



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

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**Reserved on : 05.02.2026
Pronounced on : 05.05.2026
Uploaded on : 05.05.2026**

Whether only operative part of the judgment is pronounced? *No*

Whether full judgment is pronounced? *Yes*

Balwant Kaur (dead) thr. LRs **..... Appellant**

versus

Gurmej Singh (dead) thr. LRs and others **..... Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Chanchal K. Singla, Senior Advocate with
 Ms. Ravinder Kaur, Advocate
 for the appellant.

Mr. Aman Bahri, Senior Advocate (Amicus Curiae) with
Mr. Bawa Karanveer, Advocate and
Ms. Vralika Bassi, Advocate
for the respondent.

PANKAJ JAIN, J.

1. Plaintiff is in second appeal. For convenience, parties hereinafter are referred to as by their original position in the *lis*, i.e. the appellant as plaintiff and the respondents as defendants.

2. Plaintiff filed suit seeking decree of declaration with the consequential relief of joint possession.

3. Plaintiff seeks declaration to the effect that the consent decree dated 16.02.1978 passed in Civil Suit No.150 of 1977 titled as 'Gurmej Singh vs. Balwant Kaur', is illegal, null and void and result of fraud and misrepresentation.



4. Natha Singh had three daughters, namely Balwant Kaur-plaintiff, Sant Kaur defendant No.3, Harbans Kaur defendant No.4 and two sons Gurmej Singh-defendant No.1 and Banta Singh defendant No.2. Natha Singh was exclusive owner in possession of land measuring 16 kanal 18 marlas. Plaintiff along with her father Natha Singh jointly purchased another agricultural land measuring 78 kanal 7 marlas. On his death, estate of Natha Singh was mutated in favour of his six legal heirs, i.e. widow and the aforesaid children to the extent of 1/6 share each. As per plaintiff, Gurmej Singh defendant No.1 persuaded her to transfer her share of estate inherited from father in his favour. Plaintiff and her sister Sant Kaur, agreed to transfer their respective shares inherited from Natha Singh in favour of Gurmej Singh. Civil Suit bearing No.150 dated 08.11.1977 was instituted.

5. Plaintiff filed written statement admitting the claim of Gurmej Singh. She pleads that she never agreed to transfer land jointly purchased by her and her late father Natha Singh measuring 78 Kanal 7 marlas. Consent was given only with respect to 1/6 share out of land measuring 16 Kanal 18 marlas which was exclusively owned by Natha Singh. As per plaintiff, she dealt with her share out of joint land measuring 78 kanal 7 marlas exclusively and sold 14 kanal 2 marlas out of the same on 31.12.1977 in favour of Harbhajan Singh-defendant No.5 for a consideration of Rs.13,000/-. She thus filed the present suit claiming that the decree passed in Civil Suit No. 150 of 1977 has no effect qua her share in the land purchased by her along with her father measuring 78 kanal 7 marlas.



6. Suit was contested by legal heirs of Gurmej Singh-defendant No.1. As per them, the plaintiff suffered consent decree regarding entire suit land inherited by way of succession after death of her father. Consent decree is not an act of fraud or misrepresentation, but was willfully suffered by plaintiff in favour of Gurmej Singh.

7. Suit filed by the plaintiff was put to trial by the Court of First Instance framing following issues:-

- “1. Whether the decree in civil suit No. 158 of 1978 titled Gurmej Singh Vs. Balwant Kaur is illegal, void and is liable to be set aside on the grounds taken in the plaint ? OPP*
- 2. Whether the suit is not within time? OPD*
- 3. Whether the suit is not properly valued for the purposes of court fee and jurisdiction ? OPD*
- 4. Relief.”*

8. While deciding issue No.1, the Court of First Instance relied upon statement made by PW2 Sant Kaur, who accompanied plaintiff at the time of consent decree and testified in the present suit that the land exclusively owned and possessed by the plaintiff was never consented to be transferred in favour of Gurmej Singh. The Court of First Instance further found that Balwant Kaur purchased land measuring 78 kanal 7 marlas jointly with her father in the year 1958 and continued to be owner in possession of the entire land. She continued to be in possession of the same even after death of Natha Singh. She being an illiterate lady, statement of K.S. Bajwa, Advocate and Rajinder Singh DW2 and DW3 are not sufficient to remove the doubts from the mind of the Court. The Court of First Instance accordingly answered issue No.1 in favour of the plaintiff and decreed the suit.



9. Defendant No.1 preferred appeal. Lower Appellate Court reversed the findings on issue No.1 holding that two lawyers appeared in the witness box as DW2 and DW3. They proved that the contents of written statement were read over to Balwant Kaur and thereafter she had thumb marked the same. In these circumstances, fraud cannot be said to have been proved by the plaintiff. The Lower Appellate Court accepted the appeal preferred by the defendants and dismissed the suit filed by the plaintiff.

10. Mr. Chanchal Singla, counsel for the appellant has assailed the findings recorded by the Lower Appellate Court. He submits that the judgment passed by the Lower Appellate Court is in teeth of mandate of Order XLI Rule 31 CPC, well reasoned finding recorded by the Court of First Instance have been reversed merely on the basis of surmises and conjectures. He submits that the property exclusively owned and possessed by the plaintiff, i.e. 1/2 share in the parcel of land measuring 78 Kanal 07 marlas was never the property of family and thus, there was no reason for plaintiff to accept family settlement qua the same. He submits that an illiterate lady was duped by her brother playing fraud. Two sisters agreed to transfer their share of inheritance in favour of brother who unfortunately duped the sister even of her exclusive ownership in the land which was purchased by her.

11. *Per contra*, senior counsel Mr. Bahri who was appointed as amicus by this Court to assist on behalf of the respondents, submits that the present suit would be barred by provisions of Order XXIII Rule 3A CPC. Once the consent decree has been passed in favour of defendant No.1 on the admitted written statement filed by the present plaintiff in the



earlier suit, the decree passed on the basis of consent given by defendant cannot be challenged by filing separate suit. It has been contended that the present suit seeking decree of declaration would be barred. Decree was passed in the year 1978, whereas the present suit has been instituted in the year 1985.

12. Mr. Bahri further submits that the Lower Appellate Court has rightly appreciated statement made by DW2 and DW3, who proved written statement filed by present plaintiff in the earlier suit. Plaintiff having consented to the averments made in the plaint in the earlier suit, cannot be allowed to turn around and take a different stand by filing separate suit after seven years of passing of the decree.

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

14. The material issue in the *lis* relates to validity of decree dated 16.02.1978 claimed to have been suffered by plaintiff in favour of defendant No.1 in the present suit. It is not in dispute that Natha Singh father of the parties to the present *lis* exclusively owned 16 kanal 18 marlas of agricultural land. In the year 1958, he along with his married daughter Balwant Kaur purchased agricultural land measuring 78 kanal 7 marlas. Natha Singh died on 25.05.1971. Till then, Natha Singh and the present plaintiff Balwant Kaur remained co-owners to the extent of 1/2 share each in the land jointly purchased by them admeasuring 78 kanal 7 marlas. It is also an admitted fact that Civil Suit No.150 of 1977 was instituted by Gurmej Singh and the same was decreed on 16.02.1978 after defendants in the said suit, i.e. plaintiff-Balwant Kaur and defendant No.3-Sant Kaur filed written statement admitting the claim of Gurmej



Singh. Plaintiff however submits that she agreed to transfer the share that she inherited from her father Natha Singh and never intended to transfer the land purchased by her jointly along with her father. Under the garb of getting the share from inheritance of Natha Singh transferred in his favour, Gurmej Singh defrauded present plaintiff and even got decree qua estate which was exclusively owned by her and was not inherited from her father Natha Singh. Perusal of the impugned decree dated 16.02.1978 would reveal that the same is based upon an oral statement and not on the written compromise.

15. It is in these circumstances, this Court finds that the reliance placed upon by Mr. Bahri on Order XXIII Rule 3A CPC is misplaced. Order XXIII Rule 3 and 3A CPC contemplate the written compromise signed by parties. Since there is no written compromise, the plaintiff cannot be non-suited raising objection on the basis of Order XXIII Rule 3A CPC. Accordingly, the objection raised with respect to maintainability of the suit by Mr. Bahri *sans* merit and is hereby rejected.

16. The issue which needs to be adjudicated by this Court is the claim of the plaintiff that she consented to transfer share of inheritance of her father and never consented qua the land jointly purchased by her along with her father.

17. Plaintiff filed by Gurmej Singh in the earlier suit is on record as Ex.P3. The pleadings raised in para No.2 of the plaint filed in earlier suit read as under:-

“2. That the defendants are reconsidered as owners of agricultural land as under:-

(I) 1/2 share in the land compromised in Khewat No.333 Khatauni No.566, Rect. No.76, Kh. No.14/6(0-2), Rect.



No.356(0-13), Rect. No.100 Kh. No.5(8-0), 6(8-0)

(b) 1/6th share in the land comprised in Khewat No.333/1, Khatauni No.566/1, Rect. No.99, Kh. No.7/2 min (1-12), 3(8-0), 4(8-0), 8(8-0), 9(8-0), 10(8-0), 1(8-0), 2(8-0),

(c) Besides the above land she is also recorded as owner of the land as per the entries in the mutation as under:-

(i) 1/6th share out of 1/2 of the land comprised in Khawat No.333, Khautani No.566, Rect. No.76, Kh. No.14/6(0-2) 356(0-13), Rect. No.100, Kh. No.5(8-0), 6(8-0) and Khewat No.333, Khatauni No.566, Kh.No.99, Kh. No.7/2(1-12), 3(8-0), 4(8-), 8(8-0), 9(8-0), 10(8-0), 1(8-0), 2(8-0),

(ii) Smt. Sant Kaur is recorded as owner of agricultural land as under:-

(a) 1/6th share out of 1/2 share of the land comprised in Khewat 1/5th share out of 1/2 share of the agricultural land comprised in Khewat No.333, Khautani No.566, Rect.No.76, Kh. No.14/6(0-2), 356(4-100), Kh. No.5(8-0), 6(8-0) and Khewat No.333/1, Khatauni No.566/1, Rect. No.99, Kh. No.7/2(1-12), 3(8-0), 4(8-0), 8(8-0), 9(8-0), 10(8-0), 1(8-0), 2(8-0) situated in Sanghoa, Tehsil and District Karnal as per jamabandi and the copy of the _____ attached.”

18. A joint written statement was filed on behalf of Balwant Kaur and Sant Kaur. The pleadings in the written statement read as under:-

“Para No.1 of the plaint is correct.

Para No.2 of the plaint is correct.

Para No.3 of the plaint is admitted.

Para No.4 of the plaint is correct and is admitted.

Para No.5 of the plaint is not denied.

Para No.6 of the plaint is legal and is admitted.

Para No.7 relates to Court fee and is correct.

It is prayed that the suit filed by the plaintiff be decreed and the parties be ordered to bear their own cost.

15.02.1978
RTI Balwant Kaur
RTI Sant Kaur”

19. On the same date, joint statement of Balwant Kaur and Sant Kaur was recorded. The same is on record as Ex.D2. It reads as under:-



“Stated that we defendants admit the claim of plaintiff Gurmej Singh son of Natha Singh, residents of village Sua Tehsil and District Karnal. We have no objection in transferring land to the plaintiff as we are doing the same with our own free will. We have no objection if the suit is decreed

15.02.1978

RO&AC

RTI Sant Kaur

RTI Balwant Kaur”

20. Based upon the aforesaid consented written statement and the statement of admission, the suit filed by Gurmej Singh was decreed. From the aforesaid evidence, it stands proved that an illiterate sister filed written statement consenting to the plaint filed by the brother, who pleaded family settlement. However, it is not denied that the land for which sister has filed the present suit and denies of having consented to, was purchased by sister along with father and was never owned by the family. Her co-defendant in the earlier suit, i.e. Sant Kaur also appeared in the present suit, wherein she stated that no consent was ever given with respect to the land purchased by present plaintiff. DW2 and DW3, the two Advocates on whose statement, the Lower Appellate Court has heavily relied upon have stated that the plaintiff-Balwant Kaur signed the written statement only after the same was read over to her. However, there is hardly anything pleaded in the written statement apart from admitting the claim of the plaintiff. No one claims that the contents of plaint were also read over to Balwant Kaur and that she consented to transfer her self acquired property in favour of Gurmej Singh. The mode and manner in which the earlier decree was passed itself proves its fraudulent nature.

21. Deprecating the practice of passing consent decrees in similar circumstances, Supreme Court in the case of **Santosh v. Jagat Ram &**

Anr. reported as **(2010) 3 SCC 251** observed under:-



“xx xx xx

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.

A fraud puts an end to everything. It is a settled position in law that such decree is nothing, but a nullity.”

22. 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 reported as (2012) 11 SCC 574***, hold 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 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/decre 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. Shrist 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 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.

25. It would not be an exaggeration but on the contrary an understatement if it is said that all facets of fraud get attracted to the case at hand. A rustic and illiterate woman is taken to court by a relation on the plea of creation of a lease deed and magically in a hurried manner the plaint is presented, written statement is drafted and filed, statement is recorded and a decree is passed within three days. On a perusal of the decree it is manifest that there is no reference of any kind of family



arrangement and there is total non-application of mind. It only mentions there is consent in the written statement and hence, suit has to be decreed. Be it noted, it was a suit for permanent injunction. There was an allegation that the respondent was interfering with the possession of the plaintiff. What could have transpired that the defendant would go with the plaintiff and accede to all the reliefs. It not only gives rise to a doubt but on a first look one can feel that there is some kind of foul play. However, the learned trial Judge who decreed the first suit on 27.11.1973 did not look at these aspects. When the second suit was filed in 1984 for title and the third suit was filed for possession thereafter, the courts below had routinely followed the principles relating to consent decree and did not dwell deep to find out how the fraud was manifestly writ large. It was too obvious to ignore. The courts below have gone by the concept that there was no adequate material to establish that there was fraud, though it was telltale. That apart, the foundation was the family arrangement. We have already held that it was not bona fide, but, unfortunately the courts below as well as the High Court have held that it is a common phenomenon that the people in certain areas give their property to their close relations. We have already indicated that by giving the entire property and putting him in possession she would have been absolutely landless and would have been in penury. It is unimaginable that a person would divest herself of one's own property in entirety in lieu of nothing. No iota of evidence has been brought on record that Bhali, the respondent herein, had given anything to Badami in the arrangement. It is easily perceivable that the rustic woman was also not old. Though the decree was passed in 1973 wherein it was alleged that the defendant was already in possession, she lived up to 1992 and expired after 19 years. It is a matter of record that the possession was not taken over and inference has been drawn that possibly there was an implied agreement that the decree would be given effect to after her death. All these reasonings are absolutely non-plausible and common sense does not even remotely give consent to them. It is fraudulent all the way. The whole thing was buttressed on the edifice of fraud and it needs no special emphasis to state that what is pyramided on fraud is bound to decay. In this regard we may profitably quote a



statement by a great thinker:

“Fraud generally lights a candle for justice to get a look at it; and rogue’s pen indites the warrant for his own arrest.”

23. In view of above, this Court finds that the findings recorded by Lower Appellate Court reversing the findings recorded by the Court of First Instance cannot be sustained and need to be set aside. Lower Appellate Court fell in error reversing the findings recorded by the Court of First Instance merely for the reason that the statements of DW2 and DW3 were not considered by the Court of First Instance. The reasoning recorded by the Lower Appellate Court is against the record. Findings recorded by Court of First Instance on issue No.1, evidently demonstrate that the Court of First Instance not only considered the statements of DW2 and DW3, but also analyzed the same. Accordingly, this Court finds that the suit filed by the plaintiff deserves to be decreed to the effect that the decree suffered by the plaintiff-Balwant Kaur in the earlier suit shall not effect her right qua suit property.

24. Suit filed by the plaintiff is ordered to be decreed. Judgment and decree passed by the Lower Appellate Court is hereby set aside. That passed by the Court of First Instance is restored.

25. Accordingly, the present regular second appeal is allowed.

(PANKAJ JAIN)
JUDGE

05.05.2026
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	Yes