

2024:PHHC:044107



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

204

**CWP-4356-2016 (O&M).
Date of Decision: 23.07.2024.**

BALBIR SINGH

... Petitioner

Versus

PERMANENT AND CONTINUOUS LOK ADALAT AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Gurmandeep Singh Sullar, Advocate,
for the petitioner.

Mr. Nonish Kumar, Advocate,
for respondents No.2 and 3.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the decree/award dated 30.08.2007/08.09.2007 (Annexures P-4 and P-5), passed by the Permanent Lok Adalat, Samjhauta Sadan, Karnal as well as the order dated 11.05.2015 (Annexure P-9) whereby the suit instituted by the petitioner for declaration to set aside the decree dated 30.08.2007 was rejected on the ground that a separate suit to challenge the decree of the Permanent Lok Adalat, is not maintainable since the remedy is to approach the Hon'ble

2024:PHHC:044107



High Court by way of a writ petition. The application filed by respondent under Order 7 Rule 11 of the Code of Civil Procedure, 1908, was allowed.

2 Briefly summarized, the facts of the present case are that the petitioner claimed to be the owner in possession of land measuring 81 kanals 12 marlas situated in village Gondar, Tehsil and District Karnal. Shri Chain Singh common ancestor of the parties owned 47 acres of land and that an area measuring 81 kanals i.e. about 10 acres of land approximately fell to the share of the petitioner. He claims to have purchased 7-8 acres of land from the income acquired from the aforesaid 10 acres of land in Uttar Pradesh. A Civil Suit No.775 of 2007 was instituted by respondents No.2 and 3 Gurmeet Singh and Harjinder Singh (Brothers) against the petitioner herein seeking the following relief:-

“It is therefore, humbly prayed that a decree for Declaration to the effect that the plaintiff no.1 is exclusive owner in possession of land to the extend of 393 share i.e. land measuring 5 Kanals-5 Marlas being 1575/2010 share out of the land measuring 6K-14M comprised in Khewat No. 687-Min/643, Khatoni no. 1422, total Kittas 2 and land measuring 14 Kanals - 8 Marlas being ½ share of 575/2875 share out of the land measuring 143K-15M comprised in Khewat No. 759Min/701, Khatoni No. 1542 and 1545, total Kittas 26, and the plaintiff no.1 is also owner in possession of the land to the extent of 580 share and the plaintiff no.2 is the owner in possession to the extent of 659 share out of total 1239 share comprised in Land Measuring 18 Kanals- 5 Marlas being 365/4864 share out of 243 Kanals- 4 Marlas comprised in Khewat No.689 Min, Khatoni No. 1430, Kittas 49, land

2024:PHHC:044107



measuring 22 Kanals-8 Marlas being 3037/7219 share out of the land measuring 53K-15M comprised in Khewat No. 693, Khatoni No. 1437, total Kittas 8 and land measuring 21 Kanals 6 Marlas being 2405/7219 share out of the land measuring 64K-0M comprised in Khewat no. 690 Min/ 646, Khatoni No. 1431, total Kittas 12, situated at village Gonder, Sub Tehsil Nissing, Distt Karnal vide Jamabandi for the year 2001- 02, may kindly be passed in favour of the plaintiffs and against the defendants with costs.”

3 It was specifically stated in the said civil suit that the land in Uttar Pradesh was purchased from the joint funds as Joint Hindu Family property and that the same was not in exclusive possession of the petitioner herein. It was also pleaded that to resolve the dispute amongst the parties, an oral family settlement had taken place on 13.04.2003 at village Gondar, Sub Tehsil Nissing, District Karnal, in the presence of near relatives of the parties and respectables. By virtue of the said family settlement, the petitioner (defendant no.1 therein) relinquished his ownership rights over the land situated in the revenue estate of village Gondar, Tehsil Nissing, District Karnal measuring 81 kanals 12 marlas while the respondents No.2 and 3 (being plaintiffs therein) gave up their rights over the land purchased in Uttar Pradesh. It was alleged that the petitioner herein refused to abide by the above said oral family settlement and to get the revenue entries corrected, thus, compelling them to file the said civil suit for declaration. On recording the possibility of an amicable resolution of the dispute between the parties, the matter was sent to the Permanent Lok Adalat,

2024:PHHC:044107



Karnal by the Civil Judge (Junior Division) vide order dated 21.08.2007. A fresh compromise was effected between the parties, which was placed on the record of the Permanent Lok Adalat, Karnal. The relevant extract of the terms and conditions incorporated in the said settlement read thus:-

“2. That the defendant no.1 is elder brother of the plaintiffs, whereas the defendant no.2 is the father and defendant no.3 is the mother and defendant no.4 is sister of the plaintiffs and constituted a joint Hindu Family and are also the members of joint Hindu Family.

3. That out of the joint Hindu Family Funds, the defendant no.2 had purchased some land in U.P. and Haryana in the name of the defendant no.1 is recorded to be the owner of agricultural land measuring 81 Kanals- 12 Marlas situated in village Gonder, Sub Tehsil Nising, Tehsil Distt. Karnal, which is a joint Hindu Family property and the detail of which is as under:

a. Land measuring 5 Kanals-5 Marlas being 1575/2010 share out of land measuring 6K-14 M comprised in Khewat No. 687-Min /643, Khatoni No. 1422, total Kittas 2,

b. Land measuring 14 Kanals 8 Marlas being ½ share of 575/2875 share out of the land measuring 143K-15M comprised in Khewat No. 759-Min/701, Khatoni No. 1542, total Kittas 26,

c. Land measuring 18 Kanals 5 Marlas being 365/4864 share out of 243K-4M comprised in Khewat No. 689- Min, Khatoni No. 1430, total Kittas 49,

2024:PHHC:044107



d. Land measuring 22 Kanals 8 Marlas being 3037/7219 share out of 53K-15M comprised in Khewat No. 693, Khatoni No. 1437, total Kittas 8,

e. Land measuring 21 Kanals 6 Marlas being 2405/7219 share out of land measuring 64K-0M comprised in Khewat No. 690-Min/646, Khatoni No. 1431, total Kittas 12, vide Jamabandi for the year 2001-02.

4. That there used to remain a dispute between the parties to the suit regarding the joint Hindu Family property, so, to maintain the peace and harmony amongst all the family members, an oral family settlement cum-arrangement took place on 13.04.2003 at Village Gonder, Sub Tehsil Nissing, Distt. Karnal in the presence of the near relatives of the parties and respectable persons of the village. In the said family settlement, the defendants relinquished their ownership rights of the suit land detailed in para no.3 of the compromise above in favour of the plaintiff. As per above said family settlement, the plaintiffs were put into actual physical possession of the suit land. Since the day the family settlement, the plaintiffs have been in actual physical possession of the above said land as owners thereof to the extent of their respective shares. But due to some misunderstanding between the parties to the suit/ compromise, the defendants refused to get the necessary ownership entries changed and corrected in accordance with the family settlement.

5. That now again on 20.08.2007, a meeting of near relatives and respectable persons of the vicinity was took place to

2024:PHHC:044107



resolve the matter in controversy. The misunderstanding of the defendants has been removed and the defendants have compromised the matter into toot and admitted the oral family settlement cum arrangement which took place on 13.04.2003.

6. That as per terms and conditions of the compromise, the plaintiff no.1 has become the exclusive owner in possession of land to the extent of 19K-13M 393 share i.e. land measuring 5 Kanals 5 Marlas being 1575/2010 share out of the land measuring 6K-14M comprised in Khewat No. 687 Min/ 643, Khatoni No. 1422, total Kittas 2 and land measuring 14 Kanals -8 Marlas being ½ share of 575/2875 share out of the land measuring 143K-15M comprised in Khewat No. 759-Min/701, Khatoni No. 1542 and 1545, total Kittas 26, and the plaintiff no.1 has also become the owner in possession of land to the extent of 29K-0M=580 share and the plaintiff no.2 has become owner in possession to the extent of 32K-19M=659 share out of the total 1239 share comprised in Land measuring 18 Kanals - 5 Marlas being 365/4864 share out of 243 Kanals - 4 Marlas comprised in Khewat Khewat No. 689 Min, Khatoni No. 1430, Kittas 49, total land measuring 22 Kanals 8 Marlas being 3037/7219 share out of the land measuring 53K-15M comprised in Khewat No. 693, Khatoni No.1437, total Kittas 8 and Land measuring 21 Kanals- 6 Marlas being 2405/7219 share out of the land measuring 64K-OM comprised in Khewat no. 690-Min/ 646, Khatoni No. 1431, total Kittas 12, situated at village Gonder, Sub Tehsil Nissing, Distt, Karnal vide Jamabandi for the year 2001-02.”

2024:PHHC:044107



4 The above said compromise was filed before the Court as Exhibit P-A and while reiterating the terms of the oral agreement as pleaded in the suit and dated 13.04.2003, a written compromise was also filed. The joint statement of the parties was recorded by the Presiding Officer and the decree on the basis of the compromise Ex.PA was accordingly passed. The relevant extract of the consent decree dated 30.08.2007 reads as under:-

“3. As per compromise Ex.PA, defendants have admitted the claim of the plaintiffs. We have gone through the compromise and the other documents placed on the file. Taking into consideration all the facts and circumstances of this case, including the close relationship of the parties, we are of the opinion that the compromise Ex. PA is genuine and Lawful. In this connection, reference may be made to a judgment of Hon'ble Supreme Court of India reported as Amteshwar Anand Vs. Virendar Mohan Singh and others 2005(4) RCR (Civil)-485, wherein it has been laid down that compromise decree passed in terms of family arrangement does not require registration under section 17(2) (iv) of the Registration Act. In view of this judgment members of a family can enter into a family arrangement regarding transfer of their properties and it is not necessary that a conveyance deed should be executed and registered. It is also well settled as per law declared by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab & Haryana that settlement of share by way of family settlement would not involve the element of alienation / transfer and that for this reason no conveyance is required in their cases to pass the title from one in whom it resides to the person receiving it under the family arrangement. In this connection, reference may be made by the Apex Court Judgments in Ram Charan

2024:PHHC:044107



Dass Vs. Girja Nandini Devi AIR 1966 SC 323 and Sahu Madho Das Vs. Mukand Ram AIR 1955 SC 481 which were relied upon by the Hon'ble High Court of Punjab & Haryana in Som Dev and others Vs. Rati Ram and another (2006-1) CXLII PLR 609.

4. In the result the compromise Ex.PA is accepted and award is passed in terms of the same. The compromise Ex.PA will form part of this award. In view of the provisions of Section 1 of the Haryana State Legal Services Authorities Act, 1987, this award will be deemed to be decree passed by a Civil Court. It is made clear that this award will not affect the rights, if any, of the third parties in respect of the suit property. It is the duty of the Revenue officers concerned to comply with this award by correcting the revenue record as per this award. Copies of this order and the compromise Ex.PA be supplied to the parties free of cost. The file be returned to the trial court for consigning the same to the record room.”

5 The said decree was accepted and was duly implemented between the parties. Mutation with respect to the land situated in village Gonder, Sub Tehsil Nissing, District Karnal, was sanctioned in favour of respondents No.2 and 3 (plaintiffs in the said Civil Suit). The petitioner thereafter filed a Civil Suit No.339/14 dated 05.09.2014 for declaration with consequential relief of permanent injunction in the year 2014 i.e. after a gap of nearly 07 years to the effect that the Civil Court decree/award dated 30.08.2007 and 08.09.2007 passed by the Lok Adalat in Civil Suit No.775 of 2007, titled as ‘Gurmeet Singh and another Vs. Balbir Singh and others’

2024:PHHC:044107



was illegal, non-est, null and void and not binding on their rights and to restrain them from interfering into possession. The prayer made in the said civil suit is extracted as under:-

“It is therefore, prayed that a decree for Declaration to the effect that the Civil Court decree/ Award dated 30.08.2007/08.9.2007 passed by the Permanent and Continuous Lok Adalat, Samjhauta Sadan, Karnal in civil suit no. 775 of 2007 titled as “Gurmeet Singh & Anr. Versus Balbir Singh and others” is illegal, nonest, null void and not binding on the rights of the plaintiffs be passed in favour of the plaintiff and against the defendant with consequential relief of Permanent Injunction restraining the defendants from alienating the suit land detailed in para no.3 & 4 of the plaint by way of sale/ mortgage/lease/ lien / transfer in any way of manner and further from interfering in the possession of the plaintiff and from dispossessing the plaintiff from the suit land in any way or manner as fully detailed in para no.3 & 4 of the plaint, may kindly be passed in favour of the plaintiff and against the defendants in the interest of justice.”

6 The petitioner pleaded that the said civil court decree was obtained by way of fraud practiced upon him on the pretext of seeking sanctioning of loan for the purchase of agricultural equipments for better cultivation of the agricultural land and was never intended to seek a decree against his own interests. The grounds for raising a challenge to the decree are extracted as under:-

2024:PHHC:044107



“9. That the above said Civil Court decree is illegal, null and void no-nest, in-operative, in-effective, based on misrepresentation of facts and non binding on the rights of the plaintiff and is liable to be set aside on the grounds detailed below:-

i. That the plaintiff never intended to transfer his agricultural land in favour of the defendants, nor did he engage any lawyer or sign any document with this intention. In fact the defendants have cheated and deceived the plaintiff and he was made to sign several document on the pretext of sanctioning of the loan for better cultivation of the agricultural land. The plaintiff never intended to suffer any decree against his own interest in favour of the defendant.

ii. That there was no family settlement arrived at between the plaintiff and defendants and Sh. Chain Singh regarding the transfer of the suit land in favour of the defendants.

iii. That it has been falsely alleged in the document prepared at the time of passing of the impugned judgment that the land in U.P. was purchased in the name of the plaintiff out of the Joint Hindu Family Funds. Infact, the said land was purchased by the plaintiff out of his own funds. Moreover, even the sons of the plaintiff are not the owner of the same and the same is in dispute. Therefore there was no reason for the plaintiff to have given prima land situated in village Gonder in lieu of the alleged land situated in U.P.

iv. That the above said decree relates to the transfer of the property of value of more than Rs. 100/- therefore, it

2024:PHHC:044107



required registration and in the absence of the same, the same is having no value and the same is liable to be set aside.

v. That the impugned decree amounts to sale/ exchange therefore the same required registration and in the absence of which the same is illegal and void document.

vi. That the land in dispute was not a Joint Hindu Family Property, not was there any reason for the plaintiff to part away with his land and to get the same transferred in favour of the defendants.

vii. That the defendants had not antecedent right over the suit property and the same could not have been transferred in their favour by way of the alleged family settlement and the decree passed on the basis of the said alleged family settlement is null, void and non-est.

viii. That the plaintiff never intended to suffer the said decree nor he intentionally made any statement before the Court to suffer the decree and he was mislead and deceived into signing the documents on the pretext of obtaining the loan against the land and the said decree being a result of fraud, deceit and mis-representation is not sustainable and is liable to be set aside.

ix. That the plaintiff never parted with the possession of the suit land and is still in possession of the same and the alleged entries if any in favour of the defendants are illegal and not as per the situation existing at the spot. Since the plaintiff was in possession of the suit land at the time of passing of the suit land at the time of passing of the alleged

2024:PHHC:044107



decree, the simple suit for declaration without the relief of possession was not maintainable and the impugned decree is thus a nullity on this ground alone.”

7 The respondents No.2 and 3 moved an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, for rejection of the plaint claiming that the civil suit against the decree passed by the Lok Adalat was not maintainable. The said application was allowed by the Civil Judge (Junior Division), Karnal vide order dated 11.05.2015 (Annexure P-9) and the plaint was rejected. The petitioner thus approached this Court challenging the order passed on the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, along with the original award/decree passed by Permanent Lok Adalat, on the ground of fraud.

8 A reply had been filed by the contesting respondents raising various objections regarding the maintainability of the petition. Some of the relevant objections are extracted as under:-

“1. That petitioner has not approached this Hon'ble Court with clean hands and has conceived the material facts from this Hon'ble Court, therefore, present writ petition is liable to be dismissed.

2. That petitioner is not entitled to invoke jurisdiction of this Hon'ble Court as the petitioner had challenged the order of Id. Permanent Lok Adalat after a period of more than 7 years. As much as the order was passed in presence of the petitioner and a separate statement of the petitioner has been recorded

2024:PHHC:044107



with regard to compromise in the year 2007. He kept mum upto 2014 as he was satisfied with the compromise and get his share in joint holding of land.

3. That true and material facts of the case are that one common ancestral namely Chain Singh was the owner of joint holding of suit land mentioned in the plaint filed by the answering respondent. Thereafter, some land was purchased in the name of answering respondent no.3 and in the name of the petitioner from the HUF earning. A family partition was taken place as there was always dispute with regard to share of holding from the joint holding of land. In this manner and oral family settlement come agreement took place on 13.03.2003 at Village Gonder in the presence of family members and relatives of both the parties.

4. That as per the settlement the petitioner had relinquished his ownership rights of the land measuring 81 kanal 12 marla part of suit property in the suit filed by the answering respondent and get his share in the land purchased in his name in U.P. Thereafter, he had shifted to U.P. and had no concerned with the land mentioned in the writ petition. After 2003 the petitioner and answering respondent had started to cultivate their share as per the settlement arrived among them.

5. That as the entries in revenue records has not been change as per the family settlement, the answering respondent filed a suit for declaration in the year 2007 in which the petitioner and the respondent no. was impleaded as defendant. Thereafter, as the matter was compromised the same had been requested by both the parties to sent to Permanent Lok Adalat

2024:PHHC:044107



and a compromise was reduced into writing and the same was placed before the Permanent Lok Adalat as Ex.PA. It is pertinent to mention here that the compromise was duly signed by the Petitioner. Moreover, the statement of the petitioner was also recorded before passing the award by the Permanent Lok Adalat and the same fact have nowhere been disputed by the petitioner in his pleadings.

6. That the petitioner had only challenged the order of Permanent Lok Adalat without taking any ground that in what manner the award passed by ld. Permanent Lok Adalat is against the manner prescribed to decide the case. As far as the pleading with regard to maintainability of Civil Suit against the award of Permanent Lok Adalat that has to be challenged in separate proceeding by the petitioner.”

9 The order passed by the learned Civil Court rejecting the plaint under Order 7 Rule 11 CPC was thus sought to be justified and defended as per settled law.

10 Learned counsel for the petitioner has argued that the specific plea of fraud had been raised by the petitioner and that he was entitled to institute a separate suit and challenge the consent decree and award. The civil Court fell in an error in allowing the application and dismissing the suit. He places reliance on the judgment in **Civil Revision No.7250 of 2014 titled as ‘Jagir Singh Vs. Shama’ decided on 20.11.2015**. The operative part of the order reads as under:-

2024:PHHC:044107



“The bar which the law contemplates is what will operate against parties if the proceedings had been taken as per law. If a person says that she had not been served as such and the defendant had practiced impersonation, the order so obtained cannot be an order in the eye of law to which the provision could apply. Fraud vitiates the whole of the judicial proceedings and if the plaintiff is able to show that she was not present before the Lok Adalat, the defendant is bound to prove that the plaintiff was present and the person who admitted to the defendant's claim, was indeed a plaintiff herself and the signatures found in the document produced in the Lok Adalat were hers. The defendant will have to take, therefore, a heavy burden cast on him to prove that there was no impersonation. The suit is properly laid and the rejection of the plaint sought was rightly dismissed. There is a further reason why the petitioner could not have the benefit of rejection of the plaint. The petition for rejection itself has been moved after the conclusion of the plaintiff's evidence and when it was the turn of the defendant to examine himself and when he was even cross-examined. The application for rejection was surely not bona fide.”

11 He also relies on the judgment in the matter of **Harbir and others Vs. Bhabhuti reported as 2013 (2) Civil Court Cases, page 320.** The relevant part of the said judgment reads as under:-

“15. As far as the maintainability of the suit is concerned, I find that there is a bar under 23, Rule 3A Civil Procedure Code to file a suit to set aside a compromise decree on the ground that the compromise on which a decree was passed was not lawful.

2024:PHHC:044107



But the present suit has been filed on the ground that a fraud was played upon to obtain a compromise decree. A separate suit can be filed in the light of the explanation found under 23, Rule 3 Civil Procedure Code to declare such a compromise decree as void on the ground that a fraud was played upon to obtain such a compromise.”

12 Learned counsel for respondents No.2 and 3, on the other hand, reiterates his submissions extracted above and contends that the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, was rightly allowed and that the award having been passed in exercise of the powers conferred under Section 21 of the Legal Services Authorities Act, 1987, the petitioner being a party to the *lis* and to the settlement, cannot dispute the same after an inordinate delay of 07 years more-so when the said award has already been executed between the parties. It is further argued that the plea of fraud is an afterthought and the conduct of the petitioner dispels any possibility of fraud. He also argues that so far as the judgment in **Civil Revision No.7250 of 2014 titled as ‘Jagir Singh Vs. Shama’ decided on 20.11.2015**, is concerned, the same is not applicable to the facts of the present case since in the said case there was an impersonation. It is not the case of the petitioner herein that somebody else had impersonated as the petitioner. The contention raised in the present case is that his consent had been secured on a false pretext. Thus, it could not be perceived that the petitioner would not have been aware of the nature of the proceedings especially when the compromise in question (Annexure P-3) is duly signed

2024:PHHC:044107



by the petitioner, along with all other family members and various residents of the village. The petitioner has also not disputed his signatures on the said settlement. Further, a joint statement was also recorded before the Lok Adalat wherein the petitioner acknowledged the fresh compromise as Ex.P-8. Hence, the plea that he had been defrauded and made to sign the compromise on a false pretext or to get his statement recorded on such false pretext is patently an afterthought.

13 He further submits that judgment in the matter of Jagir Singh (supra) was in context of an award passed under Section 22-C (4) of the Legal Services Authorities Act, 1987 by way of conciliation and was not an adjudication under Section 22-C (8) of the Legal Services Authorities Act, 1987. Per contra, the award in the present case was under Section 21 of the Legal Services Authorities Act, 1987. He further contends that the reliance on the judgment in the matter of Harbir Singh and others (supra) would also not be applicable since the said judgment has been passed on general principles of law and ruling that there is no statutory bar against impugning the compromise decree by way of a separate suit by relying on Order 23 Rule 3 Proviso.

14 He also argues that Section 21 of the Legal Services Authorities Act, 1987 specifically prohibits any challenge to the award passed by the Lok Adalat. Thus, the petitioner would be prohibited from raising a challenge to the said award.

2024:PHHC:044107



15 I have heard learned counsel for the parties and have gone through the documents appended with the present petition and have gone through the judgments relied upon by the petitioner.

16 The judgments cited by the counsel for the petitioner are in the context of the provisions of C.P.C. which itself carves an exception as per proviso to Order XXIII Rule 3. The judgment did not deal with the provision of the Legal Services Authorities Act, 1987. However, without delving further into the controversy, on the maintainability of separate proceedings for raising a challenge to the award passed by the Lok Adalat, when a fraud is pleaded, I have heard learned counsel appearing for the respective parties and have also gone through the documents available on record on the merits of the original decree and award which are also a subject matter of challenge in this writ petition, while keeping the said question open.

17 A perusal of the ground taken by the petitioner in the civil suit filed by him for seeking declaration that award is null and void and having been secured by fraud would show that only ground taken is that he had been made to sign on several documents on the pretext of sanction of loan for the purchase of equipments for the better cultivation of the agricultural land and he had never intended to suffer any decree against his own interest.

18 Certain other objections although were taken but the same were in relation to asserting his rights over the land and to establish that there

2024:PHHC:044107



was no occasion for him to enter into such a settlement as it was not beneficial to him. Both these arguments are liable to be rejected.

19 Dealing with the argument of fraud in relation to the award, I am inclined to reject the same on the following grounds:-

- (i) The petitioner does not dispute that he had appended his signatures on the compromise EX.PA.
- (ii) The petitioner nowhere disputes that he had appeared before the Lok Adalat and got his statement recorded in support of the compromise. He has also not denied that he never appeared before the Lok Adalat and not got his statement recorded or that some other person had impersonated as the petitioner.
- (iii) No explanation has been put forth by the petitioner as to under what circumstances and why he appeared before the Lok Adalat and got his statement recorded. The only explanation put forth is that he was lured on the pretext of securing loan to buy agricultural equipments. The petitioner does not even spell out the implements, which he intended to buy and for which loan would be required. He also does not aver the finances required for the same or that he had no means to buy those implements.

2024:PHHC:044107



- (iv) The petitioner has failed to offer any explanation about the inordinate delay that has been caused in institution of the suit especially when delay was more than 07 years. Significantly, it is hard to conceive that even though petitioner executed the documents on the pretext of seeking loan to purchase the agricultural implements, yet he chose not to make any enquiry when loan had not been received. Being a farmer, agriculture implements would be a necessity and he would have needed the money, and if not released, apply for loan elsewhere. No such steps, as a prudent person would take, have been taken.
- (v) Nothing has been explained as to how and when did he came to know of the said fraud having been played upon him. The said aspect was crucial to determine limitation, even if the plea is deemed false. Even though an attempt had been made by the petitioner to bring his suit within the limitation by averring that he came to know about the award in the year 2014, however, the petitioner has not mentioned as to how and under what circumstances, did he come to know of the passing of the said award in April 2014.

2024:PHHC:044107



- (vi) It is incomprehensible that the petitioner would have not come to know of the award having been passed for a good period of 07 years especially when the said award had already been implemented in the revenue record and the parties altered their positions.
- (vii) The said settlement had been signed in presence of various persons including the family members and residents of the village and it is not the case of the petitioner that the said persons do not belong to the locality or that they have in any manner supported the cause of the petitioner about the settlement never having been agreed upon;
- (viii) Besides, the petitioner being a signatory to the settlement and having got his statement recorded before the Lok Adalat would be deemed to be aware of the passing of the award on the said date itself. He preferred to stay silent for a good period of 07 years whereas the limitation prescribed for raising challenge to such a consent decree, if any, in law, even in the plea of fraud is required to be filed within a period of 03 years from the date of accrual of the cause of action. In the absence of any specific circumstances, no such concession can be extended to the petitioner that he was not aware of the

2024:PHHC:044107



passing of the award in the year 2007. There has to be an inference about the petitioner having knowledge of the passing of the award on the date when the statement was made before the Court and an award passed. Hence, on merits, *ex facie*, the institution of the suit would be barred by the plea of limitation.

- (ix) It is even otherwise highly unlikely that the petitioner would seek the help of his brothers to seek loan with regard to a property for which a suit has been filed by the brothers. It is not even his case that he was not aware of the institution of the suit. Ordinarily, a person would not seek help in securing loan over a property from a person who has filed a case against him for that very property. The suggestion is improbable to an extent that it does not even *prima facie* appeal to reason, logic or sensibilities.

20 In so far as the contention of the petitioner that the land in Uttar Pradesh was already in his favour and that it would not have best served the interest of the petitioner and there was no purpose of entering into settlement is concerned, the said contention is rejected for the following reasons:-

2024:PHHC:044107



- (i) The petitioner in his above said plea seeks to reopen the merits that have already been settled; and
- (ii) That the petitioner has raised this argument with a presumption that his title over the land was never in dispute. As a matter of fact, the respondents herein raised their entitlement to the share in the above said land by specifically pleading that the said land was acquired with the joint Hindu family funds but in the name of the petitioner. It was specifically stated in the earlier suit that as per the oral family settlement of 2003, the petitioner was to get a clear title with respect to the land in Uttar Pradesh and the respondents would relinquish their claim over the same in lieu of petitioner relinquishing his claim over the land falling in the revenue estate of village Gondar, Sub Tehsil Nissing, District Karnal. Hence, a clear title stood transferred in favour of the petitioner with other parties relinquishing their claim.
- (iii) Besides, this Court would not go into the wisdom of the petitioner in giving up his land knowing well fully that the parties are related to each other being brothers. The parties may, and it is not unheard of, that the claims can be relinquished out of natural love and affection as well.

2024:PHHC:044107



The subsequent objectivity and reasoning given by the petitioner cannot be the basis for revisiting a settlement that had been arrived at between the parties.

21 Since this Court has examined the grounds of challenge to the original award and passed in the Lok Adalat on 30.08.2007/08.09.2007, the issues pertaining to the right of institution of the subsequent suit are thus not required to be gone into.

22 I find that the original award cannot be said as having been obtained by way of fraud practiced upon the petitioner and I am also of the opinion that the institution of the subsequent suit was an afterthought and an attempt to create a fresh dispute, after having secured his rights, with a mischievous intent. The present writ petition is thus dismissed.

July 23, 2024
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*