accepted the arguments and held that Sarban Singh/defendant No.3 was uncle of Ajaib Singh, and defendants No.1 and 2 were grandsons of Sarban Singh. Therefore, they had no pre-existing rights in the suit property. Based on that, it was held that the decree in question, stated to be a compromise decree, dated 12.03.1996, created rights in them for the first time. As the immovable suit property was valued more than ₹100, it required compulsory registration. Accordingly, the Issues were decided in favour of the plaintiff holding them entitled to possession of 1/3rd share in the property of Ajaib Singh.

5.2. On Issue No.5, it was held that suit was not barred by limitation, though filed in the year 2004 because the period of limitation would start only from the date of knowledge of the alleged decree suffered by Ajaib Singh in favour of the defendants. The plaintiff came to know about it only after Ajaib Singh's death. Therefore, the suit was filed within the period of limitation. Issues No.4 and 6 were decided against the defendants since no argument on the same was raised by them. Accordingly, the suit was decreed.

6. The defendants filed appeal against the trial Court judgment and decree, and the plaintiff filed cross objections, which were decided together by a common judgment. The lower appellate Court partly affirmed findings of the trial Court by holding that there was no misrepresentation or fraud played upon Ajaib Singh by defendant No.3/Sarban Singh, so far as validity of judgment and decree dated 12.03.1996 suffered by the former

was concerned. It was held that there was no evidence on record that could

establish any fraud or misrepresentation. Ajaib Singh had himself appeared in the Court and suffered the statement (Ex.P10) on the basis of which the said suit was decreed in favour of respondents/defendants No.1 and 2. There was nothing on record to believe the said statement was the result of any misrepresentation. Merely because the advocates appearing for the parties happened to be real brothers, was no ground to hold that a fraud was played upon Ajaib Singh. There was nothing on record to prove any connivance between the advocates even.

6.1. On the ground of limitation, however, findings of the trial Court were reversed and it was held that Ajaib Singh was in the knowledge of judgment and decree dated 12.03.1996, therefore, limitation to challenge the same was three years therefrom by filing a separate suit. But during his lifetime, no such suit was filed by him. He died on 18.09.2004, after about eight and half years of passing the decree. And as per settled law, limitation to challenge a consent decree is three years. Therefore, no fresh cause of action can accrue to the plaintiff to file the suit after death of Ajaib Singh, who himself chose not to challenge the decree in question.

6.2. Further, the lower appellate Court held, only if right was created for the first time by a consent decree in favour of a party in the immovable property of the value of ₹100 or upwards, it would require registration, which was not the situation in the instant case. The Court has adverted to the definition of family to ascertain as to whether defendants No.1 and 2 constituted a family with Ajaib Singh, when the said family arrived at a settlement among them. Relying upon the attested copies of ration cards (Ex.D1 and D2), Bhog ceremony card (Ex.D3), voter identity card (Ex.D7), testimony (Ex.D8) and voter's list (Ex.D9), it was held that

Ajaib Singh was residing with family of defendants No.1 and 2 and was holding a joint ration card with them. These facts were also conceded by PWs-1 and 2 during their cross-examination. Besides, defendant No.1 and 2 were related to Ajaib Singh and were coparceners. Therefore, they had a chance of succeeding to the estate of deceased Ajaib Singh in some eventuality. On this reasoning, the lower appellate Court held that trial Court findings that Ajaib Singh's sister, i.e., the plaintiff, was entitled to his estate and defendants no.1 and 2 had no pre-existing right, could not be sustained.

6.3. It was further held by the lower appellate Court, since defendants No.1 and 2 were part of the family with Ajaib Singh, the only thing required to be seen was whether the right in property in their favour was created for the first time when the decree was passed or they had some pre-existing right in it. Since, on perusal of record it was clear that an oral family settlement was arrived at between the parties before filing of the suit, defendants No.1 and 2 were held to be having pre-existing rights in the suit property, and the decree in question would not require registration.

6.4. With these findings, the appeal was accepted while setting aside the findings of the trial Court on Issues No.1, 2, 3, 5 and cross objections filed by the plaintiff were dismissed. The unchallenged findings on Issues No.4 and 6 were affirmed.

7. Learned senior counsel for the appellant has contended that decree dated 12.03.1996 was a result of fraud and misrepresentation having been played upon Ajaib Singh, who was a simpleton and never gave his consent for the decree. The same was obtained by Sarban Singh/defendant No.3 with *mala fide* intentions without disclosing the real facts to him, and only on the pretext of getting the land partitioned. He further contended that

in the plaint for passing the consent decree (Ex.P2), there is no mention of the fact that plaintiff is the sole successor of Ajaib Singh, and the only existing Class-I heir of his estate. Still further, it has been contended that the oral family settlement on the basis of which respondents claimed pre-existing right in their favour, is a farce as there is no evidence on record to prove the same. Additionally, it has been contended that misrepresentation and fraud was apparent on record as the suit for consent decree was filed on 09.02.1996, however, filing of the written statement, recording of the statements of the parties and passing of the judgment, all happened the same day, i.e., on 12.03.1996. Besides, the suit pertaining to the consent decree was filed by two advocates, who were real brothers.

8. *Per contra*, learned counsel for the respondents has contended that the judgment passed by lower appellate Court is well reasoned and does not call for any interference as there is no fraud or misrepresentation in passing of the consent decree dated 12.03.1996. Defendants No.1 and 2 were very much part of family with Ajaib Singh and they could have entered into family settlement with him. Such family settlements have been duly recognized and accepted by this Court in a number of judgments. He referred to judgments of this Court passed in *Shanti Devi v. Mange Ram*, 2011 (1) PLR 680 and *Dharambir Singh and others v. Braham Prakash*, 2019 (2) HLR 471, to contend that once a consent decree was not challenged by a person who suffered the same during his lifetime, the same cannot be challenged after his death beyond the period of limitation. In the judgments cited, even an adopted son was taken to be a part of the family and the family settlement entered into with him was accepted to be valid; family for the purpose of family settlement is not to be construed narrowly.

9. Learned counsel for the parties have been heard and record perused.

10. So far as the issue with regard to misrepresentation and fraud played upon by Sarban Singh/defendant No.3 on Ajaib Singh leading to passing of the decree dated 12.03.1996 is concerned, there are concurrent findings of both the Courts below holding that there was no evidence on record which could establish any such fraud or misrepresentation. There is no error of law in the findings recorded, and the same do not call for any interference.

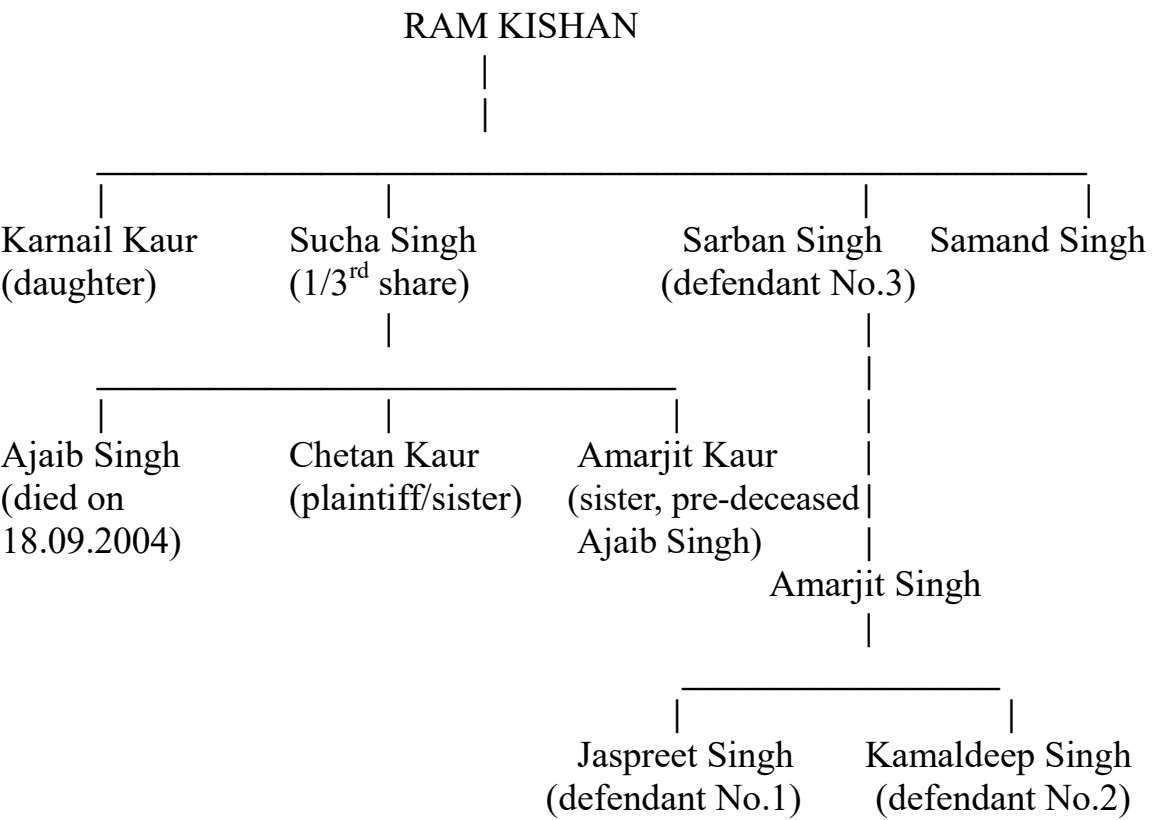
11. So far as the issue of defendants No.1 and 2 being part of the extended family with Ajaib Singh is concerned, there is no dispute about the fact that they were Ajaib Singh's uncle's grandsons. Evidence has also been led in the form of copy of ration card, copy of voter card, copy of voter list, etc., which show that the deceased was residing with family of defendants No.1 and 2. It is also a settled proposition of law that for the purpose of family settlement, the family is not to be narrowly construed and confined to immediate family members only. Family for this purpose has to be considered as a larger family consisting of members who may not be closely related. Law in this respect is settled and a reference in that regard can be made to judgment of the Supreme Court in *Smt. Badami (Deceased) by her LR v. Bhali*, 2012(11) SCC 574. Therefore, finding of the lower appellate Court holding defendants No.1 and 2 to be part of the family with Ajaib Singh need not be disturbed, as the same does not suffer from any error of law.

12. The remaining issues of pre-existing right of defendants No.1 and 2, and the suit being within limitation or not give rise to the following substantial questions of law:

(i) Whether the lower appellate Court has gone against the settled proposition of law in holding that defendants No.1 and 2 have a pre-existing right in the suit property being a part of the family with Ajaib Singh, as also on the basis of an oral family settlement?

(ii) Whether the suit was barred by limitation?

13. To consider and appreciate the first substantial question of law, it is apposite to reproduce the pedigree table of the parties hereunder:



13.1 Sucha Singh had three descendants Ajaib Singh, Chetan Kaur (plaintiff) and Amarjit Kaur. Ajaib Singh died on 18.09.2004 and his second sister, Amarjit Kaur, predeceased him in the year 1992. As per mutation (Ex.P6) sanctioned in the name of Ajaib Singh on the basis of Sucha Singh’s Will, apart from Ajaib Singh and his two sisters, Parsini was shown as Sucha

Singh's wife; who also died in the year 1987. Undisputedly, Ajaib Singh died issueless and unmarried on 18.09.2004. The fact stand duly established on record by way of statements of Sant Singh husband of Amarjit Kaur-PW1, corroborated by defendant No.3/Sarban Singh, DW2, in his cross examination. Therefore, plaintiff-Chetan Kaur remains the only surviving heir to Ajaib Singh's share to the extent of 1/3rd of the suit land.

13.2 In this factual background, it cannot be said that defendants No.1 and 2, the grandsons of defendant No.3, had any pre-existing right in the suit land or chance of succeeding to Ajaib Singh's estate. Findings of the lower appellate Court to that extent, based on copies of ration card, voter card, voter list, Bhog ceremony card, etc., are not sustainable. The said documents cannot confer any pre-existing right on defendants No.1 and 2 with respect to the suit land, as the same are not documents of title. Merely by being considered as part of the family with Ajaib Singh, defendants No.1 and 2 cannot be said to have any pre-existing right in his property also; that too when the sole surviving Class-I heir, the plaintiff, is alive. The two concepts of 'family for the purpose of family settlement' and 'pre-existing right in property' are different, having different connotations. The latter cannot be read into the former. Right or title in a property cannot be conferred merely because a person is a part of the wider family, as understood for the purpose of family settlement.

13.3. It needs to be decided whether in the absence of pre-existing right in the suit land in favour of defendants No.1 and 2, the decree in question, dated 12.03.1996, required compulsory registration under the Indian Registration Act, 1908. As per settled proposition of law, the only situation when a decree will not require registration is, if it does not create

any right, title or interest in immovable property to the value of ₹100 or upwards in favour of any of the parties to the suit. Meaning thereby, there has to be a pre-existing right. In the absence of any pre-existing right in favour of defendants No.1 and 2, as held hereinabove, the said decree had to be suffered for settlement of a dispute between the parties to avoid registration. If a dispute is settled between members of a family, there can be a family settlement or arrangement to resolve it. Existence of a dispute is the foremost condition to validify such a settlement. Since in the absence of dispute, there cannot be a family settlement; nor can there be any consent decree suffered.

13.4. A reference in that regard can be made to law laid down by Supreme Court in *Smt. Badami* case (*supra*). The relevant paragraph of the said judgment reads as under:

24. In *Kale and others v. Deputy Director of Consolidation and others*, AIR 1976 SC 807, it has been held that the object of the arrangement is to protect family from filing long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family.

Their Lordships opined that the family is to be understood in the wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of claim or even if they have a spes successionis so that future disputes are sealed forever and

litigation are avoided. What could be the binding effect and essentials for a family settlement were expressed thus:-

"10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

- (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;
- (3) The family arrangement may be even oral in which case no registration is necessary;
- (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the

court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) [(sic) (Sec.17(1)(b?))] of the Registration Act and is, therefore, not compulsorily registrable;

- (5) The members who may be parties to the family arrangements must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same.

13.5 In the instant case, there is no evidence on record to establish existence of any dispute in the family. There is no averment to that effect either; the plaint only states in para 3 that *“the land in dispute had been given to the plaintiffs by the defendant in oral family settlement on account of services rendered by them in the last week of December 1995 and the defendant had delivered the vacant possession of the suit land, hence the plaintiffs have become the owners of the suit land in December, 1995.”*

There is no pretence of any dispute even, in the plaint. Nor is there any evidence to establish any family settlement between members of the family or between defendants and Ajaib Singh. Besides, undisputedly, defendants No.1 and 2 were minors, approximately six to seven years old, at the time of passing of the decree in 1996. There could not have been any family settlement, oral or otherwise, between them and Ajaib Singh. Therefore, findings recorded by the lower appellate Court that oral family settlement was arrived at between the parties before filing the suit that resulted in passing of the decree on 12.03.1996, are unsustainable having been recorded in the absence of any evidence. Accordingly, the decree in question required compulsory registration, which was not done.

14. The second substantial question of law is on the issue of limitation. Although, Ajaib Singh died on 18.09.2004, after eight and a half years of passing of the decree dated 12.03.1996, it needs to be seen whether the plaintiff can be attributed any knowledge of the said decree. The plaintiff was married to Sant Singh and settled in her matrimonial home in a village in District Patiala, as established on record. Ajaib Singh used to reside with the family of defendants No.1 and 2. She, therefore, had no occasion to know about the decree suffered by Ajaib Singh. In the suit filed by defendants No.1 and 2 also, there was no mention of the fact that plaintiff existed as sole successor to Ajaib Singh, nor was she impleaded as a party thereto. It would show there was a deliberate attempt to conceal the facts about passing of the decree from the plaintiff. It was only after death of Ajaib Singh in 2004, that the plaintiff came to know about the decree suffered by him, and soon thereafter, the present suit was filed within two

months of his death. As per settled proposition of law, the limitation in such a situation starts to run from the date of knowledge of the decree only.

14.1 The lower appellate Court considered the decree in question to be a consent decree. Since limitation to challenge such a decree is three years from the date of passing the decree, the suit has been held to be barred by limitation. This, in fact, is not the case. The decree in question is not a consent decree, as the same is based on admissions in the written statement filed by Ajaib Singh. The suit leading to passing of the decree dated 12.03.1996, was instituted on 09.02.1996; whereupon, a written statement admitting the plaintiff’s claim was filed, and the defendants’ statement to that effect was recorded on 12.03.1996. On that basis the decree in question was passed. It was a judgment and decree on admission under Order XII Rule 6 CPC, and not a consent/compromise decree. Therefore, findings of the lower appellate Court on Issue No.5 are unsustainable, and the suit in question cannot be said to be barred by limitation.

15. In view of the aforesaid, findings of the lower appellate Court on Issues No.1, 2, 3 and 5 are set aside and judgment and decree passed by the trial Court is upheld. Accordingly, the suit is decreed with costs.

16. Appeal stands allowed.

17. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

10.02.2023

Maninder	Whether speaking/reasoned	:	Yes
	Whether reportable	:	Yes