

Sukhdevi Vs. Hari Ram

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Court : Punjab and Haryana

Decided On : Aug-21-2007

Reported in : (2007)4PLR551

Judge : Satish Kumar Mittal, J.

Appellant : Sukhdevi

Respondent : Hari Ram

Disposition : Appeal dismissed

Judgement :

Satish Kumar Mittal, J.

1. Plaintiff Sukhdevi, who is the real sister of deceased Lalu, has filed this Regular Second Appeal against the judgment and decree dated 16.10.2003, passed by the first appellate Court, whereby after setting aside the judgment and decree of the trial Court, suit of the plaintiff for declaration and possession has been dismissed.

2. In the present case, the plaintiff has challenged the consent decree dated 22.4.1988 suffered by Lalu in favour of Hari Ram vide Civil Suit No. 155 of 1988, titled as Hari Ram v. Lalu. Hari Ram is the real nephew of deceased Lalu. It is pertinent to mention here that mother of Lalu and Ranjit (father of Hari Ram) was one and same lady. The plaintiff has challenged the aforesaid decree on the

grounds that Hari Ram was having no pre-existing right in the land of Lalu; that there was no family settlement between Hari Ram and Lalu; that there was no occasion to enter into family settlement, as Hari Ram was not a member of Joint Hindu Family; and that subject matter of the impugned judgment and decree was the immovable property of the value of more than Rs. 100/-, therefore, the consent decree was required to be compulsorily registered. Hence, the impugned consent decree is said to be illegal, null and void and not binding upon the rights of the plaintiff.

3. It is admitted position that on the basis of the aforesaid consent decree, mutation was sanctioned on 19.5.1988 and Lalu also remained alive up to November, 1991, who during his life time never challenged the consent decree suffered by him, and the instant suit was filed by his sister Sukhdevi on 2.2.2000, after the death of Lalu.

4. The trial court decreed the suit while holding that in view of the judgment of the Supreme Court in Bhoop Singh v. Ram Singh and Ors. : AIR 1996 SC196 , the aforesaid consent decree required registration because no alleged family settlement was proved and the same is illegal, null and void and not binding on the rights of the plaintiff. Suit of the plaintiff was also held to be within limitation.

5. The first appellate court has reversed the judgment and decree of the trial court and held that the consent decree suffered by Lalu in favour of his nephew Hari Ram does not require any registration, as the land in question in the hands of Lalu was his individual property and he has suffered the consent decree on the basis of admission in favour of Hari Ram. A consent decree is a valid decree, unless it is set aside on the ground on which a contract can be set aside. It has been held that the family settlement pleaded by Hari Ram in the earlier suit was admitted by Lalu in his written statement, therefore, it cannot be said that the right of Hari Ram was created for the first time in the decree. In this regard, the first appellate court has relied upon the decision of the Supreme Court in Bachan Singh v. Kartar Singh and Ors. (2002-2) 131 P.L.R. 512 (S.C.). It has also been held that the suit filed by the plaintiff on 2.2.2000 challenging the decree dated 22.4.1988 is also time barred.

6. Learned Counsel for the appellant could not dispute that the consent decree was passed on 22.4.1988 and mutation with regard to the said decree was also sanctioned on 19.5.1988, which was within the knowledge of the plaintiff. In the earlier suit filed by Hari Ram against Lalu, a family settlement was alleged, in which he had acquired the right in the suit property. The said family settlement was admitted by Lalu in the written statement and subsequently, by way of statement in the court. Since the earlier suit was decreed on the basis of admission admitting the pre-existing right of Hari Ram, such decree, in my opinion, does not require any registration, in view of the law laid down by the Supreme Court in Bachan Singh's case (supra). Thus, the first appellate court has rightly dismissed the suit of the plaintiff. I cannot be denied that Hari Ram was in the family of Lalu, as Hari Ram is real nephew of Lalu, as Lalu and father of Hari Ram were born to one and the same lady. Lalu has suffered consent decree in favour of Hari Ram regarding his individual property. Such kind of decree can be challenged only on the ground of fraud and mis-representation or any other illegality. In this case, there is neither any allegation of fraud and mis-representation nor the same has been proved. The decree was set aside by the trial court only on the ground of non-registration of the same, which in my opinion does not require any registration, in view of the law laid down by the Supreme Court in Bachan Singh's case (supra) and Sbm Dev and Ors. v. Rati Ram and Anr. : AIR 2006 SC3297 .

7. In view of the above, I do not find any illegality or infirmity in the impugned judgment and decree passed by the first appellate court and no interference is required by this Court.

Dismissed.