

Jai Narain Vs. Smt. Sona Devi

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Court : Punjab and Haryana

Decided On : Jan-13-2006

Reported in : (2006)143PLR573

Judge : M.M. Kumar, J.

Acts : [Registration Act, 1908](#) - Sections 17, 17(1) and 17(2); [Specific Relief Act, 1963](#) - Sections 34; [Indian Stamp Act, 1899](#) - Sections 2(14); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100 - Order 30, Rule 3

Appeal No. : Second from Appeal No. 3794 of 2001

Appellant : Jai Narain

Respondent : Smt. Sona Devi

Advocate for Def. : Sanjay Vashisht, Adv.

Advocate for Pet/Ap. : Ashish Aggarwal, Adv.

Disposition : Appeal dismissed

Judgement :

M.M. Kumar, J.

1. This is defendant's appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for brevity, 'the Code') challenging the concurrent findings of fact

recorded by both the Courts below holding that the plaintiff-respondent Sona Devi is daughter of deceased Jagan whose estate is the subject matter of dispute in this case. It has further been found she was the only legal heir and would have inherited the property of deceased Jagan had he not suffered the judgment and decree dated 18.11.2005. The learned trial Court recorded the finding that the family settlement between deceased Jagan and the defendant-appellant was arrived at to deprive the plaintiff-respondent from her rights in the suit property because it would have fallen to the share of the plaintiff-respondent being the sole legal heir after the death of Jagan. The learned trial Court further held that a Hindu male cannot alienate the suit property by executing a Will or by any other means like suffering a decree. It has further been found that the decree suffered by deceased Jagan did not disclose the existence of any dispute, right or love and affection between Jagan and the defendant-appellant. It is appropriate to mention that the defendant-appellant is the son of Jagan's brother. The learned trial Court has also recorded by referring to para 3 of the plaint filed in the suit, which was the basis of the collusive decree dated 18.11.1995 that there was not even a whisper about love and affection of the services rendered by the defendant-appellant or the fact that Smt. Sona Devi daughter of deceased Jagan is alive. The contradictory stand taken by the defendant-appellant, which resulted into passing of collusive decree on 18.11.1995 and the written statement filed in the instant suit has also been highlighted by the learned trial Court. It was concluded that the judgment and decree dated 18.11.1995 is based on mis-representation made by the parties and with the object of depriving the plaintiff-respondent from her right to inherit the property of her father. The trial Court did not seriously consider the question as to whether the unsigned judgment of the Presiding Officer or the statements made by deceased Jagan, father of the plaintiff-respondent, would have any bearing. However, the learned trial Court has further found that the judgment and decree dated 18.11.1995 require registration under Section 17(2) of the [Registration Act, 1908](#), and placed reliance on a judgment of the Supreme Court in the case of *Bhoop Singh v. Ram Singh Major* : AIR 1996 SC196 .

2. The issue with regard to the maintainability of the suit without seeking consequential relief of possession was also decided against the defendant-appellant because it was found that the plaintiff-respondent was in possession of

the property being a co-sharer and suit for declaration simplicitor was held to be maintainable. In that regard reliance was placed on a judgment of this Court in the case of Amar Singh v. Manphool .

3. On appeal, the learned lower Appellate Court affirmed the finding that the decree required registration. It also concluded that the theory of family settlement/compromise, which led to the passing of decree was also a mere eyewash and that the defendant-appellant had no right or interest in the property in dispute. The learned lower Appellate Court also found that an un-signed judgment is no judgment in the eyes of law although the decree based on the judgment might be signed. The rationale for this view is that the decree follows the judgment and not vice versa. The finding by the learned lower Appellate Court has been recorded in para 14, which reads as under: -

14. I do not agree with this contention. A decree follows the judgment. Unless a judgment is signed by the Presiding Officer, it is no judgment in the eyes of law. Unless the judgment is signed by the Presiding Officer, it will not have the force of law. The statement of the defendant, which was not signed by the Presiding Officer, may be ignored, but not the judgment. So, on this ground also, the judgment and decree dated 18.11.1995 are liable to be set aside. So, these arguments are of no avail. The findings-of the learned trial court are well reasoned and based on law and facts. The learned trial Court has looked into every aspect from every angle and there is no, reason to discard the same.

4. Mr. Ashish Aggrwal, learned Counsel for the defendant-appellant has argued that in a subsequent suit like the one filed against the defendant-appellant, no Court is competent to go into the validity of the collusive decree or go into the facts of that case. According to the learned Counsel, the jurisdiction of the subsequent Court is completely barred. In support of his submission, learned Counsel has placed reliance on two judgments of this Court rendered in the cases of Harpal v. Smt. Ram Piari 1981 P.L.J. 492 and Gurdev Kaur v. Mehar Singh 1989 P.L.J. 182 (D.B.). Learned Counsel has then argued that a family settlement followed by a collusive decree is not compulsorily registerable because the collusive decree itself did not create any new rights. According to the learned Counsel, if such a

decree has not been found to be fraudulent then it does not require registration. In support of his submission, learned Counsel has placed reliance on the judgments of this Court in the cases of Lal Singh v. Jaswant Singh 2002(4) R.C.R. (Civil) 219 and Gurdev v. Jagtar Singh 2002(4) R.C.R. (Civil) 277. Learned Counsel has then argued that non-signing of judgment dated 18.11.1995 does not suffer from any fatal infirmity because the decree duly signed by the Court is available, which is valid by entry of probate in favour of the defendant-appellant. Therefore, the finding by the learned lower Appellate Court deserves to be set aside. His last submission is that a simple suit for declaration and permanent injunction would not be maintainable without the prayer for possession as the same is prohibited by Section 34 of the [Specific Relief Act, 1963](#), (Para 3) (REF)

5. Mr. Sanjay Vashisht, learned Counsel for the respondent has submitted that both the Courts below have concurrently found that the judgment and decree dated 18.11.1995 suffers from a fatal difficulty of non-registration and no question of law to set aside the findings recorded by both the Courts below would arise for determination of this Court. According to the learned Counsel, the decree dated 18.11.1995 has been obtained by a method which is in the nature of misrepresentation and the judgment which is the basis of decree has not been duly signed. According to the learned Counsel, the property in the hands of the plaintiff-respondents is a coparcenary property and she being a right holder is deemed to be in possession and, therefore, no suit for possession is required to be filed and the suit for declaration and permanent injunction is maintainable.

6. After hearing the learned Counsel for the parties and perusing the judgments of both the courts below, I am of the considered view that no question of law warranting admission of this appeal under Section 100 of the Code has been raised. It has been found by the learned Lower Appellate Court that the judgment which is the basis of the decree dated 18.11.1995 has not even been signed by the Presiding Officer. The provisions of Order 30 Rule 3 of the Code require that the judgment shall be signed by the Presiding Officer in the open Court at the time of pronouncement. It is further evident that even no effort has been made by either of the parties to move appropriate application for rectification of the mistake. Both the Courts below have also found that the defendant-appellant had no pre-existing

right in the property of the father of the plaintiff-respondent nor any reference has been made to the special relationship in the plaint or the written statement which might have resulted into passing of a collusive decree by suffering a statement by Jagan in favour of the defendant-appellant. The so-called family settlement to which reference has been made in the plaint has been considered to be a mere eye wash in order to defeat the payment of registration fee, therefore, the view of both the Courts below placing reliance on the judgment of the Supreme Court in Bhoop Singh's case (supra) deserves to be accepted.

7. The argument of learned Counsel based on the Division Bench judgment of his Court in Gurdev Kaur's case or Harpal's case (supra) would not come to the rescue of the defendant-appellant because the consent decree has been set aside for want of registration and also on account of some misrepresentation made by the defendant-appellant. With regard to registration, the Division Bench judgment of Gurdev Kaur's case (supra) has been duly considered by the Supreme Court in the case of Bhoop Singh (supra). Accepting the view taken by this Court in Gurdev Kaur's case and after referring to the provisions of [Indian Stamp Act, 1899](#) and judgments of other Courts, their Lordships observed as under:

11. The sheet anchor of Shri Sehgal's submission is a Bench decision of the Punjab and Haryana High Court in Gurdev Kaur v. Mehar Singh . Reference to that decision shows that the Bench opined that the view taken by the learned Single Judges of High Court in some earlier cases that a decree based on compromise conferring title required registration, even though it related to the property in suit, was not correct. One such view had been taken in Ranbir Singh v. Shri Chand 1984 Pun.L.J. 562, on the reasoning that a compromise is basically a contract and decree founded on it, if the same created right for the first time, would be treated as a instrument of gift and so would require registration. The Bench, however, held that a compromise decree creating right even for the first time would not require registration. This decision is thus rightly pressed into service by Shri Sehgal. Its perusal, however, shows that it distinguished the case of Sumintabi Ramkrishna v. Rakhmabai Ramkrishna Jadhav : AIR1981 Bom52 , because in that case the compromise itself was not regarded as bona fide by the Court, as it was described as sham compromise brought about for the purposes of

practising fraud upon the law relating to stamp duty and registration.

12. The aforesaid decisions do not cover the whole ground, according to us. They meet our approval as far as they go. But something more is required to be said to find out the real purport of Clause (vi). It needs to be stated that Sub-section (1) of Section 17 mandates that the instruments enumerated in Clauses (a) to (e) shall be registered compulsorily if the property to which they relate is immovable property value of which is Rs. 100/- or upwards. When the document purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest therein, whether vested or contingent, it has to be registered compulsorily. The Act does not define 'instrument'. Section 2(14) of the [Indian Stamp Act, 1899](#), defines 'instrument' to include every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. Sub-section (2) of Section 17 of the Act engrafts exceptions to the instruments covered only by Clauses (b) and (c) of Sub-section (1). We are concerned with Clause (vi) of sub section. Clause (vi) relates to any decree or order of a Court, except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding. Clause (v) is relevant which in contrast reads thus: 'any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another instrument. ' The Explanation applies (implies) that a contract for the sale of immovable property containing a recital of payment of any earnest money or of the whole or any part of the purchase price shall not be deemed to be required or ever to have required registration.

13. In other words, the Court must enquire whether a document has recorded unqualified and unconditional works of present demise of right, title and interest in the property and included the essential terms of the same, if the document, including a compromise memo, extinguishes the right of one and seeks to confer right, title or interest in praesenti in favour of the other, relating to immovable property of the value of Rs. 100/- and upward, the document or record or compromise memo shall be compulsorily registered.

8. When the argument raised by learned Counsel is examined in the light of the view expressed by the Supreme Court in Bhoop Singh's case (supra) then it becomes evident that both the Courts below have not regarded the family settlement, as referred in the decree itself, as bona fide. The aforementioned family settlement has been found to be a sham transaction, which has been cited for the purposes of practicing fraud upon law concerning stamp duty and registration. The Supreme Court in Bhoop Singh's case (supra) has referred to the exception created by Sections 17(1), (b) and (c) as created by Sub-section 2 of Section 17 of [Indian Stamp Act, 1899](#). Therefore, the question which must be inquired by a Court is whether a document has recorded the fact of conferring or extinguishing, a right or title in the property for the first time, which is more than Rs. 100/- and upwards, then the document or compromise memo or a decree is to be a compulsorily registered. When the decree dated 18.11.1995 is examined in the light of the aforementioned principles it becomes evident that preceding to the decree there was no family settlement or compromise, oral or in writing. If there was any oral understanding or family settlement, then it cannot ipso facto be accepted unless it is reflected in some form either in the revenue record or anywhere else before the same could be accepted by a Court passing the decree. Therefore, for the purposes of examining the nature of the judgment and decree the Courts below have rightly gone into the bona fide nature of the averments made with regard to family settlement there is thus no merit in the argument raised by the learned Counsel for the defendant-appellant.

9. The other argument that no suit for declaration alone without relief of possession is competent would not require any detailed consideration because the plaintiff-respondent has been proved to be a co-sharer although not in possession of the suit land and, therefore, suit for declaration without seeking he relief of possession would be competent, as has been held by this Court in Amar Singh's case (supra) on which reliance has been rightly placed by the Trial Court. Therefore, I do not find any merit in the aforementioned argument.

10. For the reasons stated above, this appeal fails and the same is dismissed with costs.

