

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-29-1993

GURDIAL SINGH

.....APPELLANT

VERSUS

RANJIT KAUR ETC.

....RESPONDENTS

1.	The date when the judgment is reserved	24.02.2026
2.	The date when the judgment is pronounced	14.05.2026
3.	The date when the judgment is uploaded	15.05.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any of the pronouncement of full judgment and reason thereof.	Not applicable

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. APS Shergil, Advocate with
Ms. Anisha Singh, Advocate for the petitioner(s).

Mr. Varun Mittal, Advocate for the Respondents.

SANDEEP MOUDGIL, J

1. The plaintiffs, being the daughters of Bhagwant Singh, instituted a suit for possession to the extent of half share in agricultural land measuring 37 bighas 14 biswas. Their claim was founded on their status as legal heirs as well as on the basis of a registered Will dated 15.02.1980 executed by Bhagwant Singh in their favour.
2. That Bhagwant Singh was owner of half share in the suit property and, upon his death, the plaintiffs succeeded to his estate. The defendant, however,

contested the claim and asserted his title on the strength of a consent decree dated 23.01.1979, allegedly suffered by Bhagwant Singh in his favour.

3. In addition thereto, the defendant also set up a plea of an oral family settlement, contending that the property had already been transferred to him during the lifetime of Bhagwant Singh out of love and affection.

4. The Trial Court, upon appreciation of the pleadings and evidence, decreed the suit in favour of the plaintiffs, holding that the defendant had failed to establish any valid transfer of title and that the plaintiffs were entitled to succeed on the basis of the registered Will.

5. Aggrieved, the defendant preferred an appeal, which came to be dismissed by the First Appellate Court. While affirming the decree, the Appellate Court held that the consent decree relied upon by the defendant was vitiated by fraud and, therefore, incapable of conferring any valid title.

6. The appellant-defendant has now preferred the present regular second appeal assailing the judgment and decree of the Trial Court and the First Appellate court as erroneous in law.

Contentions:

On behalf of appellant-defendant:

7. Learned counsel for the appellant–defendant contends that the finding of fraud recorded by the First Appellate Court is wholly unsustainable in law, as the same has been returned without any specific pleadings or clear evidence indicating the manner in which fraud was allegedly practiced. It is argued that the Appellate Court has proceeded merely on suspicion and surrounding circumstances, which cannot substitute strict proof required for establishing fraud.

8. It is further submitted that the consent decree dated 23.01.1979, having been passed by a competent court on admission, carries a presumption of validity and could not have been indirectly set aside in the present proceedings. The learned counsel urges that in the absence of any challenge to the said decree during the lifetime of Bhagwant Singh, the same had attained finality and was binding on the parties.

9. The learned counsel further contends that the consent decree dated 23.01.1979 was not challenged in the original plaint nor the fraud and misrepresentation has been alleged in the replication. Moreover the judgments and decree evidenced by the plaint Ex D-1, statements D-4 and D-5 and judgment-decree Ex D-6 and D-7, were not challenged in the plaint and thus, the challenge to the consent decree is an after thought. It is urged that the approach adopted by the First Appellate Court in disregarding the decree amounts to unsettling a concluded judicial determination without recourse to appropriate legal proceedings, which is impermissible.

10. It is thus submitted that the findings recorded are perverse, based on conjectures, and contrary to settled legal principles, thereby giving rise to a substantial question of law warranting interference under Section 100 CPC

On behalf of respondent-plaintiff

11. Learned counsel for the respondent-plaintiffs, in rebuttal, submits that the contentions advanced on behalf of the appellant are misconceived and contrary to settled principles of law. It is argued that the absence of elaborate pleadings is not fatal in the present case, inasmuch as the foundation regarding the invalidity of the consent decree was clearly laid in the pleadings, and the parties were fully

aware of the controversy. The Appellate Court has, on a comprehensive appreciation of the material on record, rightly concluded that the decree was not genuine.

12. It is further contended that fraud, by its very nature, is seldom capable of direct proof and can be inferred from the cumulative effect of surrounding circumstances. The evidence on record, including the conduct of Bhagwant Singh and the manner in which the decree came into existence, clearly probabilizes the case of the plaintiffs, and the finding so recorded cannot be said to be based on mere conjectures.

13. Learned counsel submits that a consent decree obtained by fraud is a nullity in the eyes of law and, therefore, the same can be questioned even in collateral proceedings. Consequently, the argument that the decree was never formally challenged or had attained finality is of no consequence, as fraud vitiates even the most solemn judicial acts.

14. It is also urged that the plea that the challenge to the consent decree is an afterthought is devoid of merit, as the plaintiffs, being legal heirs, became aware of the fraudulent nature of the decree only subsequently, and have consistently disputed its validity in the present proceedings.

15. It is thus contended that the First Appellate Court has recorded a well-reasoned finding based on proper appreciation of evidence, which neither suffers from perversity nor raises any substantial question of law, and therefore, no interference is called for under Section 100 CPC.

16. Having heard learned counsel for the parties and perused the record.

SUBSTANTIAL QUESTION OF LAW:

Whether the First Appellate Court's findings, including the finding of fraud for setting aside the consent decree of a competent court, are legally sustainable in the absence of specific pleadings and strict proof, or are perverse so as to warrant interference under Section 100 CPC?

Analysis:

17. The present Regular Second Appeal is directed against the judgment and decree passed by the First Appellate Court and the Trial Court, whereby the suit of the plaintiffs-respondents for possession of half share in the agricultural land measuring 37 Bighas 14 Biswas has been decreed, primarily on the basis of inheritance and the registered Will dated 15.02.1980 executed by Bhagwant Singh in their favour. The appellant-defendant has challenged the said judgment contending that the First Appellate Court has held the consent decree dated 23.01.1979 to be vitiated by fraud and has thereby ignored its legal effect while affirming the plaintiffs' claim.

18. The principal question which arises for consideration is whether the First Appellate Court was justified in law in holding that the consent decree dated 23.01.1979 stood vitiated by fraud, and whether such a finding, recorded in the absence of specific pleadings and strict proof, can be sustained in law or is liable to be interfered with under Section 100 CPC.

19. At the outset, it is necessary to notice the factual backdrop in some detail. The suit land was jointly owned by Kartar Singh and Bhagwant Singh in equal shares. It is an admitted position that Bhagwant Singh died on 04.08.1982,

leaving behind the plaintiffs as his daughters. The plaintiffs claimed half share in the suit property on the basis of inheritance as well as a registered Will dated 15.02.1980 (Ex. P.1). The defence set up by the appellant was that Bhagwant Singh had already divested himself of his share in favour of the appellant through an oral family settlement and that the rights had already been crystallised in favour of the appellant through a consent decree dated 23.01.1979 passed in Civil Suit No. 545 of 07.12.1978.

20. The record of that earlier suit, which forms Ex. D-1 to Ex. D-7, shows that the suit was instituted by the present appellant seeking declaration of ownership on the basis of alleged oral gift/family settlement from Kartar Singh and Bhagwant Singh. Written statements (Ex. D-2) were filed by both Kartar Singh and Bhagwant Singh admitting the claim, and their statements (Ex. D-4 and Ex. D-5) were recorded in Court, on the basis of which a consent decree dated 23.01.1979 (Ex. D-7) was passed by a court of competent jurisdiction.

21. The Trial Court, on appreciation of the entire evidence, held that the plaintiffs were entitled to succeed on the basis of the registered Will Ex. P.1 and inheritance. Significantly, it recorded that the consent decree was not registered and did not divest Bhagwant Singh of his right in the property. The Trial Court further found that Bhagwant Singh had executed the Will in 1980 in a sound disposing state of mind, which further supported the genuineness of his understanding of his rights.

22. It is only at the appellate stage that the plea of fraud was substantially pressed and Issue No. 4-B came to be considered in detail after amendment of Writenn Statement and remand by the First Appellate Court. The Trial Court, even

after remand, returned a clear finding that no fraud or undue influence was proved. However, the First Appellate Court reversed this finding and held that the consent decree itself was vitiated by fraud.

23. A careful examination of the appellate reasoning shows that this conclusion is not based on any direct evidence of fraud. The law is well settled that fraud must be specifically pleaded with full particulars under Order VI Rule 4 CPC and must be strictly proved by clear, cogent and convincing evidence. It is not in dispute that the plea of fraud was not originally articulated with specificity in the pleadings and came to be projected more emphatically at the appellate stage, whereupon the First Appellate Court framed additional issues and remitted the matter to the Trial Court for a finding.

24. It is a plain and basic rule of pleadings that in order to make out a case of fraud or coercion there must be a) an express allegation of coercion or fraud and b) all the material facts in support of such allegations must be laid out in full and with a high degree of precision. In other words, if coercion or fraud is alleged, it must be set out with full particulars. Guidance may be drawn from ***Bishundeo Narain v. Seogeni Rai 2010 INSC 219***, wherein it was observed that:

24. We turn next to the questions of undue influence and coercion. Now it is to be observed that these have not been separately pleaded. It is true they may overlap in part in some cases but they are separate and separable categories in law and must be separately pleaded.

25. It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any Ct. ought to take notice, however, strong the language in which they are

couched may be and the same applies to undue influence and coercion. See Order 6, Rule 4, Civil Procedure Code.

25. Otherwise also, there is no pleading, much less proof, of the manner in which Bhagwant Singh was allegedly deceived, who practised fraud upon him, or what false representation was made at the time of passing of the consent decree. The finding is essentially built on circumstantial factors such as the alleged haste in disposal of the earlier suit, the absence of detailed description of land in the compromise pleadings, alleged irregularities in mutation proceedings, the testimony of the Lamberdar Bachan Singh being disbelieved, and the fact that Bhagwant Singh was an illiterate villager. Additionally, reliance has been placed on the subsequent Will dated 15.02.1980 wherein no reference is made to the consent decree.

26. However, these circumstances, even if taken cumulatively, do not satisfy the strict legal requirements for establishing fraud. Illiteracy of Bhagwant Singh, without proof of deception or misrepresentation at the time of recording of his statement in Court (Ex. D-5), cannot lead to a presumption that his consent was vitiated. Likewise, the omission in the subsequent Will of 15.02.1980 cannot retrospectively invalidate a judicial decree already passed and acted upon.

27. In ***Union of India v. Ibrahim Uddin (2012) 8 SCC 148***, it has been reiterated that courts cannot base findings of fraud on assumptions or conjectures and must insist on strict proof. Relevant extract is as under:

16. Thus, in view of the above, the law on the issue can be summarised to the effect that, issue of drawing adverse inference is required to be decided by the court taking into consideration the pleadings of the parties and by deciding whether any document/evidence, withheld, has any relevance at all

or omission of its production would directly establish the case of the other side. The court cannot lose sight of the fact that burden of proof is on the party which makes a factual averment. The court has to consider further as to whether the other side could file interrogatories or apply for inspection and production of the documents etc. as is required under Order 11 CPC. Conduct and diligence of the other party is also of paramount importance. Presumption or adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some reasonable grounds. In case one party has asked the court to direct the other side to produce the document and other side failed to comply with the court's Order the court may be justified in drawing the adverse inference. All the pros and cons must be examined before the adverse inference is drawn. Such presumption is permissible, if other larger evidence is shown to the contrary.

28. It is also a crucial fact that Bhagwant Singh never challenged the consent decree during his lifetime. On the contrary, the decree was allowed to attain finality and was acted upon in revenue records. This assumes significance because a consent decree passed by a court of competent jurisdiction carries the same binding force as a contested decree. It is settled law that such a decree can be set aside only in appropriate proceedings and cannot be ignored or declared void in collateral proceedings unless fraud is strictly proved.

29. In the present case, the First Appellate Court has nullified a consent decree of 1979, passed by a competent court on the basis of statements of parties, without there being any foundational pleading of fraud with particulars and without any direct evidence establishing deception. The approach adopted is thus contrary to settled principles governing proof of fraud and finality of judicial decrees.

30. This Court is of the opinion that under Section 100 CPC, interference with concurrent or primary findings of fact is permissible only where such findings are perverse, based on no evidence, or are the result of misapplication of law. A finding which rests entirely on suspicion and circumstantial inference, without addressing the legal requirement of strict proof of fraud, cannot be sustained as a valid finding of fact. The First Appellate Court, in the present case, has substituted conjecture for proof and inference for evidence.

31. In this view of the matter, the finding of the First Appellate Court holding that the consent decree dated 23.01.1979 was vitiated by fraud cannot be sustained. The said finding is therefore perverse and unsustainable in law, warranting interference under Section 100 CPC. Accordingly, the substantial question of law is answered in favour of the appellant.

32. It is also worth noting that a consent or compromise decree passed by a competent civil court does not require compulsory registration if it merely records or declares a pre-existing right or an earlier family arrangement between the parties, even if such arrangement was oral. In such a situation, the decree does not itself create or extinguish rights in immovable property but only recognises an already concluded transaction and does not require registration if it merely declares pre-existing rights, but would require registration only if it itself creates new rights for the first time. The same has been reiterated by the Apex Court in ***Som Dev v. Rati Ram (2006) 10 SCC 788***. It was observed that,

It was held in that case that exception under clause (vi) of Section 17(2) of the Act is meant to cover that decree or order of a Court including the decree or order expressed to be made on a compromise which declares the pre-existing right and does not by itself create new right, title or interest in

praesenti in immovable property of the value of Rs. 100/- or upwards. Any other view would find the mischief of avoidance of registration which requires payment of stamp duty embedded in the decree or order. It would, therefore, be the duty of the Court to examine in each case whether the parties had pre-existing right to the immovable property or whether under the order or decree of the Court one party having right, title or interest therein agreed or suffered to extinguish the same and created a right in praesenti in immovable property of the value of Rs. 100/- or upwards in favour of the other party for the first time either by compromise or pretended consent.

Therefore, where the decree is in substance declaratory of an antecedent arrangement and not the source of title by itself, non-registration would not render it invalid or unenforceable.

33. In the facts of the present case, the consent decree dated 23.01.1979 cannot be treated as a fresh or independent mode of transfer so as to attract the requirement of compulsory registration. The evidence on record shows that the appellant was closely associated with Bhagwant Singh and had been looking after him during his lifetime. It has come in the testimony of the appellant as well as Kartar Singh that, in lieu of the services rendered, Bhagwant Singh along with Kartar Singh had agreed to give their share in the suit land to the appellant in a family arrangement. It is also borne out from the record of the earlier suit (Ex. D-1 to Ex. D-7) that both Bhagwant Singh and Kartar Singh appeared before the Court, filed written statement admitting the claim, and their statements were recorded on oath, on the basis of which the decree was passed. Significantly, Bhagwant Singh never questioned the said decree during his lifetime, though he lived for about three years thereafter. The conduct of the parties, thus, clearly indicates that the

arrangement had already been acted upon and the decree only gave it a formal shape.

34. In this background, the decree cannot be said to be creating rights in praesenti for the first time; rather, it recognises and affirms a pre-existing family arrangement between close relations. The circumstance that the appellant was put in possession and continued to remain so, coupled with the categorical admission of Bhagwant Singh before a competent court, lends assurance to the genuineness of the arrangement. Merely because the arrangement was oral would not render it invalid, particularly when it stands acknowledged in judicial proceedings. In such a situation, the decree is essentially declaratory in nature and falls within the exception under Section 17(2)(vi) of the Registration Act. Applying these principles, it must be held that the consent decree dated 23.01.1979 validly recognises the rights of the appellant flowing from the earlier family arrangement, and cannot be disregarded on the ground of want of registration.

Conclusion

35. In view of the discussion and findings recorded hereinabove, the present Regular Second Appeal is allowed. The judgment and decree dated 25.08.1992 passed by the learned Additional District Judge, Patiala (First Appellate Court), as well as the judgment and decree dated 30.05.1987 passed by the learned Additional Senior Sub Judge, Nabha (Trial Court), are hereby set aside.

36. It is held that the consent decree dated 23.01.1979 passed in Civil Suit No. 545 of 07.12.1978 is a valid and binding decree, being declaratory of a pre-existing family arrangement, and does not require registration. The said decree

validly recognises the rights of the appellant in the suit property. Consequently, the suit filed by the plaintiffs for possession and mesne profits is dismissed.

37. Therefore, the present Regular Second Appeal is allowed.

38. Pending applications, if any, shall also stand disposed of.

14.05.2026
anuradha

(SANDEEP MOUDGIL)
JUDGE

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