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

(102)

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Date of decision:- 20.02.2025

Tarlok Singh

...Appellant

Versus

Baldev Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Raj Kumar Gupta, Advocate
for the appellant.

Mr. Vishal Aggarwal, Advocate
for the respondents.

...

SUVIR SEHGAL, J. (Oral)

1. Appellant-plaintiff is in second appeal before this court, challenging the concurrent finding recorded by the two Courts below.
2. Plaintiff filed a suit for declaration to the effect that judgment and decree dated 07.04.1984, in Civil Suit No. 221 of 22.03.1984, titled as Baldev Singh etc. Versus Teja Singh, passed by the Court of Additional Senior Sub Judge, Nabha, is illegal, null and void. His pleaded case is that the parties constituted a Joint Hindu Family and the suit land was an ancestral coparcenary property, in the hands of defendant No.3. It has been averred that in 1982,



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plaintiff and proforma defendants No.4 and 5, were separated from the Joint Hindu Family and were given half share in the land, which was in the name of defendant No.3, by an oral partition. They were also given possession of the land, and later on, a family settlement was entered into and accepted by defendant No.3, in a civil suit, which was decreed on 29.11.1983. It has been alleged that defendants No.1 to 3, obtained a collusive decree dated 07.04.1984, to defeat the rights of the plaintiffs and proforma respondents No.4 and 5. Upon notice, suit was contested by defendants No.1 to 3, by filing a written statement on the ground that the Joint Hindu Family was partitioned and 1/6th share was given to the plaintiff and proforma defendants No.4 and 5. The allegation of conspiracy was denied, and it was stated that the decree dated 07.04.1984, was a consent decree. A separate written statement was filed by defendant No.6, contesting the suit. Plaintiff filed a replication reiterating the pleas taken in the plaint and on the basis of pleadings of the parties, issues were framed. After contest, Trial Court dismissed the suit by judgment and decree dated 09.03.1987.

3. In appeal filed by the plaintiff, dispute was amicably settled and the first appellate Court passed the following order on 12.09.1989:-

*“Today the case was fixed for arguments when Baldev Singh one of the respondents made a statement that the respondents will be owners of 18 bighas of land. Baldev Singh has further surrendered one bigha of land in favour of Santokh Singh and Balwinder Singh and Tarlok Singh appellant which was given to them vide judgment dt. 4.7.84. Tarlok Singh appellant has agreed to take one bigha of land and has left the rest of the claim. In view of the above statements of the parties, the appeal is accepted with the above modification, with no order as to costs.
File be consigned.”*



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4. Mr. Raj Kumar Gupta, counsel for the appellant has assailed the judgment passed by the first appellate Court by urging that the provisions of Order 23, Rule 3, CPC, have not been complied with in as much as no written compromise has been arrived at between the parties. Mr. Vishal Aggarwal, counsel for the respondents, has however, opposed the appeal.

5. I have heard counsel for the parties and considered their respective submissions.

6. Order 23, Rule 3, CPC, provides that any lawful agreement or compromise to be valid, has to be in writing, and has to be signed by the parties. In the present case, although no written agreement has been entered into between the parties, both the parties had appeared before the first appellate Court and their statements were recorded, which were duly signed by them in the presence of their respective counsel. The statements of the parties recorded by the learned Additional District Judge, Patiala, on 12.09.1989, are reproduced hereunder.

“Present:- Counsel for parties.

The respondent wants to make statement. Let his statement be recorded.

*Sd/-
A.D.J.
12-09.89.*

Statement of Sh. Hardev Singh respondent (on S.A.). and of Sh. Raj Kumar Ad. Counsel for respondent (W.O.).

I Surrender one bigha of land in favour of Tarlok Singh, Santokh Singh and Balwinder, which has been given by judgment dated 4.7.84. I will be owner of 18 bighas of land.

R.O.&A.C.



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Sd/-
Hardev Singh
Sd/-
Raj Kumar, Advocate

Sd/-
A.D.J.
12-09-89

*Statement of Sh. Tarlok Singh appellant (on S.A.) and of
 Sh. Deep Chand Ad. (W.O.)*

*I have heard the statement of Hardev Singh
 respondent. I agree to it.*

Sd/-
Tarlok Singh
Sd/-
Deep Chand, Advocate

Sd/-
A.D.J.
12.09.89"

7. A perusal of the above reproduced statements show that respondents surrendered one bigha land in favour of the appellant and the appellant in a separate statement, recorded on the same day, has agreed to accept the land. It is evident from the above that as the statements have been recorded by the parties, in person, and are in writing, requirement of Order 23, Rule 3, CPC, is satisfied. The argument raised by the counsel for the appellant that the essential ingredients of the said provision are not complied with, stands rejected.

8. Furthermore, it deserves to be mentioned that the plaintiff had filed a suit for declaration challenging a compromise decree dated 07.04.1984. Order 23, Rule 3-A, CPC, bars the filing of a fresh suit to set aside a compromise decree. It has been observed by the Supreme Court in Navratan Lal Sharma versus Radha Mohan Sharma and others, 2024 SCC online SC 3720, that



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neither a fresh suit is maintainable, nor an appeal can be filed for setting aside a consent decree, and the only remedy available to an aggrieved party is to approach the Court that recorded the compromise under Order 23, Rule 3, CPC. This civil suit filed by the plaintiff is clearly not maintainable. The judgments and decrees passed by both the Courts below, therefore, do not call for any interference and are affirmed.

9. Appeal, being devoid of merit, is dismissed with no order as to cost.

(SUVIR SEHGAL)
JUDGE

20.02.2025
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes