



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

105

RSA-742-1994**Reserved on : 17.02.2025****Pronounced on : 13.05.2025**

Satbir Singh (since deceased) through his LR's. Appellant

versus

Ram Phal and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Maninder Singh Saini, Advocate and
Mr. Prateek Sharma, Advocate
for the appellant.

Mr. S.K. Hooda, Advocate
for respondents No.1 and 2.

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in second appeal.
2. Plaintiff filed suit for declaration with the consequential relief of permanent injunction. As per plaintiff, the parties are related to each other and constitute joint hindu family. Defendant No.3 Himmat Singh was karta of family. The joint hindu family is owner in possession of the properties as described in the plaint. Defendant No.3 suffered consent decree qua some of the properties in favour of defendant No.1 and 2 on 26.04.1986. Decree dated 26.04.1986 is illegal, null and void and not binding on the rights of the plaintiff. As per plaintiff, neither defendant No.3 had any right to alienate the HUF property without any legal necessity nor there was any family settlement to found basis of the impugned decree.



3. Suit was contested by the defendants. Relationship was admitted. However, it was denied that the parties to the suit constitute HUF. As per defendants, defendant No.3 was absolute owner of the property in dispute. He divided the properties in equal shares in between all his sons. Property in village Anwal was purchased in the name of wife of the plaintiff on 27.03.1974. Property in dispute came to the share of defendant No.1 and 2 in family settlement which was recognized in decree dated 26.04.1986. Suit filed by the plaintiff was put to trial framing following issues:-

- “1. Whether suit land is the ancestral and joint Hindu Family property as alleged? OPP.
2. Whether the decree passed dated 26.04.86 in favour of defendant No.1 and 2 is illegal void and not binding upon the right of plaintiff? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus-standi to file this suit? OPD
5. Whether defendant No.3 had distributed the equal portion of the suit land to plaintiff and defendant No.1 and 2 as alleged in W.S.? OPD
6. Relief.”

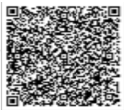
4. While returning finding on issue No.1, Court of the first instance found that plaintiff failed to prove that the property in dispute is HUF property or a coparcenary property. The ancestral nature of the property also could not be established and thus, Court of the first instance decided issue No.1 against the plaintiff. While deciding issue No.2 to 5, Court of the first instance found that plaintiff admitted that a plot was given to him by way of decree by his father and decided issue No.2 to 5 against the plaintiff and dismissed the suit.



5. Unsuccessful plaintiff filed appeal. Lower Appellate Court affirmed the findings recorded by the Courts below and dismissed the appeal.

6. Counsel for the appellant assails the findings of the Courts below claiming that the nature of the property being HUF property was admitted in the pleadings raised in the civil suit that led to passing of the decree in favour of defendants. While relinquishing land in favour of defendant No.1 and 2, Himmat Singh admitted that the property is ancestral property. In the light of the aforesaid admission on record, Courts below erred in recording the finding that the plaintiff failed to prove that the property was ancestral or was owned by joint hindu family. It has been further contended that PW-4 Samer Singh and PW-5 Sultan Singh brother of Himmat Singh deposed that the suit property was ancestral and supported the case of the plaintiff. Even defendant Ram Phal DW-3 and Jeet Singh DW-8 admitted that some land was ancestral. Thus, the Courts below erred in holding the land to be self owned property of Himmat Singh. He submits that the findings recorded by the Courts below need to be reversed.

7. *Per contra*, counsel for the respondents submits that concurrent findings of fact have been recorded by the Courts below. There is no evidence on record to show that the property in hands of Himmat Singh was ancestral property. Rather Himmat s/o Ram Karan purchased land from Jai Lal and Des Raj vide sale deed dated 18.04.1951. Mutation qua the same has been proved on record as Ex. P-4. Defendants successfully proved that Himmat Singh transferred some of the property through consent decree dated 17.02.1986 in favour



of plaintiff Satbir Singh. Copy of the same has been proved on record as DW-5/A. The plaintiff being himself a beneficiary of family settlement by way of decree dated 17.02.1986, cannot be allowed to claim that father Himmat Singh wrongly suffered decree in favour of defendants.

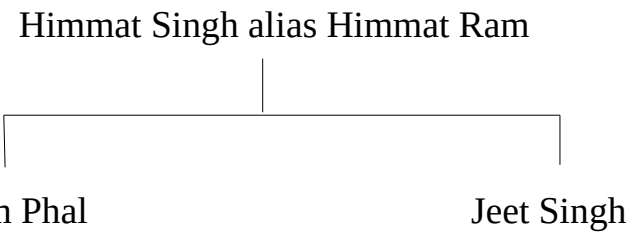
8. I have heard counsel for the parties and have carefully gone through the records of the case.

9. The two issues that arise for consideration of this Court are:-

- (a) the nature or property;
- (b) whether decree suffered by Himmat Singh in favour of his sons i.e. defendant No.1 and 2 is bad?

10. So far as nature of the property is concerned, plaintiff has relied upon pleadings raised in the civil suit which led to the passing of judgment and decree impugned by him to claim that the defendants admitted that the land in question is ancestral. The argument is against the pleadings raised in civil suit No.65 of 1986 filed by Ram Phal and Jeet Singh against their father Himmat. Pleadings read as under:-

“1. That the plaintiffs and defendant are the members of joint-Hindu Family, plaintiffs are the sons of defendant which is clear from the following pedigree table:-



2. That the defendant was the owner in possession of agricultural land comprising in khewat no.22/23 khatoni no.54 rect no.14 Killa no.15 rect



no.15 Killa no.11/1, 20/1 rect no.40 Killa no.17/8, 17/9 rect no.40 Killa no.17 10 rect no.41 Killa no.1/3 rect no.42 Killa no.11/2, 12/2, 19, 20, 21, 22, 23 and number 114 total land 63K-12M situated in the revenue estate of village Jondhi Tehsil Jhajjar Distt. Rohtak and Khewat no.2796/2692 Khatoni no.3305 rect no.21 Killa and 21 rect no.22 Killa no.25 rect no.42 Killa no.4/2, 5, 6, 7, 14, 15 rect no.43 Killa no.1, 2, 9, 10, 11, 12 total land measuring 104 K.15M situated in the revenue estate of village Jhajjar Teh. Jhajjar Distt. Rohtak Farar jamabandi for the village Jondhi & Jhajjar are attached.

3. That there was family settlement two years back by which the defendant had relinquished khewat no.22/23 khatoni no.54 rect. no. 42 Killa no.11/2, 12/2, 19, 20, 22, 23 total area 30K.17M. Out of Jondhi land and 1/4 share out of Jhajjar village Land mentioned above in Killa no.2 in equal share to the plaintiffs and the plaintiffs since that time of family settlement up to date are in actual physical possession of the land in suit.”

11. Thus, even though the defendants admitted in the plaint that they constitute joint hindu family, but there was specific plea that it is defendant-Himmat, who is owner in possession of the land in question. Thus, to say that there is any admission on part of the defendants that the property is ancestral in nature, is misplaced and cannot be accepted being against the record.

12. In jamabandi Ex.P-3 for the year 1944-45, it is Jai Lal and Des Raj sons of Munna Lal who were recorded to be the owners of part of the land. Copy of mutation Ex.P-4 shows that Himmat i.e. defendant No.3 purchased the said land from Jai Lal and Des Raj vide sale deed



dated 18.04.1951. Even if part of the land is said to be co-owned by Himmat Singh and his brother Sultan Singh as per jamabandi for the year 1959-60 Ex.P-6 and P-7, trite it is that an ancestral land when mixed with self acquired, whole of land attains the character of self acquired and becomes non-ancestral.

13. In view thereof, this Court finds no reason to interfere in the concurrent findings recorded by the Courts below regarding the land being self acquired land of Himmat Singh-defendant No.3.

14. That being the case, this Court does not find that the plaintiff had any locus to challenge decree suffered by Himmat Singh in favour of Ram Phal and Jeet Singh qua his self acquired land. That apart, counsel for the appellant is not in a position to dispute that appellant-plaintiff was also transferred land by way of decree Ex.DW-6/A and Ex.DE i.e. judgment and decree dated 17.02.1986 passed in civil suit No.608/19.09.1985 titled as '*Satbir Singh vs. Himmat Singh*'.

15. Counsel for the appellant at this stage raises issue of the decree not being registered and thus, not conferring any right upon the plaintiff. The argument raised sans merit. Supreme Court in the case of ***Bhoop Singh vs. Ram Singh Major*** reported as **(2015) 3 SCC 164** dealt with the issue and observed as under:-

“18. The legal position qua clause (vi) 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 duty 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/- or 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 the 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."

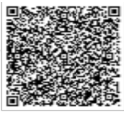
16. Same is the view taken by Supreme Court in the case of ***Mukesh vs. State of Madhya Pradesh and another*** reported as **2024 SCC Online SC 3832** to conclude as under:-

“xx xx xx

Thus, it could be discernible that in order to fall under the exception of Section 17(2)(vi) of the Act, 1908, the following conditions must be satisfied:

- (i) There must be a compromise decree as per the terms of the compromise without any collusion;
- (ii) The compromise decree must pertain to the subject property in the suit; and
- (iii) There must be a pre-existing right over the subject property, and the compromise decree should not create a right afresh.”

17. Applying the aforesaid parameters to the present case, the impugned decree has been passed in favour of defendants No.1 and 2 on



the basis of family settlement. The right of defendants No.2 and 3 thus, was not created for the first time by the compromise decree, but was only recognized acknowledging earlier family settlement. The compromise decree pertains to the subject property of the suit only. Since it has come on record that defendant No.3 Himmat Singh has already suffered decree in favour of the plaintiff, it cannot be said that the impugned decree was an act of collusion between defendants No.1 & 2 and defendant No.3. Collusion has been defined in Wharton’s Law Lexicon as under:-

“Collusion in judicial proceedings is a secret agreement between two persons that one should institute a suit against the other, in order to obtain the decision of a judicial Tribunal for some sinister purpose.”

18. There is no sinister purpose brought on record by the plaintiff to hold that the decree was an act of collusion. It has been already held by this Court that the property of Himmat being self acquired, plaintiff has no locus to file the present suit. The appeal filed by the plaintiff sans merit and is liable to be dismissed.

19. In view of above, this Court finds that the Courts below have rightly non-suited the plaintiff-appellant as there is no reason to hold that the decree suffered by defendant No.3 in favour of defendant No.1 and 2 dated 26.04.1986, can be said to be bad.

20. Finding no merits in the present appeal, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

13.05.2025

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Whether speaking/reasoned : Yes

Whether Reportable : No