



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4354-1999 (O&M)

Reserved on: 03.09-2024

Pronounced on: 13.09.2024

TALWANT SINGH

... APPELLANT

Vs.

BHAGWANT SINGH AND ANOTHER

.... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Amit Jain, Sr. Advocate, with
Mr. Aryaman Thakur, Advocate, for the appellant.

Mr. A.K. Kansal, Advocate, for respondent No.1.

DEEPAK GUPTA, J.

Plaintiff of the suit has approached this Court by way of present RSA against the concurrent findings of the Courts below.

2. Civil Suit No.444 of 1993/1991 filed by plaintiff Talwant Singh (*appellant herein*) seeking a decree of declaration against defendants Bhagwant Singh and Daljit Singh (*respondents herein*) was dismissed by the trial Court of Id. Civil Judge (Sr. Divn.) Panchkula on 02.09.1997. Not satisfied with the same, Plaintiff Talwant Singh filed Civil Appeal No.134 of 1997 but the said appeal has been dismissed by the Appellate Court of Id. District Judge, Ambala vide judgment dated 27.09.1999. Against this concurrent finding, the plaintiff has approached this Court.

3.1 Sole plaintiff-Talwant Singh and the two defendants-Bhagwant Singh and Daljit Singh are real brothers being sons of Ram Singh. Subject matter of the suit is House No.220, Sector 11 Panchkula. Admittedly, said house stands in the name of defendant No.1-Bhagwant Singh. Plaintiff brought the suit seeking declaration to the effect that he is owner in possession to the extent of 1/3 share in the said house. His stand is that parties had purchased the house

out of joint family funds from Housing Board, Panchkula and have been residing therein. They had raised construction of the house by spending jointly. Plaintiff further relied upon a family settlement purported to have been effected on 28.08.1986, as a result of which the house was partitioned amongst the three brothers. Two rooms existing on the first floor were given to the plaintiff, whereas two rooms each on the ground floor were given to the two defendants. The latrine and bathroom on the ground floor were agreed to be shared commonly by all the parties. As defendants threatened to interfere in the possession of the plaintiff, so the present suit was filed.

3.2 Defendants in their written statement denied the joint nature of the suit property. It was pleaded that plaintiff was having a separate mess and his individual business for the last more than 15 years. They denied that parties ever constituted any Joint Hindu Family as was alleged. It was further claimed that defendants have purchased the house from their own resources and personal funds in the name of defendant No.1. It was further pointed out that alleged agreement dated 28.08.1986 was never signed by defendant No.2-Daljit. It was further claimed that defendants were in exclusive possession of the suit property in equal share, though plaintiff was residing in a portion thereof as a licensee with the consent of the defendants without payment of any rent and as defendants asked the plaintiff to vacate the portion, required for the marriage, he refused to do so and rather, filed the present suit with *mala fide* intention. Denying any right, title or interest of the plaintiff in the suit property, defendants prayed for dismissal of the suit.

3.3 Necessary issues were framed. Evidence produced by both the parties was taken on record. It was found by Id. trial Court that plaintiff had failed to prove the document dated 28.08.1986 as a family settlement. It was further found that plaintiff had failed to prove that he had 1/3 share in the suit property and as such, he was not entitled to the injunction as prayed by him. Based upon these findings on the material issues, suit was dismissed by the trial Court on 02.09.1997. The First Appellate Court vide its judgment dated 27.09.1999, affirmed these findings.

4. It is contended by Id. senior counsel for the appellant that merely because defendant No.2-Daljit Singh is not signatory to the family settlement, it does not mean the same is not proved, particularly when the family settlement is proved to have been duly acted upon, inasmuch as all the three brothers are in possession of separate portions of the suit property. It is further contention of Id. senior counsel that defendant-Bhagwant Singh in his testimony as DW3 admitted his signature on the family settlement (Ex.P1) and therefore, even if one of the attesting witnesses namely, Darshan only proved his signature on the agreement and failed to prove the contents thereof, it does not matter. It is also pointed out that the statement of DW3-defendant No.1 to the effect that his signatures were taken on the family settlement (Ex.P1) under force, is beyond pleadings and so cannot be believed. It is also urged that as all the three brothers had interest in the suit property and had antecedent rights therein, therefore, mere non-registration of the family settlement (Ex.P1) is of no effect. It is argued that defendant No.1 being signatory to the family settlement, he is estopped from denying thereof on the ground of non-registration.

5.1 Refuting the aforesaid contentions, it is argued by Id. counsel for the contesting respondent No.1 that it is the specific case of the plaintiff that suit property was purchased out of the Joint Hindu Family funds. However, there is absolutely no evidence that the parties constituted a Joint Hindu Family or that said family had a joint nucleus, by which the suit property could have been purchased. The contention is that onus is upon the plaintiff to prove his assertion that suit property had been purchased from Joint Hindu Family funds and in the absence of any nucleus, the said assertion made by the plaintiff is not proved on record. It is contended further that in the absence of any evidence to show that there was any common nucleus, there was no antecedent right, title or interest of the plaintiff in the suit property and therefore, non-registration of the family settlement relied upon by the plaintiff is quite significant and it does not have any legal value in the absence of any registration.

5.2 It is further the contention of the Id. counsel that defendant No.2-Daljit being not signatory to the family settlement (Ex. P1), the alleged family settlement is of no effect because even if the contention of the plaintiff is accepted to the effect that the three brothers were co-sharers in the suit property, it was incumbent that all the co-sharers signed the family settlement, but in the absence thereof, Ex.P1 cannot be relied upon and so, has been rightly rejected by both the Courts below.

5.3 Attention is further drawn towards testimony of plaintiff, who was examined as PW2 and admitted that there was no joint family account in the name of any joint family, by which the suit property could have been purchased. Id. counsel contends that plaintiff failed to prove that he contributed in any manner to purchase the suit property. Even if the receipts placed on record by the plaintiff are taken into consideration, these do not prove that these were meant as a share to purchase the property in dispute.

5.4 Further attention is drawn towards the testimony of defendant No.1-Bhagwant Singh as DW3, Defendant No.2-Daljit as DW6 and the mother of the parties Smt. Amar Kaur, who examined as DW5, have denied any family settlement to have been effected amongst the parties. They have also denied about the existence of any Joint Hindu Family. Id. counsel submits that in these circumstances, the suit filed by the plaintiff has been rightly dismissed by the Courts below and that there is no scope for any interference with the concurrent findings as recorded by the Courts below. He prayed for dismissal of the appeal.

6. This Court has considered submissions of both the sides and have appraised the record carefully.

7. It is not in dispute that property in question was allotted in the name of defendant No.1-Bhagwant Singh by Housing Board, Haryana. Plaintiff has claimed that suit property was purchased out of the joint Hindu family funds and so, it is joint of the three brothers. However, there is neither any pleading nor any evidence to show that there was any common nucleus held by Joint Hindu Family purported to be constituted by the parties.

8. In ***Bhagwant Sharan (Dead through LRs) Vs. Purushottam and others, 2020 (2) RCR (Civil) 515***, it has been held by Hon'ble Supreme Court that onus is upon the person, who alleges the existence of the joint undivided family to prove the same. It will be apt to reproduce the observations made by Hon'ble Supreme Court in this regard, which reads as under: -

“10.The law is well settled that the burden is on the person who alleges that the property is a joint property of an HUF to prove the same. Reference in this behalf may be made to the judgments of this Court in ***Bhagwan Dayal vs. Reoti Devi, 1962 AIR (SC) 287***. Both the parties have placed reliance on this judgment. In this case this Court held that the general principle is that a Hindu family is presumed to be joint unless the contrary is proved. It was further held that where one of the coparceners separated himself from other members of the joint family, there was no presumption that the rest of coparceners continued to constitute a joint family. However, it was also held that at the same time, there is no presumption that because one member of the family has separated, the rest of the family is no longer a joint family. However, it is important to note that this Court in ***Bhagwati Prasad Sah and Ors. vs. Dulhin Rameshwari Kuer and Ors., 1951 2 SCR 603***, it held as follows:-

“.... Except in the case of reunion, the mere fact that separated coparceners chose to live together or act jointly for purposes of business or trade or in their dealings with properties, would not give them the status of coparceners under the Mitakshara law.”

The Privy Council in ***Appalaswami v. Suryanarayanamurti, 1948 ILR (Madras) 440*** held as follows:

"The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively 2 (1951) 2 SCR 603 I.L.R. 1948 Mad.440 that the property was acquired without the aid of the joint family property”.

The aforesaid view was accepted by this Court in ***Shrinivas Krishnarao Kango v. Narayan Devji Kango and Ors., 1955 1 SCR 1***. In ***D.S. Lakshmaiah and Ors. v. L. Balasubramanyam and Ors., 2003 10 SCC 310***, this Court held as follows:

“The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.”

Similar view was taken in ***Mst Rukhmabai v. Lala Laxminarayan and Others, 1960 2 SCR 253*** and ***Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade, 2007 1 SCC 521***. The law is thus well settled that the burden lies upon the person who alleges the existence of the Hindu Undivided Family to prove the same.

11. Normally, an HUF can only comprise of all the family members with the head of the family being karta. Some property has to be the nucleus for this joint family. There is cleavage of opinion as to whether two brothers of a larger group can form a joint family. But assuming that such a joint family could have been formed by Madhav Prashad and Umrao Lal, the burden lies heavily on the plaintiff to prove that the two of them joined together to form an HUF. To prove this, they will have to not only show jointness of the property but also jointness of family and jointness of living together.”

9.1 Further, in ***Gurmukh Ram Madan Vs. Bhagwandas Madan, 1998 (7) SCC 367***, Hon’ble Supreme Court has held that when a suit for partition was filed claiming that property was jointly owned and possessed by the parties, and it was found from the title deeds that house was exclusively in the name of the defendants and there was no material to show that house in question was joint or was procured from joint funds, the plea of plaintiff regarding equal share in the house was not acceptable. It was found by Hon’ble Supreme Court that there was no material to show that the property was joint or the family

possessed joint funds. There was no nucleus to augment or add by way of accretion to the same. There was no material to show that the appellant plaintiff had contributed any sum of money in the purchase of the house or made any contribution thereof. The evidence on record outweighed the proof sought to be placed by the appellant in this regard. It was found that firstly the title deed stood in the name of the respondent alone. Respondent had placed material before the Court that he had purchased the building material at different stages to raise the construction and had been given possession exclusively right from the date of construction.

9.2 The facts of the aforesaid case are quite similar to the present case. In this case also, the title deed is in the name of defendant No.1. Plaintiff has failed to prove any common nucleus of the Joint Hindu Family to augment or add by way of accretion to the same.

10. Plaintiff during his testimony has admitted that there was no account of the Joint Hindu Family. In the absence of any evidence to show any Joint Hindu Family funds or any nucleus for the Joint Hindu Family, the suit property cannot be held to be the Joint Hindu Family property or the coparcenary property of the parties. It is not the case of the plaintiff that suit property was inherited by the parties from any common ancestor. In these circumstances, the findings of the Courts below to the effect that suit property is not Joint Hindu Family or coparcenary property, is affirmed.

11. Proceeding further, though names of all the three brothers are incorporated in the family settlement (Ex.P1) to be party to the said settlement, but it is not disputed that defendant No.2-Daljit is not a signatory to the said family settlement. Even if it is assumed that the parties were co-sharer in the suit property, as is claimed by the plaintiff, no family settlement or partition can take effect in the absence of all the parties signing the settlement or the partition. Reliance in this regard can be placed upon **Narendra Kante Vs. Anuradha Kante and others, 2010 (2) SCC 77**, wherein it was held by Hon'ble Supreme Court as under: -

“As far as the second question is concerned, a Deed of Family Settlement seeking to partition joint family properties cannot be relied upon unless signed by all the co-sharers. In the instant case, admittedly, the Respondent No.8, Sau. Pratibha, was not a signatory to the Deed of Settlement dated 8th February, 1967, although, she is the daughter of Bapu Saheb Kante by his first wife. As was held in the case of **M.N. Aryamurthy (supra)**, under the Hindu Law if a Family Arrangement is not accepted unanimously, it fails to become a binding precedent on the co-sharers. Both Mr. Vivek Tankha and Mr. Anoop G. Chaudhary, learned Senior Advocates, brought this point to our notice to indicate that all the co-sharers had not consented to the Deed of Family Settlement which could not, therefore, be relied upon. The argument would have had force had it not been for the fact that acting upon the said Settlement, the appellants had also executed sale deeds in respect of the suit property. Having done so, it would not be open to the appellants to now contend that the Deed of Family Settlement was invalid.”

12. Still further Ex.P1 is an unregistered document. Ld. counsel for the appellant has referred to **Ravinder Kumar Grewal and others Vs. Manjit Kaur and others, 2020(3) RCR (Civil) 393**, wherein Hon’ble Supreme Court by making reference to **Kale Vs. Dy. Director of Consolidation (1976) 3 SCC 119** has held as under:

“Be that as it may, the High Court has clearly misapplied the dictum in the relied upon decisions. The settled legal position is that when by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangement ought to be governed by a special equity peculiar to them and would be enforced if honestly made. The object of such arrangement is to protect the family from 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, as observed in **Kale (supra)**. In the said reported decision, a three– Judge Bench of this Court had observed thus: –

“9. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is

undoubtedly a milestone in the administration of social justice. That is why the term “family” has to be understood in a 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 a claim or even if they have a spes successionis so that future disputes are sealed forever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits.”

(emphasis supplied)

In paragraph 10 of the said decision, the Court has delineated the contours of essentials of a family settlement as follows: –

“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) of the Registration Act and is, therefore, not compulsorily registrable;

5) The members who may be parties to the family arrangement 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;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”

(emphasis supplied)

Again, in paragraph 24, this Court restated that a family arrangement being binding on the parties, clearly operates as an estoppel, so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same. In paragraph 35, the Court noted as follows: –

“35. ... We have already pointed out that this Court has widened the concept of an antecedent title by holding that an antecedent title would be assumed in a person who may not have any title but who has been allotted a particular property by other party to the family arrangement by relinquishing his claim in favour of such a donee. In such a case the party in whose favour the relinquishment is made would be assumed to have an antecedent title.”

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While rejecting the argument regarding inapplicability of principle of estoppel, the Court observed as follows: –

“38. ... Assuming, however, that the said document was compulsorily registrable the courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the

parties after having taken advantage under the arrangement to resile from the same or try to revoke it.” (emphasis supplied)

13. I am afraid that the above authority cited by Id. senior counsel for the appellant is not applicable to the facts of the present case, as there is no evidence in the present case of the plaintiff having any antecedent right, title or interest in the suit property, as he has failed to prove that there was any nucleus of Joint Hindu Family fund, whereby the suit property could have been purchased by the three brothers as was claimed by him and as has already been noticed earlier.

14. Further Id. senior counsel for the appellant has also referred on ***Narender Kante Vs. Anuradha Kante and others, 2010 (1) RCR (Civil) 465*** in order to contend that even if the deed of family settlement is not signed by all the co-sharers, it will not make the deed invalid, if the co-sharers acted upon the same and sold the property falling into their respective share.

15. Again the cited authority, as relied by counsel for the appellant, is not applicable to the facts of the present case. No doubt that plaintiff in this case has been found to be in possession of a portion of the suit property, but there is no cogent evidence that his possession in the property is as a result of family settlement allegedly effected amongst the parties. The stand of the plaintiff in this regard is not only denied by the two defendants, but also by the mother of the parties, who has denied any such family settlement. In the case of ***Narendra Kante's (Supra)*** before Hon'ble Supreme Court, the co-sharers had not only acted upon the family settlement, rather they had sold the property falling into their respective shares and it was in those circumstances that non-signing by all the co-sharers was held to be immaterial. It is not so in the present case, as there is no evidence that any of the party has sold any portion of the suit property or have acted upon the family settlement in any other manner.

16. Still further, had the purported family settlement EX.P1 been acted upon ever as is claimed by the plaintiff, the plaintiff would have taken the matter to the any of the arbitrators as mentioned in the family settlement

Ex.P1. However, both the arbitrators as mentioned in Ex.P1 testified before the Court that parties never approached any of them for mediating between the two parties. The same itself shows that the agreement Ex.P1 was never acted upon.

17. This Court finds that there is no substance so as to convince this Court to take a view different from the concurrent views taken by both the Courts below. No question of law much less substantial question of law has been found to be involved in the present case, which is sine qua non for interference at the hands of the Court while exercising its jurisdiction under Section 100 CPC as held by Hon’ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286.**

18. On account of the entire discussion as above, it is held that the Courts below did not commit any error in coming to the conclusion that plaintiff failed to prove that he had any share in the suit property or that it was purchased from the Joint Hindu Family funds of the family. This Court does not find any reason to interfere in the well reasoned concurrent findings of facts recorded by the Courts below.

19. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

13.09.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No