



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

RSA-218-1998 (O&M)
Date of decision : 23.01.2025

KARAN SINGH

....Appellant

Versus

GAWAN SINGH

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sudhir Aggarwal, Advocate
 for the appellant.

 Mr. Ashish Kapoor, Advocate and
 Mr. M.S. Rana, Advocate for the respondent.

PANKAJ JAIN, J. (ORAL)

Plaintiff is in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the plaintiff and the respondent as the defendant.

3. Plaintiff filed suit seeking decree of declaration to the effect that decreed dated 06.09.1974 passed in Civil Suit No.770 of 1974 titled as ‘Gawan Singh vs. Ram Bux’ by the Court of Sub Judge, 2nd Class, Gurgaon is invalid, illegal and void.

4. Plaintiff filed suit claiming that he is son of Ram Bux son of Umrao, who was co-owner in agricultural land bearing Rect. No.26, Killa No.7, admeasuring 8 Kanals situated in the revenue estate of Sohna, Tehsil



and District Gurgaon. Ram Bux mortgaged suit land with one Beedhu son of Dulli. Beedhu sold away his mortgagee rights to the plaintiff and thus the plaintiff is owner in possession of the suit land. Plaintiff further claimed that it has come to his knowledge that there is a decree being claimed by defendant, dated 06.09.1974 in his favour. Defendant claims the decree to have been suffered by Ram Bux. The said decree is result of fraud and misrepresentation. Defendant played fraud upon the process of law. It was claimed that father of the plaintiff died prior to 06.09.1974 i.e. when the suit was instituted. Someone else misrepresented himself to be Ram Bux that led to passing of the decree.

5. Suit was contested by the defendant. Mortgage of the suit land with Beedhu and the sale of the mortgagee rights in favour of the plaintiff, were denied. Title of the plaintiff was denied. It was claimed that father of the plaintiff namely Ram Bux and the defendant were close to each other and treated each other as brothers. Ram Bux, predecessor-in-interest of the plaintiff, suffered decree dated 06.09.1974 in favour of the defendant and the plaintiff being successor of Ram Bux was bound by the same. It was further claimed that Ram Bux himself was present in the Court and was identified by Shri M.C. Aggarwal, Advocate.

6. On the basis of the pleadings of the parties, Court of First Instance framed the following issues :

- “1. Whether the decree dated 6.9.74 in civil suit No.770 of 1974 titled as Gawan Singh Vs. Ram Bax passed by

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Sh.K.K. Chopra, Sub Judge Ist Class, Gurgaon, was obtained by fraud and misrepresentation as alleged, If so, to what effect ? OPP.

2. If the finding on issue No.1 is in the affirmative, whether the plaintiff has become owner of the suit land ?OP Parties.
3. Whether the plaintiff is in possession of suit land through the purchase of mortgage rights from Beedhu as alleged? OPP.
4. Whether the suit of the plaintiff is time barred?OPD
5. Whether the suit has not been filed by competent person Sh. Murari Lal, as next friend of the minor plaintiff?OPD.
6. Whether the plaintiff has concealed true facts and not come with clean hands? OPD.
7. Relief.”

7. Trial Court after analysing the evidence came to the conclusion that the suit was instituted on 06.09.1974. It is claimed that the same day, Ram Bux appeared. He admitted the case of the plaintiff suffering statement on Oath before the Court. He was identified by none-else but Shri M.C. Aggarwal, Advocate who was representing Gawan Singh. Trial Court further found that Ram Bax and Gawan Singh belong to different castes and thus the plea raised in the earlier plaint that Gawan Singh was son of brother of father of Ram Bax was factually incorrect. Holding that the decree dated 06.09.1974 passed in Civil Suit No.770 of 1974 was result of fraud and that the plaintiff on the strength of revenue record has proved to be in established possession of the suit land, Trial Court decreed the suit.



8. In appeal preferred by the defendant, the aforesaid findings have been reversed by the Appellate Court holding that the ground on which the decree was assailed, was misrepresentation and not fraud. Plaintiff failed to prove that Ram Bax died prior to 06.09.1974 as claimed in the plaint. Plaintiff having failed to prove fraud, Trial Court erred in recording finding on issue No.1 in favour of the plaintiff. Lower Appellate Court thus dismissed the suit filed by the plaintiff.

9. Mr. Aggarwal, counsel for the appellant while assailing the findings recorded by the Lower Appellate Court submits that the Court erred in misreading the pleadings. In the plaint, specific plea w.r.t. fraud having been played upon the process of law, was raised. Trial Court after analysing all the evidence found fraud evident from the record and answered issue No.1 in favour of the plaintiff. It stood proved on record that on the day the Civil Suit No.770 of 1974 was filed, statement of Ram Bax was recorded and Ram Bux was identified by the counsel representing Gawan Singh. The plea w.r.t. relationship between Gawan Singh and Ram Bux was found to be factually incorrect as they were of different castes. Lower Appellate Court erred in reversing the finding recorded on issue No.1. In support of his contention, he relies upon law laid down by Apex Court in the case of **Amro Devi and others vs. Julfi Ram (Deceased) through LRs and others, SLP(C) No.14690 of 2015**, dated 15.07.2024 wherein Apex Court held that in order to meet the requirement of Order XXXIII Rule 3 CPC written



compromise is *sine qua non*. In the absence of there being any written compromise, suit cannot be decreed and any compromise decree passed without the requirements of Order XXXIII Rule 3 CPC, cannot be sustained. He further relies upon law laid down in **Santosh v. Jagat Ram & Anr. (2010) 3 SCC 251** which has been reiterated by Supreme Court in the case of **Smt. Badami (Deceased) By her L.R. v. Bhali (2012) 11 SCC 574**.

10. Counsel for the respondent however pleads no instructions.

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

12. The seminal issue involved in the *lis* relates to '*legality and validity of decree dated 06.09.1974*'.

12.1. Normally separate suit challenging decree based on compromise is not maintainable. Only exception is 'fraud'.

13. It is a matter of record that in the plaint dated 06.09.1974, plaintiff claimed that he as well as defendant Ram Bux were related. Ram Bux was his father's brother's son. Without any notice being issued, summons being served, statement of Ram Bux got recorded on the same day. Ram Bux was identified by Mr. M.C. Aggarwal-the counsel representing the plaintiff i.e. Gawan Singh. He suffered a statement admitting the case pleaded by the plaintiff. Decree was passed on the same day. It has come on record and was so held by the Trial Court that the plea w.r.t. relationship between the Gawan Singh and Ram Bux in earlier plaint was wrong as both



of them were of different castes. Fact of Ram Bax having been identified by counsel representing the plaintiff, stands proved on record. Admittedly, there is no written compromise on the record. Instead of meeting with the aforesaid finding recorded by the Trial Court, Lower Appellate Court misdirected itself in holding that the fraud was not pleaded by the plaintiff. In fact, it is a case wherein fraud was pleaded on the process of law and the same stands unveiled by evidence on record.

14. Supreme Court in the case of **Santosh v. Jagat Ram & Anr.** (supra) while dealing with somewhat similar situation observed as under:-

“11. Very unfortunately, all this has escaped the notice of the High Court, who passed a very casual judgment without being bothered about these glaring facts. We are of the firm opinion that a whole suit No. 253 of 1985, decree passed thereupon on 26.3.1985 and the subsequent Caveat proceedings were nothing but a systematic fraud. There cannot be a better example of a fraudulent decree. We are anguished to see the attitude of the Court, who passed the decree on the basis of a plaint and a Written Statement, which were filed on the same day. We are also surprised at the observations made by the Appellate Court that such circumstance could not, by itself, prove the fraudulent nature of the decree.

12. A fraud puts an end to everything. It is a settled position in law that such decree is nothing, but a nullity. It has come in the evidence that when the respondents herein started disturbing the possession of the appellant and also started bragging about a decree having been obtained by them, the appellant chose to file a suit. In that view, her suit filed in 1990 would be absolutely within time. The casual observation made by the High Court that her suit would be barred by limitation, is also wholly incorrect.”



15. Taking note of the abuse of process by the parties, in obtaining consent decrees by fraud, Supreme Court in the case of *Smt. Badami (Deceased) by her L.R. v. Bhali* held that -

- “11. From the aforesaid decision it becomes quite clear that this Court expressed a sense of surprise the way the suit in that case proceeded with and also expressed its anguish how the court passed a decree on the foundation of a plaint and a written statement that were filed on the same day.
12. It is seemly to note that the Code of Civil Procedure provides how the court trying the suit is required to deal with the matter. Order 4 Rule 1 provides for suit to be commenced by plaint. Order 5 Rule 1(1) provides when the suit has been duly instituted, a summon may be issued to defendant to appear and answer the claim on a day to be therein specified. As per the proviso to Order 5 Rule 1 no summon need be issued if the defendant appears and admits the claim of the plaintiff. Order 10 deals with the examination of parties by the court. Rule 1 Order 10 provides for ascertainment whether allegations in pleadings are admitted or denied. It stipulates that "at the first hearing" of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The court is required to record such admissions and denials. Use of the term 'first hearing of the suit' in Rule 1 has its own signification. Order 15 Rule 1 lays a postulate that where "at the first hearing" of the suit it appears that the parties are not at issue on any question of law or of fact, the court may at once pronounce the judgment. Recently, this Court in *Kanwar Singh Saini v. High Court of Delhi, 2011(4) RCR (Civil) 402 : 2011(5) Recent Apex Judgments (R.A.J.) 278 : 2012(4) SCC*

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307, while dealing with the concept of first hearing, speaking through one of us (Dr. B.S. Chauhan, J) has opined thus :-

"12. The suit was filed on 26-4-2003 and notice was issued returnable just after three days i.e. on 29-4-2003 and on that date the written statement was filed and the appellant appeared in person and the statement was recorded. Order 10 Rule 1 Civil Procedure Code provides for recording the statement of the parties to the suit at the "first hearing of the suit" which comes after the framing of the issues and then the suit is posted for trial i.e. for production of evidence. Such an interpretation emerges from the conjoint reading of the provisions of Order 10 Rule 1, Order 14 Rule 1(5) and Order 15 Rule 1 CPC. The cumulative effect of the above referred provisions of Civil Procedure Code comes to that the "first hearing of the suit" can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. On the date of appearance of the defendant, the court does not take up the case for hearing or apply its mind to the facts of the case, and it is only after filing of the written statement and framing of issues, the hearing of the case commences. The hearing presupposes the existence of an occasion which enables the parties to be heard by the court in respect of the cause. Hearing, therefore, should be first in point of time after the issues have been framed.

13. The date of "first hearing of a suit" under Civil Procedure Code is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit. Thus, the question of having the "first hearing of the suit" prior to determining the points in controversy between



the parties i.e. framing of issues does not arise. The words "first day of hearing" do not mean the day for the return of the summons or the returnable date, but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence is taken. (Vide **Ved Prakash Wadhwa v. Vishwa Mohan, 1981(1) RCR (Rent) 670 : 1981(3) SCC 667** , **Sham Lal v. Atme Nand Jain Sabha, 1987(1) RCR (Rent) 181 : 1987(1) SCC 222**, **Siraj Ahmad Siddiqui v. Prem Nath Kapoor, 1994(1) RCR (Rent) 153 : 1993(4) SCC 406** and **Mangat Singh Trilochan Singh v. Satpal, 2004(2) RCR (Civil) 1 : 2003(2) RCR (Rent) 567 : 2003(8) SCC 357** ."

After so stating, it has been further observed as follows :-

"From the above fact situation, it is evident that the suit was filed on 26-4-2003 and in response to the notice issued in that case, the appellant-defendant appeared on 29.4.2003 in person and filed his written statement. It was on the same day that his statement had been recorded by the court. We failed to understand as to what statutory provision enabled the civil court to record the statement of the appellant-defendant on the date of filing the written statement. The suit itself has been disposed of on the basis of his statement within three weeks of the institution of the suit."

15.1. Supreme Court further observed that -

"19. Presently, we shall refer as to how this Court has dealt with concept of fraud. In **S.B. Noronah v. Prem Kumari Khanna, 1979(2) RCR (Rent) 445** while dealing with the concept of estoppel and fraud a two-Judge Bench has stated that it is an old maxim that estoppels are odious, although considerable inroad into this maxim has been made by modern law. Even so, "a judgment

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obtained by fraud or collusion, even, it seems a judgment of the House of Lords, may be treated as a nullity”. (See Halsbury’s Laws of England, Vol. 16 Fourth Edition para 1553). The point is that the sanction granted under Section 21, if it has been procured by fraud or collusion, cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion.

20. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others, 1994(1) R.R.R. 253* this court commenced the verdict with the following words:-

“Fraud-avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”

21. In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party. 22. In *Smt. Shristi Dhawan v. M/s. Shaw Brothers, 1992(1) RCR (Rent) 442* it has been opined that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in *Roshan Deen v. Preeti Lal, 2002(2) S.C.T. 106, Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and*

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other, 2003(4) S.C.T. 318 : 2003(8) SCC 319 and *Ram Chandra Singh v. Savitri Devi and others, 2003(8) SCC 319.*

23. In State of *Andra Pradesh and another v. T. Suryachandra Rao, AIR 2005 Supreme Court 3110* after referring to the earlier decision this court observed as follows:-

“In *Lazaurs Estate Ltd. v. Beasley, 1956(1) QB 702* Lord Denning observed at pages 712 & 713, “No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.” In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. ”

24. Yet in another decision *Hamza Haji v. State of Kerala & Anr., AIR 2006 Supreme Court 3028* it has been held that no court will allow itself to be used as an instrument of fraud and no court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud. The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof.”

16. Moreover, in view of ratio of law laid down in **Amro Devi’s case** (supra) and bare provisions as contained under Order XXXIII Rule 3 CPC, there being no written compromise on the file, this Court finds that the Lower Appellate Court erred in reversing the judgment and decree passed by the Trial Court. In terms of Order XLI, Rule 31 CPC, Appellate Court was required to deal with the reasoning recorded by the Trial Court. Duty was on the Lower Appellate Court to record reasons for reversing the findings recorded by the Court of First Instance. The Appellate Court failed to do so

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and completely misread the pleadings. This led to perverse findings which cannot be sustained.

17. In view of above, this Court finds that the present appeal merits acceptance. Resultantly, the same is allowed. Impugned judgment and decree passed by the Lower Appellate Court is ordered to be set aside. Judgment & decree passed by the Trial Court is ordered to be restored.

18. Pending application, if any, shall also stand disposed off.

January 23, 2025
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes