



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

RSA-556-1993

Reserved on: 22.01.2025

Pronounced on: 17.02.2025

Bhagal (Since Deceased) Through LRs

....Appellant

Versus

Bulla (Since Deceased) Through LRs and Another

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Amit Jain, Senior Advocate, with
Mr. Parit Aggarwal, Advocate for the appellant.

Mr. D.K. Tuteja, Advocate for respondent No.1.

None for respondent No.2.

VIKRAM AGGARWAL, J.

This is plaintiff's appeal against the judgment and decree dated 21.01.1993 passed by the Court of learned Additional District Judge, Rohtak allowing the appeal filed by the defendants against the judgment and decree dated 22.05.1992 passed by the Court of learned Additional Senior Sub-Judge, Jhajjar, District Rohtak, vide which the suit filed by the plaintiff had been decreed.

2. For the sake of convenience, the parties shall be referred as per their original status.

3. The plaintiff Bhagal and the defendants Bulla and Tara Chand were real brothers, all three being sons of Smt. Siriya and Jiya Ram. The plaintiff filed a suit for declaration to the effect that he is the owner in possession of 1/3rd share of land measuring 56 Kanals 02 Marlas (fully

described in the plaint) situated in Village Kutani, Tehsil Jhajjar, District Rohtak (hereinafter referred to as the 'suit property') (at the relevant time, Jhajjar was in District Rohtak) and for a declaration to the effect that the judgment and decree dated 23.04.1987 passed in ***Civil Suit No.273 of 1987*** titled as '***Bulla Vs. Bhagal Etc.***' was illegal, null and void and not binding on the rights of the plaintiff. The claim of the plaintiff was that he had never appeared in any Court nor had he engaged any counsel or filed any written statement and that the thumb impressions of the plaintiff over the Power of Attorney and written statement were not his and somebody else had impersonated. It was claimed that the decree was illegal and that the same had been obtained with the collusion of the defendants. Further, with the collusion of the revenue authorities, Mutation No.1151 had been sanctioned on 14.11.1987 which again was not binding upon the rights of the plaintiff. Defendant No.1 Bulla contested the suit. However, defendant No.2 Tara Chand did not put in appearance and was accordingly proceeded against *ex parte*. However, he later appeared as DW-4 in the evidence of the defendants. In the written statement filed by defendant No.1, all averments were controverted and the decree was defended, having been validly passed.

4. From the pleadings of the parties, following issues were framed:-

“1. Whether the decree in suit No.273 of 1983, decided on 23.07.1984, by Sub Judge Ist Class, Jhajjar is null, illegal, void as alleged? OPP

2. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD

3. Whether the suit of the plaintiff is barred by the principle of res judicata? OPD

4. Whether the suit of the plaintiff is not maintainable in the present form? OPD

5. Whether the plaintiff has no locus standi to file the present suit? OPD

6. Whether the defendants are entitled to special costs under section 35-A CPC as alleged? OPD

7. Relief.”

5. Parties led their respective evidence.

6. The trial Court decreed the suit and set aside the judgment and decree dated 23.04.1987. However, the appeal filed by the defendants was allowed and the suit filed by plaintiff was dismissed, leading to the filing of the present second appeal.

7. Learned counsel for the parties were heard.

8. It was submitted by learned Senior counsel representing the plaintiff that the First Appellate Court had erred in allowing the appeal and dismissing the suit. It was submitted that the judgment and decree passed by the trial Court was well reasoned and upon proper appreciation of facts and law and the same was erroneously set aside by the First Appellate Court.

8.1 It was submitted that there was no proof of service of the plaintiff in the previous litigation and, therefore, it stands proved that somebody else appeared in the matter before the Court. It was further submitted that the decree had been passed within one month from the institution of the suit which also raises suspicion.

8.2. Learned Senior counsel further submitted that there was no identification of the defendants therein when they appeared in Court nor was any identity proof retained on record.

8.3. Learned Senior counsel also submitted that it was admitted by the witnesses of the defendants in the present case that there was no dispute between the parties. Learned Senior counsel submitted that once there was

no dispute, there was no question of a family settlement having been arrived at.

8.4. Learned Senior counsel referred to the statements of the witnesses in detail and read out certain portions of the cross-examination of the witnesses of the defendants.

8.5. Learned Senior counsel also argued that the legal effects of such a decree should have been considered as such a decree would amount to an oral gift and under the circumstances, it would require registration. In support of his contentions, he placed reliance upon the judgment passed by the Supreme Court of India in the case of '**Kale and Others Vs. Deputy Director of Consolidation and Others**', 1976 AIR (SC) 807 as also the judgments passed by this Court in the case of '**Sh. Siri Bhagwan Vs. Smt. Murti Devi (dead) through LRs and Others**', 2023 (3) RCR (Civil) 360 and in the case of '**Chetan Kaur through LRs Vs. Jaspreet Singh and Others**' (RSA No.299 of 2014, decided on 10.02.2023).

9. *Per contra*, learned counsel for the defendants submitted that there is no illegality in the judgment and decree passed by the First Appellate Court. It was submitted that the suit property had devolved upon the parties from their mother and Bhagal and his brother Tara Chand had agreed to transfer the same to Bulla by way of a family settlement and accordingly, the previous suit had been filed which was rightly decreed by the Court concerned.

9.1 Learned counsel referred to the plaint (Ex.P-1), written statement (Ex.P-2) and the judgment and decree (Ex.P-3) and submitted that there is absolutely no reason to doubt the correctness of the judgment merely on the asking of the plaintiff. It was submitted that in the plaint of the

present suit, there is no mention of there having been no family settlement and, therefore, once there is no foundation in the pleadings, no argument to the effect could be raised.

9.2 Learned counsel also submitted that a family settlement cannot be called into question in a subsequent suit and the previous decree can only be challenged on the ground of fraud. Learned counsel further submitted that no consideration was required in a family settlement and in case of consideration having passed, it would amount to a sale and not to a family settlement.

9.3 Learned counsel also contended that there was no requirement of issuance of summons and many times, defendants appear on the first date and admit the claim. Learned counsel submitted that even to prove that there were no summons, no process server or record keeper was examined to say that no summons had been issued and under the circumstances, the argument cannot be accepted.

9.4 Replying to the argument that the decree had been passed within one month and, therefore, it raised suspicion, learned counsel submitted that the decree was not passed on the day of the institution and it was only when written statement had been filed and parties suffered their respective statements and that the decree was passed. As regards registration, it was submitted that as there was a pre-existing right which is clear from the plaint itself, there would be no requirement of registration.

9.5 It was also submitted that a party to the decree cannot challenge the decree on the ground of registration but only on the ground of fraud which has to be pleaded and proved. Learned counsel contended that apart from the self-serving statement of the plaintiff Bhagal, no other

witness or family member or some witness from the Village was produced to support the case of the plaintiff.

9.6 Learned counsel submitted that Tara Chand had also suffered the decree but did not challenge the same and in fact, he stepped into the witness box as DW-4 and duly stated about the decree having been passed.

9.7 Learned counsel submitted that even the Advocate Mr. M.S. Gulia appeared as DW-2 and had stated that thumb impressions etc. of Bhagal had been affixed on the written statement. This witness, however, was not cross-examined by the plaintiff and, therefore, whatever he had stated in the examination-in-chief would have to be accepted as such.

9.8 Learned counsel further submitted that the plaintiff had summoned the Advocate of the other side also but did not examine him for obvious reasons. In support of his contentions, he placed reliance upon the judgments passed by the Supreme Court of India in the case of '*New Moga Transport Company Vs. United India Insurance Co. Ltd. and Ors.*', 2004 (3) RCR (Civil) 141, '*M/s Hanil Era Textiles Ltd. Vs. M/s Puromatic Filters (P) Ltd.*', 2004 (2) RCR (Civil) 808, '*A.B.C. Laminart Pvt. Ltd. and another Vs. A.P. Agencies, Salem*', 1989 AIR SC 1239, '*Saroj Anand and Others Vs. Prahlad Raj Anand and Others*', 2009 (2) RCR (Civil) 631, '*Gurcharan Singh and Others Vs. Angrej Kaur and Another*', '*Khushi Ram and Others Vs. Nawal Singh and Others*' and the judgment passed by this Court in the case of '*Lali Devi and Others Vs. Jai Singh and Others*', 2013 (5) RCR (Civil) 206, '*Lichhami Devi and Other Vs. Bharpai and Others*', 2012 (5) RCR (Civil) 628, '*Murti Vs. Jai Ram and Others*', 2012 (5) RCR (Civil) 574 as also the judgment passed by the Delhi High Court in the case of '*K.G. Khosla Compressors Ltd. Vs. U.P. Electricity Board*'.

10. I have considered the submissions made by learned counsel for the parties and have perused the record which was duly summoned.

11. The question which would arise for the consideration of this Court would be as to whether the judgment and decree had been obtained by fraud and further, as to whether it would require registration.

12. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab & Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of '**Pankajakshi (Dead) through Rs and others versus Chandrika and others**', (2016) (6) SCC 157 followed by judgments of the Supreme Court in the cases of '**Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors**', 2019 (3) R.C.R. (Civil) 168 and '**Sayender and Ors, Versus Saroj and Ors.**', 2022 (12) Scale 92. Relying upon the law laid down in the aforesaid judgments, no substantial question of law is required to be framed and this Court shall proceed to answer the question which arises for consideration.

13. First of all, it would be essential to go through the plaint filed in the previous suit i.e. **Civil Suit No.273 of 1987** titled as '**Bulla Vs. Bhagal and Another**' which is on record as Ex.P-1. From the plaint itself, it appears that parties were owners of $\frac{1}{3}^{\text{rd}}$ share each of the total land measuring 56 Kanals 02 Marlas. Accordingly, the suit was filed by Bulla against Bhagal and Tara Chand as regards their $\frac{2}{3}^{\text{rd}}$ share. In paragraph 2 of the plaint, it was mentioned that $2\frac{1}{2}$ years prior to the filing of the suit, a family settlement had been arrived at between the parties and the $\frac{2}{3}^{\text{rd}}$ share of the defendants had come to the share of the plaintiff and possession had been

handed over. It is only when the defendants did not agree to the Mutation effected, the suit was filed. The written statement is also on record as Ex.P-2 in which the claim of the plaintiff was admitted. It bears the thumb impressions of both Bhagal and Tara Chand. Ex.P-3 is the statement of Bhagal and Tara Chand while appearing with their Advocate Mr. Mahinder Singh. Ex.P-3 also contains the statement of Mr. Uday Veer, Advocate representing the plaintiff therein namely Bulla. In the statement of Bhagal and Tara Chand, it was stated that Bulla was their real brother and the land had come to them from their mother and further, that they were transferred the same to Bulla with their own free will. It was also stated that they had heard the contents of the plaint and had understood the same and then gave a statement that the suit be decreed. Their Advocate, Mr. M.S. Gulia stepped into the witness as DW-2 and deposed about having appeared for the defendants in the said case. He duly stated that the written statement had been drafted on the instructions of the defendants and that they had affixed their thumb impressions after accepting the contents of the same to be correct. He also stated that the statements of the defendants had also been recorded and that he had also appended his signatures on the statement. No doubt, he stated that he did not know the defendants personally but that in fact, does not cause any dent because an Advocate is not supposed to know all his parties. Notably, no cross-examination of this witness was conducted by the plaintiff in the present case, meaning thereby the whatever he stated would be accepted as correct.

14. Coming to the experts, one expert PW-1 Somnath Aggarwal was examined by the plaintiff and one expert namely Amar Kant Khandelwal was examined as DW-3 by the defendants. Both gave their own

reports as expected. Whereas, Somnath Aggarwal stated that the thumb impressions were not of Bhagal etc, Amar Kant Khandelwal stated that they were the thumb impressions of Bhagal etc. Experts are known to give reports in favour of the clients who engage them. Further, a Court can also examine signatures/thumb impressions with naked eye though examining signatures would be easier than thumb impressions. The trial Court gave its own version while examining creases in the thumb impressions which, in the considered opinion of this Court, the trial Court was not competent to do as the learned Presiding Officer was not an expert. On the contrary, the First Appellate Court examined the reasons given for the decision and found the reasons given by Amar Kant Khandelwal to be more valid and, therefore, accepted his report. I agree with the findings of the learned First Appellate Court in this regard.

15. Not only this, defendant No.2 Tara Chand also stepped into the witness box as DW-4 and has stated about the decree having been passed. It has to be kept in mind that Tara Chand had also suffered the decree and had given a $\frac{1}{3}$ rd share to Bulla and did not challenge the same.

16. Merely because summons were not issued, would not mean that the decree was a result of a fraud. Reference can be made to the judgment of a Co-ordinate Bench of this Court in the case of '*Jai Lal Vs. Chattar Singh and Others*', 2004 (4) RCR (Civil) 775, wherein such a view was taken:

"5. After hearing the learned counsel for the parties and going through the records of the case I do not find any merit in the argument raised by the learned counsel for the appellant. It is correct that summons were not issued as the decree was passed on the very next date of the filing of the suit but it could not be disputed that the decree was passed on the basis of written statement filed by Smt. Ram Kaur admitting the claim of the plaintiffs and who also appeared before the court

admitting the claim of the plaintiffs. Therefore, merely because summons were not issued will not make the decree suffered by Smt. Ram Kaur as illegal or one suffering from fraud.”

Still further, in the case of *‘Lichhami Devi and Other Vs. Bharpai and Others’* (supra), it was held that a consent decree can be challenged in a subsequent suit on the ground of fraud etc. but not on the ground that facts pleaded in the suit leading to the consent decree were incorrect meaning thereby that the family settlement could not be called into question in a subsequent suit:

“8. I have carefully considered the aforesaid contentions, but find myself unable to accept the same. Learned counsel for the appellants tried to pick up the word 'relinquishment' in isolation. On the other hand, consent decree was suffered on the basis of family settlement, whereby share of Fatta was relinquished in favour of defendants no.1 and 2 herein. Thus, family settlement was the basis of the consent decree in question. Courts in India have always recognised the concept the family settlement among Hindus. In the instant case, the family settlement was between Fatta and his real nephews i.e. defendants no.1 and 2 herein. Said family settlement did not require compulsory registration. In the subsequent suit, said family settlement is not required to be proved again. Consent decree can be challenged in subsequent suit on the ground of fraud etc., but not on the ground that facts pleaded in the suit leading to the consent decree were incorrect. Court in subsequent suit cannot go behind the earlier decree (because that decree settles rights of parties) and find out as to whether the earlier consent decree was passed on right or wrong facts. Subsequent court is not entitled to go into facts to find whether on that basis, earlier consent decree could be passed or not. This view finds support from judgment of this Court in the case of Harpal and others v. Smt. Ram Piari and others reported as 1981 P. L. J. 492. Such challenge in subsequent suit is also barred by principle of estoppel and res judicata. Judgments of this Court namely Smt. Maha Devi and others v. Smt. Lichhman and others reported as 1978 P. L. J.

379 and Smt. Har Kaur v. Smt. Dhappan (died) and others reported as 1986 P. L. J. 94 support this view.”

The argument that there was no dispute and, therefore, no family settlement could have been arrived at, therefore, falls to the ground. Even otherwise, a bare reading of the plaint shows that a family settlement had been arrived at between the parties. No doubt, it looks little odd that the entire land was given to one brother. However, this alone would not make the family settlement illegal and arbitrary and in any case, such a family settlement cannot be called into question in a subsequent suit and a decree, as noted above, could be challenged only on the ground of fraud. Still further, in the case of *‘Lali Devi and Others Vs. Jai Singh and Others’*, (supra), a Co-ordinate Bench while dealing with a challenge to a consent decree on the ground of fraud held that where a statement had been made in the Court also and the previous suit had not been decreed only on the basis of a written statement, it was difficult to accept a plea of fraud. It was held that a statement made in Court carries authenticity and that if challenge to such decrees are accepted, there would be no end to litigation and no *lis* would attain finality. It was held that no sanctity would be attached to the proceedings of the Court and the whole system of administration of justice would collapse. It was held that it was not uncommon that such consent decrees are suffered voluntarily and later on, the persons suffered such decrees, change their mind and challenge the same on different ground. It was held that it is only where fraud is established beyond reasonable doubt that such consent decree can be set aside:

“9. Plaintiffs have miserably failed to prove the alleged fraud in passing of consent judgment and decree dated 15.04.1996. The said consent judgment and decree were passed not only on the basis of admission made in written statement

filed by defendants of suit No. 281 of 1996 but also on the admission made by the said defendants by making statement in Court itself. Plea of the plaintiffs of the present suits that their thumb impressions/signatures had been obtained on blank papers on one pretext or the other, if substantiated, could possibly be accepted if there had been admission in written statement only. However, admission by making statement in Court stands on altogether different footings. Statement made in Court carries authenticity. It cannot be said that the said statement was recorded on blank paper already bearing thumb impressions/signatures of makers of the said statement. Such a contention cannot be entertained at all. If such contention is accepted, then there will be no end to litigation. No lis would attain finality. No sanctity would be attached to the proceedings of the Court. The whole system of administration of justice would collapse. It is not uncommon that such consent decrees are suffered voluntarily and later on, the persons who suffered such decrees, change their mind and challenge the same on different grounds. It is only where fraud is established beyond reasonable doubt that such consent decree can be set aside. Fraud when pleaded in civil case is also required to be proved beyond reasonable doubt just like criminal charge. In the instant case, very strong evidence of exceptional quality is required to prove the alleged fraud because defendants of suit No. 281 of 1996 had even made statement in Court admitting the claim of plaintiffs of that suit and, therefore, fraud is reasonably ruled out. Plaintiffs have miserably failed to prove the alleged fraud.”

17. The argument that such a transfer would amount to an oral gift and, therefore, the decree would require registration is devoid of merit. The plaint duly mentioned about a family settlement having been arrived at and, therefore, there was a pre-existing right and it was not a settlement *in praesenti*. The law governing the concept of registration would be the judgment of the Apex Court in the case of ‘**Bhoop Singh Vs. Ram Singh Major, (1995) 5 SCC 709**, wherein it was laid down as under:

“18. The legal position qua Clause (vi) of Section 17 (2) can, on the basis of the aforesaid discussion, be summarised as below:-

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100/- upwards in favour of any party to the suit, the decree or order would require registration.

(3) If the decree were not to attract any of the Clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of compromise in question.

(5) If the property dealt with by the decree be not the "subject matter of the suit or proceeding", Clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated."

18. The test would, therefore, be as to whether a right has been conferred *in praesenti* or there was a pre-existing right. In the present case, the plaint itself shows that there was a pre-existing right and, therefore, the decree would not require registration. Even otherwise, a party to the decree cannot challenge the same on the ground of registration. The judgment in the case of *‘Siri Bhagwan Vs. Smt. Murti Devi (dead) through LRs and Others’* (supra), which had been relied by learned counsel for the plaintiff would not be applicable because in that case, it had been found by the Court that no family settlement had taken place and under these circumstances, the

legal effects of such a decree were seen and it was held that it would then amount to an oral gift requiring registration. In the case of '**Rajjo Vs. Jawahar Singh**', 2007 (2) RCR (Civil) 62, a Co-ordinate Bench held that a party who suffers a consent decree cannot challenge the same on the ground of non-registration and it can challenge the same only on the grounds of fraud and misrepresentation:

“11. The only question that now survives is as to whether a party, who has suffered a consent decree, can challenge it on the ground of non-registration. In my opinion, the party, who has suffered the decree, can challenge it on the grounds of fraud and misrepresentation alone and not on the ground of non-registration. Either the concerned party denies the very genesis of the decree by saying that it was the result of fraud, misrepresentation and that there was no intention to suffer the decree, but to say that after suffering the decree that the same was not registered is not permissible. It has been held by this Court in the judgment reported as 2000(1) RCR (Civil) 122: 2000(1) Civil Court Cases 188 (P&H), Parveen Kumar v. Shiv Ram alias Sheo Ram that the person, who has suffered the decree, cannot challenge it on the ground of non-registration. The decree can be challenged only on the ground of fraud, misrepresentation or if it has been passed by the Court of incompetent jurisdiction. The party who suffers the consent decree is estopped by his own conduct to challenge the same except on the grounds mentioned above. There has to be sanctity accorded to the statements made before the Courts. It was so held by the Supreme Court in the judgment reported as 2001(4) RCR (Civil) 106 (SC) : AIR 2001 Supreme Court 2790, Salkia Businessmen's Association and others v. Howrah Municipal Corporation and others, wherein it was observed as under :

"The memorandum and terms of the compromise in this case became part of the orders of the High Court itself when the writ petition was finally disposed of in terms of the compromise reached between the parties notwithstanding that there was no verbatim reproduction of the same in the order. While so, it is beyond one's comprehension as to how any violation of terms of compromise could have been viewed by the Court as a matter of

mere contract between parties and under that pretext absolve itself of the responsibility to enforce it, except by doing violence to the terms thereof in letter and spirit. If Courts are not to honour and implement their own orders, and encourage party litigants - be they public authorities, to invent methods of their own to short circuit and give a go-bye to the obligations and liabilities incurred by them under orders of the Court - the rule of law will certainly become a casualty, in the process - a costly consequence to be jealously averted by all and at any rate by highest Courts in States in the Country."

19. The argument that once there was no family dispute, there could be no settlement is devoid of merit. The only requirement is that the family settlement must be *bona fide*. No doubt, it was stated by Bulla in his cross-examination that nothing had been given in exchange to the plaintiff. However, again, it would have to be reiterated that the family settlement cannot be called into question in a subsequent suit. If these things were to be gone into, no decree would ever stand and each decree would then be challenged with a change of heart.

20. As regards the argument that the decree was passed within a short time, the same also is devoid of merit because when the parties appeared and admitted the claim, no further delay could have taken place. Even otherwise, if the decision is delayed, the same is agitated and when it is done expeditiously, the same is also agitated. In any case, in view of the categorical statements given by DW-3 Amar Kant Khandelwal and DW-4 Tara Chand as also keeping in view the other oral and documentary evidence led on the record of the case, no illegality is found with the decree under challenge.

As a result of the aforesaid discussion, I do not find any illegality in the judgment and decree dated 21.01.1993 passed by the Court of learned Additional District Judge, Rohtak thereby warranting interference.

Accordingly, the said judgment and decree is upheld and the appeal filed by the plaintiff is dismissed.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 17.02.2025
Prince Chawla

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No