



110

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

RSA-9907-2018 (O&M)

Reserved on : 29.01.2025

Date of Decision : 06.02.2025

Raj Kumar

... Appellant(s)

VERSUS

Maro Devi (deceased) through LRs

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rohit Singh, Advocate for
Mr. Aman Godara, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellant challenging the concurrent findings returned by the Trial Court vide judgment and decree dated 06.08.2003 and by the First Appellate Court vide judgment and decree dated 09.02.2018.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for declaration that she was owner in possession of the suit property measuring 8 kanals 9 marlas situated in village Laharpur, Tehsil Jagadhri fully described in the plaint. It was the case set up by the plaintiff-respondent that she was the widow of Shadi Ram, hence, the only sole heir of deceased - Shadi Ram. Shadi Ram is stated to have died on 28.03.1997. It was further the case that during the lifetime of Shadi Ram, the defendant-appellant – Raj Kumar – had by misrepresenting and by fraud got a judgment and decree dated 02.03.1996 in his favour being

civil suit no.535-CS of 1995 titled as Raj Kumar Vs. Shadi Ram, which was illegal, null and void and not binding on the rights of the plaintiff-respondent. A written statement was filed by the defendant-appellant averring therein that Shadi Ram was his maternal uncle and he was living with the defendant-appellant and that he had incurred all the expenses for Shadi Ram. In 1995 a family settlement took place in which the suit property was given to him by Shadi Ram. It was further averred that in a civil suit filed by the defendant-appellant against Shadi Ram, Shadi Ram filed an admitted written statement, and that the judgment was valid and binding on all. Replication was filed. On the basis of the pleadings, the following issues were framed :

1. Whether the plaintiff is owner in possession of the suit land, as alleged ? OPP
2. Whether the judgment, decree dated 2.3.96 passed in Civil Suit No.535 of 1995 titled as 'Raj Kumar Vs. Shadi Ram' in respect of the suit land are illegal, null and void and liable to be set aside, as alleged ? OPP
3. Whether the plaintiff is entitled to the possession of the suit property, as alleged ? OPP
4. Whether the suit 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 suit of the plaintiff is time barred ? OPD
7. Whether the plaintiff is entitled to the special costs ? OPD
8. Relief.

3. The Trial Court decreed the suit vide judgment and decree dated 06.08.2003. Aggrieved by the same an appeal was preferred by the

defendant-appellant wherein the plaintiff-respondent – Maro Devi – was proceeded against *ex parte*. The appeal was accepted by the First Appellate Court vide judgment and decree dated 08.11.2004. Maro Devi preferred a regular second appeal being RSA No.849 of 2005 which was dismissed on 22.01.2007. Aggrieved by the same, Civil Appeal No.6693 of 2009 was filed which was allowed by the Hon'ble Supreme Court on 17.08.2017 and the matter was remanded to the First Appellate Court for a decision afresh on merits. Thereafter, the First Appellate Court decided the case afresh vide judgment and decree dated 09.02.2018 upholding the judgment and decree passed by the Trial Court. Hence, the present regular second appeal.

4. Learned counsel for the defendant-appellant would contend that the Courts below have erred in decreeing the suit of the plaintiff-respondent. It is urged that the defendant-appellant, in the present case, was the nephew of Shadi Ram and he looked after his maternal uncle and pleased with his services, Shadi Ram suffered a judgment and decree in his favour giving all his self-acquired properties to the defendant-appellant. It is further the contention of the learned counsel that being a family settlement, the decree did not require registration. In support of his arguments, he has relied upon **Dhian Singh & Ors. Vs. Mohinder Singh & Ors. [2018 (4) RCR (Civil) 387]; Bant Singh Vs. Lakhbir Singh & Ors. [2005 (2) RCR (Civil) 676]; Jagdish & Ors. Vs. Ram Karan & Ors. [2003 (1) RCR (Civil) 657]; Hari Singh Vs. Gurcharan Singh & Ors. [2003 (3) RCR (Civil) 632]; Malkiat Singh Vs. Jasbir Singh [2017 (5) RCR (Civil) 221]; Krishna Biharilal Vs. Gulab Chand & Ors. [AIR 1971 Supreme Court 1041] and Mukanda Vs. Kura Ram [2003 (3) RCR (Civil) 370].**

5. I have heard the learned counsel for the defendant-appellant.

6. In the present case the defendant-appellant claimed that on the basis of a family settlement the suit filed by him against Shadi Ram was decreed on the basis of an admitted written statement. The learned counsel for the defendant-appellant has sought to rely upon the judgment in the case of **Dhian Singh** (supra) to contend that the family member would include the extended family. The judgment in the case of **Dhian Singh** (supra) is on an issue where an oral family settlement had taken place and on the basis of the said settlement a decree was passed. In the present case there is no family settlement which has been brought on the record by the defendant-appellant and in the absence of any family settlement the judgment and decree, which was a simpliciter suit for declaration, cannot be said to be exempted from registration. The judgment relied upon by the learned counsel in the case of **Bant Singh** (supra) is on the same proposition that a compromise recording a family settlement would not require registration. Similarly in the case of **Jagdish** (supra) it has been held that a decree based on a family settlement would not require registration. Same proposition has been laid down in the case of **Hari Singh** (supra). In the present case, as noticed above, there is no family settlement which has come on the record. Ex.D2, which is the judgment and decree, states that the suit was for simpliciter declaration to the effect that Raj Kumar was the owner of the property enlisted therein. The defendant-appellant is admittedly the son of Shadi Ram's sister and normally would not be held to constitute a joint Hindu family with Shadi Ram. The learned counsel for the defendant-appellant has not been able to convince this Court, nor point to any evidence, to even remotely suggest that Shadi Ram constituted a joint Hindu family with the defendant-appellant and that the defendant-appellant had a

pre-existing right in the property. There can be no quarrel with the proposition of law that a family settlement could also include near relatives but here again, as noticed above, the suit was only for declaration that Raj Kumar was the owner of the property enlisted in the suit. There is no document on the record even remotely suggesting that the suit was filed on the basis of any family settlement. In the absence of the same, no mileage can be drawn by the learned counsel for the defendant-appellant on the case of **Krishna Biharilal** (supra) or on the case of **Mukanda** (supra).

7. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The present appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

06.02.2025
Yogesh Sharma

(**ALKA SARIN**)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO