
(2003) 03 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2516 of 1998

Ajay Chaudhary

APPELLANT

Vs

Santosh Kumar and Another

RESPONDENT

Date of Decision : 14-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Registration Act, 1908 — Section 17(1), 17(2)

Citation : (2003) 135 PLR 3 : (2004) 1 RCR(Civil) 807

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : S.C. Kapoor and Ashish Kapoor, for the Appellant; Anil Khetrapal and Suba Singh, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—Plaintiff Smt. Santosh Kumari is the wife of Sh. Ch. Dube Singh of village Kurar. Defendant No. 1 is Ch. Sube Singh himself while defendant No. 2 Ajay Chaudhary and defendant No. 3 Sanjay Chaudhary are the sons of Ch. Sube Singh. On 8.4.1991, Smt. Santosh Kumari filed suit for declaration against Ch. Sube Singh and his two sons Ajay Chaudhary and Sanjay Chaudhary whereby she prayed that decree dated 12.3.1991 vide which 67 kanal 5 marlas of land detailed in para No. 1 of the plaint situated in village Nangal Khurd, Tehsil and District Sonapat was transferred in the name of the defendants in almost equal shares, be annulled. It is alleged in the plaint that she was the owner of land measuring 67 kanal 5 marla situated in village Nangal Khurd, Tehsil and District Sonapat. Since sometime past, Ch. Sube Singh became more favourably disposed towards his elder son Ajay Chaudhary. He wanted larger share of IPS Research and Breeding Farm to his elder son Ajay Chaudhary. She was insisting upon both Ajay Chaudhary and Sanjay Chaudhary being given equal share so that there was no jerk to the peace and harmony in the family in future. Defendant Ch. Sube Singh began nursing ill-will towards her as he was not approving that both the sons be given equal share in TPS Research and Breeding

Farm. He started beating her, torturing her in different ways and imputing unchastity to her. She and Ch. Sube. Singh were away to Putaparti. There arose great uproar between them. After they returned from Putaparti, she was virtually kept captive in her own house since 17.2.1991. She was threatened to part with the land in their name or else she would be done to death. On the right of 1st March, 1991 her neck was pressed in order to kill her. She raised hue and cry. Her sons Ajay Chaudhary and Sanjay Chaudhary came to her rescue and freed her from the clutches of Ch. Sube Singh. On 2.3.1991, Ch. Sube Singh's sister came. She was kept on her watch and she was instructed that she should not be allowed to be freed from her captivity till she agreed to part with her land. She (Smt. Santosh Kumari) was also threatened that if she did not agree to part with the land, she would be shot dead. Sanjay Chaudhary defendant was also threatened that if she did not agree to make statement in court parting with the land, he would be shot dead. On 7.3.1991, Ch. Sube Singh brought her to Sonapat courts saying that they had filed some suit, she should make statement in the suit as per their desire. At that time also gun and cartridges were lying in the van. She Ajay Chaudhary, Sanjay Chaudhary and Ch. Sube Singh's sister were left in the van by Ch. Sube Singh and himself went to some Advocate. After some time, he brought some Munshi near the van and got her signatures on some papers. She had not known any Advocate at Sonapat. One Ram Sarup Rana, Advocate was told to be her- counsel in that suit while Shri Jawahar Lal Rana, Advocate was told to be the counsel of the defendants in that suit. Ram Sarup Rama and Jawahar Lal Rana were told to be father and son practising together. Every thing done in that suit was done by S/Shri Ram Sarup Rana and Jawahar Lal Rana in conspiracy with Ch. Sube Singh. Thereafter, she was taken to the Court of Sh. Pruthi, Senior Sub Judge, Sonapat. Her signatures were taken on some statement without asking her anything. On 11.3.1991 she was taken to the Court of Naib Tehsildar, Sonapat by Ch. Sube Singh. At that time also, there was gun lying in the van. His elder son Ajay Chaudhary was also with him. Naib Tehsildar came to the van and asked her, her name etc. She was asked if she had any objection. As she was frightened, she accepted everything. On 21.3.1991, she came to the court alongwith her brother for knowing what exactly had taken place. She came to know that Ch. Sube Singh had got suit filed by himself, his sons Ajay Chaudhary and Sanjay Chaudhary against her for declaration in the Court of Senior Sub Judge, Sonapat on 12.3.1991 of misstating facts and had obtained therein though the fact of the matter is that no family settlement had even taken place. If no family settlement had taken place, there was no question of her having refused to acknowledge that family settlement for its being given effect to. If she wanted, she could part with that property in favour of her sons by sale or by means of gift. Ch. Sube Singh got land measuring 67 kanal 5 marla settled through a fictitious decree on the basis of fictitious settlement which never took place. She got nothing on the basis of the so called family settlement. Sajay Chaudhary got inferior part of the property. That decree dated 12.3.1991 has no effect so far as her rights are concerned. It is null and void, it required registration as the value of the property involved was lacs of rupees. In the

absence of registration no right, title or interest in the property vested in Ch. Sube Singh etc. defendants. In the plaint of that suit, false facts had been pleaded that the property was ancestral of the parties. In other words she was only benami owner of the property. Decree was hit by Section 4 of the Benami Transaction and Prohibition Act, 1988. Decree was obtained by practising coercion and undue influence upon her. She and the defendants have been working together at TPS Research and Breeding Farm. On 12.1.1991, a fictitious lease deed was got executed from her under threat. It is stated that the decree dated 12.3.1991 is illegal, null and void and is not binding upon her rights. Similarly, pattanama dated 12.1.1991 got executed from her by Ch. Sube Singh by fraud is also null and void.

2. Defendant No. 1 (Ch. Sube Singh) contested the suit. It was urged that she suffered that decree of her free will and volition. She is estopped by her own act and conduct from challenging the decree. Suit is not maintainable. Her suit is barred. It was admitted that she was absolute owner of the property. She was however, trustee so far as he was concerned. She was constituted as owner of the property for the welfare of the entire family. In fact, he was the owner in possession of that property. He alone was managing the entire property. She was looking after only the household so far as Ajay Chaudhary and Sanjay Chudhary are concerned, they were earlier studying at Public School Nabha and, thereafter till the year 1983 they were studying in college. They were incapable of managing any property. Equal share of the property was given to Ajay Chaudhary and Sanjay Chaudhary as settled to be given to them by the family settlement which was accepted by one and all. It was denied that she was subjected to any coercion or undue influence. In fact, nothing of the sort took place. She suffered that decree of her free will and volition. She has chosen to challenge that decree on the instigation of his elder brother Lal Chand and his elder brother's son Ajit Singh. She has fabricated this story with a view to be able to successfully challenge that decree. Otherwise, there is not even a iota of truth so far as this story goes. It was denied that the Benami Transaction and Prohibition Act, 1988 has any applicability so far as this decree is concerned. It was denied that any pattanama was got executed on 12.1.1991 from her through undue influence or coercion.

3. Defendant No. 2 Ajay Chaudhary also contested the suit, it was urged that this suit is barred under the provisions of the CPC as no suit lies to set aside a decree on the ground that the compromise decree was not lawful. Plaintiff is estopped by her act and conduct from challenging the decree. Plaintiff on her own made statement on oath before the Court admitting the suit of the defendants and it was on her statement on oath, which was read over to her and admitted by her to be correct, that the civil court at Sonapat passed decree in favour of the defendants in suit No. 219 of 1991 decided on 12.3.1991. It was admitted that she was owner of the suit property but she had ceased to be the owner of the suit property prior to the date of filing of this suit, she having already parted with the suit property in their favour by means of decree suffered by her in civil suit

No. 219 of 1991 decided on 12.3.1991. It was denied that Sube Singh was drawn more favourably and affectionately towards him (Ajay Chaudhary) vis-a-vis Sanjay Chaudhary. In fact, after the marriage of Sanjay Chaudhary, some loan was advanced by Sh. Sube Singh to Sanjay Chaudhary's father-in-law. Ch. Sube Singh asked for the repayment of that loan amount. Smt. Santosh Kumari and Sanjay Chaudhary's wife protested. Smt. Santosh Kumari is playing in the hands of Sanjay Chaudhary's wife and is inimical to him (Ajay Chaudhary). His (Ajay Chaudhary's) wife was not to the liking of Smt. Santosh Kumari and she even tried with him (Ajay Chaudhary) to divorce his wife. She got petition for divorce filed by him against his wife. Wisdom dawned on him and his wife and the matter was compromised and the divorce averted. It was not to the liking of Smt. Santosh Kumari that compromise took place between them and the divorce averted. Sanjay Chaudhary and his wife became jealous of him because his wife comes of a family which is family very well off vis-a-vis Sanjay Chaudhary's wife's family. After the marriage of Sanjay Chaudhary, Sanjay Chaudhary's wife was inciting Smt. Santosh Kumari against him and his wife. It was urged that this suit has been got filed by Sanjay Chaudhary and his wife. It was also urged that Ch. Sube Singh is also in league with Smt. Santosh Kumari in the filing of this suit which is intended to prejudice his rights. In fact, the decree was passed at the instance of the plaintiff who suffered statement of her free will and volition in sound disposing mind without any coercion, undue influence or fraud. In fact, she wanted the property to be given to her sons in equal shares and this is what has been done. Both the counsel were engaged simultaneously by the parties. They were engaged by the plaintiff and Ch. Sube Singh in consultation with each other as a consent decree was to be passed. It was denied that there was any altercation between the parties on 17.2.1991 or any threat was meted out to the plaintiff. It was denied that on 1.3.1991, defendant No. 1 tried to strangle the plaintiff or that she was saved by her sons. In fact, the sister of Ch. Sube Singh came to Murthal. In her presence also, the plaintiff admitted that she would suffer a decree in favour of the defendants but no threat was meted out to her. She had thorough discussion with the counsel with regard to the details of the property which was to be given to each of the defendants and after full satisfaction, she signed the written statement and then the statement which was recorded before the Court. Court made detailed enquiries from her and after due satisfaction, decree was passed. As the plaint was got dictated by the plaintiff and it was for the counsel to make due inquiries whether the land was ancestral or not, it made little difference whether the land was ancestral or non ancestral. Plaintiff was absolute owner of the suit property and she could dispose it of in any manner she liked. It was denied that any question of benami arose between the parties or it was ever alleged that it was ever benami, in fact it could have been that the land was purchased from the nucleus of the Joint Hindu Family.

4. Defendant No. 3-Sanjay Chaudhary filed written statement admitting the claim of the plaintiff. On the pleadings of the parties, the following issues were framed:-

1. Whether the decree dated 12.3.1991 is illegal, null and void? OPP

2. Whether the plaintiff has no locus standi to file this suit? OPD
3. Whether the suit is barred on the ground of compromise? OPD
4. Whether the plaintiff is estopped by her own act and conduct to file this suit? OPD
5. Whether the suit has been filed by the plaintiff in collusion with defendants No. 1 and 2? OPD
6. Whether the defendant No. 2 has made an improvement over the suit property ? If so, to what value and what effect? OPD
7. Relief.

5. Vide order dated 21.10.1997, Additional Civil Judge, (Senior Division), Sonapat decreed the plaintiffs suit for declaration that decree dated 12.3.1991 passed by Senior Subordinate Judge in civil suit No. 219 of 4.3.1991 was illegal, null and void and not binding upon the rights of the plaintiff and consequentially the plaintiff is entitled to possession of the suit land in view of her finding that the decree dated 12.3.1991 required registration under the Indian Registration Act. In the absence of registration, it conveyed no right, title or interest to Ch. Sube Singh, Ajay Chaudhary and Sanjay Chaudhary defendants. It was found that the decree was the result of coercion and undue influence. She had every locus standi to challenge the decree as she was owner of the property and she had been made to part with the property on account of decree which was the result of undue influence and coercion. It was found that it was not a compromise decree but a consent decree passed on the consent of the parties and as such could be challenged through a separate suit. It was found that challenge to that decree was not barred under Order 23 Rule 3-A CPC. It was found that she was not estopped from challenging the decree. It was found that there was no collusion between her, Ch. Sube. Singh and Sanjay Chaudhary in the filing of the suit. It was found that it was not a compromise decree as family settlement Ex.D1 and dissolution deed Ex.PW3 do not pertain to the suit property.

6. Ajay Chaudhary went in appeal which was dismissed by Additional District Judge, Sonapat vide order dated 30.5.1998. Still not satisfied. Ajay Chaudhary has come up in further appeal in this court.

7. Learned counsel for the appellant raised the following questions of law for the consideration of this Court.

1. Whether the decree dated 12.3.1991 passed in civil suit No. 219 of 1991 did not require registration?
2. Whether decree dated 12.3.1991 could be challenged without challenging the family settlement Ex.D1?
3. Assuming that decree dated 12.3.1991 was valid in law, could relief of possession be granted to Smt. Santosh Kumari when she had not challenged

family settlement Ex.D1.

4. If decree dated 12.3.1991 is found to be bad in law, should suit No. 219 of 1991 is required to be remitted to the trial Court for being tried on merits and parties to be given opportunity to prove their case?

5. Whether courts below could still give finding that decree was the result of coercion and undue influence when there was no issue to this effect?

6. Whether separate suits is barred under Order 23 Rule 3-A CPC for challenging the decree by Smt. Santosh Kumari who has suffered the decree?

8. I have heard learned counsel on both sides and gone through the record.

9. It was submitted by the learned counsel for the appellant that decree dated 12.3.1991 is based on family settlement between members of the same family. Such a decree does not require registration. It was joint family property and the property being joint and family, settlement devised between the parties jointly, there being on all the parties to it. The transaction of a family settlement entered into by the parties who are members of a family bona fide to put an end to the dispute among themselves is not a transfer. It is not also the creation of an interest. For, in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties. Every party who takes benefit under it need not necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary to show is that the parties are related to each other in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say affection.

10. It was submitted that law leans in favour of upholding family settlements. In support of this submission, he drew my attention to Kale and Others Vs. Deputy Director of Consolidation and Others, where it was held that by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and dispute, settlement and resolve titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity, peculiar to themselves and, would be enforced if honestly made. In this connection, Kerr in his valuable treatise "Kerr on" Fraud at page 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

"The principles which apply to the case of ordinary compromise between strangers, do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in, mistake or ignorance of fact as to what their rights actually are or of the points on which their rights actually depend."

11. The object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today, when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore of the entire country is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of Social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a "spes successionis" so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile, litigation is able to devote its attention to more constructive work in the large interest of the country. The Courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the Courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In Halsbury's Laws of England, Vol. 17, Third Edition at PP 215-218, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

"A family arrangement is an arrangement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the arrangement in a deed to which the term "family arrangement" is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The Courts, when deciding the rights of parties under family arrangements or claims to upset such arrangements." considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which in dealing with transactions between persons not members of the same family would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangement".

12. The family settlement may be even oral in which case registration is not necessary. The registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family settlement had already been made either for the purpose of record or for information of the court for making necessary mutation. In such a case, the memorandum itself does not create or extinguish any rights in immovable properties and is, therefore, not compulsorily registerable. The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the courts will find no difficulty in giving assent to the same.

13. It was submitted that in this case the parties to the "family settlement" are members of the same family that is Smt. Santosh Kumari, her sons and her husband. It was submitted that the suit property was a joint Hindu family property and the same was purchased with the joint funds of the family as well as from the sale proceeds of the ancestral property. Ajay Chaudhary, defendant No. 2 (appellant) DW6 stated that the suit property was a joint family property and the same was purchased from the joint funds of the family as well as sale proceeds of the ancestral property. On 26.2.1991, the parties to the suit had arrived at family settlement which was reduced into writing. It was signed by all the parties concerned. Smt. Santosh Kumari was not under any pressure. She was in full disposing mind when the family settlement took place. He stated that his mother was never compelled in the house nor she was threatened with being liquidated nor she was threatened at the point of loaded gun. She made statement before the court of her free will and volition. She signed the written statement and vakalatnama etc. of her own free will and volition without any pressure or duress from any quarter. Decree was passed in favour of the defendants at the instance of the plaintiff without any coercion or duress. She had antecedent right in the suit property as well as the house. He further stated that then mutation was entered on the basis of that decree, she was not under any pressure, coercion or duress. It was when she admitted that she had suffered the decree of her free will and volition that the mutation was sanctioned. His father was not carrying any gun when her statement was recorded before the Court and when the mutation was sanctioned in their favour.

14. Learned counsel for the respondent on the other hand, submitted that Smt. Santosh Kumari was under constant threat and pressure by the defendants especially Ch. Sube Singh defendant, it was submitted that there is no evidence brought by Ajay Chaudhary defendant that his mother was not under pressure, coercion or duress when she filed written statement and made statement in court

on 7.3.1991. It was submitted that decree dated 12.3.1991 was the result of constant threat, pressure and duress being practised on Smt. Santosh Kumari. She was not a free agent. Her free will and volition was stifled by the defendants particularly Ch. Sube Singh. It was submitted that decree can always be annulled on the ground of fraud, misrepresentation coercion etc. In support of this submission, he drew my attention to Tej Singh and Ors. v. Jagrup Singh and Ors. 1999(1) P.L.J. 38. It was submitted that Smt. Santosh Kumari is a female. She was the absolute owner of the property. There is no coparcenary conceivable between Smt. Santosh Kumari, Ch. Sube Singh, Sanjay Chaudhary and Ajay Chaudhary so that it could be said that each of the coparceners had pre-existing right in the property. It was submitted that no family settlement was conceivable between Smt. Santosh Kumari, her husband and sons when the latter had no pre-existing right in the property, the property being absolute ownership of Smt. Santosh Kumari. So that there could be family settlement between members of the same family there should have been some antecedent title, claim or interest even a possible claim in the property. In Kale and Others Vs. Deputy Director of Consolidation and Others, also it was held that there should have been some antecedent title in Ch. Sube Singh, Ajay Chaudhary and Sanjay Chaudhary so that family settlement could be devised. In this case no settlement could be devised by Smt. Santosh Kumari as she was absolute owner of the property. She could alternate this property only through registered instrument. In Bhoop Singh Vs. Ram Singh Major and others, it was held that Sub-section 2 of Section 17 of the Registration Act engrafts exceptions to the instruments covered only by Clauses (b) and (c) of Sub-section 1. Clause (vi) relates to any decree or order of a court, except a decree or order expressed to be made on a compromise and comparing immovable property other than that which is subject matter of the suit or proceeding. Sub-section 1 of Section 17 mandates that the instrument enumerated in Clauses (a) to (c) shall be registered compulsorily if the property to which they relate to immovable property value of which is Rs. 100/- or upwards. The exception engrafted in Clause (vi) of Section 17(2) is meant to cover that decree or order of a Court, including a 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 evidence of registration, which requires payment of stamp duty, embedded in the decree or order. The Court should therefore examine in each case whether the parties have 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 right, title or interest in presenti in immovable property of the value of Rs. 100/- or upwards in favour of other party for the first time, either by compromise or pretended consent; If latter be the position, the document is compulsorily registerable.

15. The legal position qua Clause (vi) of Section 17(2) can be summarised as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs. 100/- or upwards in favour of any party to the suit, the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of Sub-section (1) of Section 17, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject matter of the suit for proceeding", Clause (vi) of Sub-section (2) would not operate."

16. Where right, title and interest is created for the first time by the decree in immovable property of the value of Rs. 100/- or upwards, the decree would require registration. Learned counsel for the appellant submitted that in this case, the court has to assume from the admission of Smt. Santosh Kumari made by her in the written statement as to the claim of the defendants that they had claim to the property. Defendants filed suit No. 219 of 1991 against Smt. Santosh Kumari for declaration that plaintiff Ch. Sube Singh is owner of land measuring 22 kanal 9 marla. Ajay Chaudhary plaintiff No. 2 is owner of land measuring 21 kanal 18 marla and Sanjay Chaudhary plaintiff No. 3 is owner of land measuring 22 kanal 18 marla. In para 2 of the plaint, they had alleged that they and Smt. Santosh Kumari constitute joint Hindu family and this land is ancestral in which they have inherent right. In her written statement filed by Smt. Santosh Kumari, she had said "yes" so far as this allegation is concerned. In para 3 of the plaint they had alleged that about 2 years ago family settlement took place between them and Smt. Santosh Kumari at which land measuring 22 kanal 9 marla was settled on Ch. Sube Singh, land measuring 21 kanal 18 marla was settled on Ajay Chaudhary and land measuring 22 kanal 18 marla was settled on Sanjay Chaudhary. To this averment also, she had said "yes". It was submitted that Smt. Santosh Kumari admitted their claim and it was because of the admission of their claim by her that their suit was decreed. It was submitted that Smt. Santosh Kumari had admitted their claim because it was genuine. She was simply a house wife having no source of income of her own wherewith to purchase the land in suit. Land in suit was purchased with the joint family funds in her name. Ch. Sube Singh himself could not purchase the property in his own name as if he were to purchase the property in his own name, he would have had to obtain permission from the government as he was a government servant. It was submitted that the property was purchased in the name of Smt. Santosh Kumari so that no such permission was needed. In my opinion, this submission is

fallacious. If Smt. Santosh Kumari were a mere house wife having no source of income of her own, the government was required to be informed of these transactions along with how money was paid by Smt. Santosh Kumari to the vendors. Ch. Sube Singh did not have much ancestral land. His father Ch. Bharat Singh was owning 3-1/2 acres of land which devolved upon him and his two brothers on the death of Ch. Bharat Singh in the year 1982. Land measuring 3-1/2 acres could not yield so much as to have enabled Smt. Santosh Kumari to purchase so much land in the year 1969, 1975 and 1988. It was submitted by the learned counsel for the appellant that Smt. Santosh Kumari threw this property into common hotch poch. With the throwing of this property in the common hotch poch, every member of the joint Hindu family came to acquire interest in this property and as such no registration was needed. There was no transfer of any interest in this property and every member of the family under the settlement took by virtue of his being member of the joint family. In support of this submission that in this situation, no registration was required, he drew my attention to *Ram Charan Das v. Girja Nandini Devi and Ors.* AIR 1996 SC 323. In my opinion, there is fallacy in this submission. There is no evidence that this property was put into the common hotch poch by Smt. Santosh Kumari. In the written statement filed by Ajay Chaudhary, he has admitted that Smt. Santosh Kumari was the owner of this property but she was not so at the time of filing of this suit. While saying so, what was in the mind of Ajay Chaudhary was that she was owner of the property earlier but she had ceased to be so because of the decree dated 12.3.1991 which she had suffered in their favour in Suit No. 219 of 1991. In suit No. 219 of 1991 also, they had averred that Smt. Santosh Kumari was the owner of this property but she had settled this property on them about 2 years ago. In the revenue record, Smt. Santosh Kumari was all along recorded as owner of this property.

17. Land measuring 57 kanal 12 marla i.e. 1/3rd share of 172 kanal 18 marla was purchased by Smt. Santosh Kumari vide sale deed Ex. P1 dated 2.2.1969. Smt. Santosh Kumari purchased land measuring 10 kanal 11 marla in the year 1975 and 2 kanal 5 marla in the year 1986. In para 1 of the plaint of this suit, she has averred that she as owner of land measuring 67 kanal 5 marla. While dealing with this para of the plaint. Ajay Chaudhary has stated that it is absolutely correct that Smt. Santosh Kumari was the owner of the suit property. This fact was further admitted by Ajay Chaudhary in para 11 of his written statement where he has stated that Smt. Santosh Kumari was the absolute owner of the suit property and she could dispose it of in any manner she liked. Ajay Chaudhary had admitted in cross examination that the land held by his grand father devolved upon his three sons i.e. Ch. Sube Singh, Ch. Lal Chand and Ch. Hardy Singh on his death. Land of the share of Ch., Sube Singh is with Ch. Sube Singh. Smt. Santosh Kumari was thus absolute owner of the property. It was not joint Hindu family property. She had never thrown this property into common hotch poch. Family settlement devised with regard to this property required registration. If family settlement was not got registered decree dated

12.3.1991 required registration.

18. Learned counsel for the appellant submitted that Smt. Santosh Kumari could not challenge this decree on the ground that it lacked registration when she was party thereto, In support of this submission he drew my attention to Parveen Kumar v. Shiv Rant alias Sheo Ram (2000-2) 125 P.L.R. where it was held that a consent decree cannot be challenged on the ground of non registration by a party, to the decree. It can be challenged only on the ground of fraud or collusion or on the ground that civil court has no jurisdiction to pass the decree. In my opinion, Smt. Santosh Kumari could also challenge this decree on the ground that it required registration or the family settlement preceding it required registration in view of Bhoop Singh's case (supra). Family settlement would require registration if it creates right, title and interest in favour of the other party for the first time. It would not require registration if the other party had pre-existing right in the property. In this property, the defendants Ch. Sube Singh etc. did not have any pre-existing right and as such decree required registration or the family settlement preceding it required registration.

19. It was submitted by the learned counsel for the appellant that if decree dated 12.3.1991 is washed out, suit No. 219 of 1991 will have to be left to be decided on merit. In the plaint of suit No. 219 of 1991, para 3, it is alleged that Ch. Sube Singh. Ajay Chaudhary and Sanjay Chaudhary are in separate possession of their shares accordingly to family settlement. This claim was admitted by Smt. Santosh Kumari and the decree was passed. If decree dated 12.3.1991 was bad in law, it was submitted that the relief of possession could not be granted to Smt. Santosh Kumari. Parties have to be given opportunity to prove their case as alleged in the pleadings of suit No. 219 of 1991. Parties would have to be relegated to their original rights. In support of this submission, he drew my attention to Ashrafilal Mahta and Others Vs. Surajmaya Mishrain, where it was held that the effect of setting aside the compromise was to remit both parties to their original rights and hence where consent decree is set aside court can proceed with the original suit. Suffice it to say, this submission cannot come to the aid of the appellant as no family settlement dated 26.2.1991 was pleaded by the plaintiffs in Suit No. 219 of 1991. All that what was pleaded was that about 2 years ago, family settlement took place between them and Smt. Santosh Kumari. So far as family settlement dated 26.2.1991 is concerned, that does not speak of land measuring 67 kanal 5 marla. That speaks only of TPS Breeding and Research Farm. It was an agreement for settlement of family disputes relating to TPS Breeding and Research Farm, GT Road, Murthal, Revenue Estate of village Nangal Khurd. Through this settlement. Ajay Chaudhary and Sanjay Chaudhary were constituted as entitled to all the assets and liabilities of this firm as on 31.3.1991 in the ratio of 50% each. No share was given to Ch. Sube Singh and Smt. Santosh Kumari in the assets and liabilities of this firm which was to be dissolved on 31.3.1991, As such, there can be no sense in remitting suit No. 219 of 1991 for trial after setting aside decree dated 12.3.1991. Decree dated 12.3.1991 has to be set aside lock, stock and barrel.

20. It was submitted by the learned counsel for the appellant that no-where in the plaint of this suit family settlement Ex.D1 was challenged. There is no allegation that family settlement Ex.D1 was obtained by coercion or undue influence. It was submitted that even the terms of family settlement Ex.D1 find support from the averments made in para No. 4 of the plaint where the plaintiff has stated that she was willing to give 50:50 to both her sons under family settlement, Ajay Chaudhary was given 30%. It was submitted that family settlement Ex.D1 having not been challenged could not be ignored and in the face of family settlement Ex.D1 no decree for possession could be passed in favour of the plaintiff. In support of this submission, he drew my attention to (1999)1 RCR 588, [? Editor] it would bear repetition that family settlement Ex.D1 does not speak of the land in suit nor there is mention of this family settlement in Suit No. 219 of 1991 which was decreed on 12.3.1991. As such after decree dated 12.3.1991 was set aside, consequential relief of possession had to be given. It was submitted that decree dated 12.3.1991 could not be challenged by Smt. Santosh Kumari through a separate suit. Separate suit is barred under the provisions of Order 23 Rule 3-A CPC. Order 23 Rule 3-A CPC lays down that "no suit shall be to set aside a decree on the ground that the compromise on which the decree is based was not lawful. "Now the question arises whether decree dated 12.3.1991 is a "consent decree" or a "compromise decree". In Black's Law Dictionary, compromise and settlement have been defined settlement of a disputed claim by mutual concession to avoid a law suit. An arrangement arrived at either in court or outside a court for settling a dispute upon what appears to the parties to be equitable term having regard to the uncertainty they are in regarding the facts or the law and the facts together. An agreement or arrangement by which in consideration of mutual concessions a controversy is terminated in Banwari Lal v. Smt. Chando Devi (Through LR) 1993(3) R R R 685, it was held by the Hon"ble Supreme Court that if a party makes an application for setting aside of the order passed on the basis of an agreement which is void or voidable, the court has the power to entertain such an application u/s 151 CPC and decide the legality or validity of such compromise. No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. A consent judgment is a judgment, the provisions and terms of which are settled and agreed to by the parties to the action. A consent decree can be challenged on the ground of fraud, coercion, undue influence etc, through a separate suit.

21. Both the courts below have concurrently found that this decree was the result of coercion and undue influence. For arriving at this finding, they have relied upon evidence. Finding of fact based on evidence cannot be gone into by this Court in second appeal. This is intendment of Section 100 CPC. Section 100 CPC deals with the scope of second appeals. Section 100(1) CP lays down that "save as otherwise expressly provided in the body of this Code or by any other law for the time being in force an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High

Court is satisfied that the case involves a substantial question of law.

22. Learned counsel for the appellant submitted that there is no evidence to sustain the finding that the decree dated 12.3.1991 was the result of coercion and undue influence. If the decree were the result of coercion and undue influence, why should she have filed written statement admitting the claim of the plaintiffs in suit No. 219 of 1991? Why should she have made statement before the court admitting the claim, She would have stated that she had not willingly signed the written statement and the written statement was the result of coercion and undue influence. Similarly, she would have stated before the court that she was not willing to make statement admitting the claim of the plaintiff. She had been pushed into court by them with a view to making statement admitting their claim. Similarly, she would have stated before the revenue officer who attested the mutation that she had not suffered this decree of her own free will and violation. Decree was the result of undue influence and coercion. It was submitted that in the absence of evidence to this effect courts below could not have returned this finding that the decree was the result of coercion and undue influence. In my opinion, the courts below gave finding on evidence that the decree was the result of coercion and undue influence. In Suit No. 219 of 1991, father and son were representing the respective parties. How could Smt. Santosh Kumari have independent advice when both the parties were represented by father and son. If there is some evidence to sustain that finding in second appeal, the sufficiency of that evidence cannot be seen by this court sitting in second appeal. Under the decree dated 12.3.1991 nothing was given to Smt. Santosh Kumari.

23. Faced with this position, learned counsel for the appellant submitted that under the decree the appellant's share was reduced to 1/3rd whereas Smt. Santosh Kumari wanted both of her sons to be given equal share. It was submitted by him that the appellant has gained any undue advantage under the decree. Suffice it to say, Smt. Santosh Kumari was the owner of the entire 67 kanal 5 marlas of land. Under the decree, she got nothing. It was held in Karnal Distillery Co. Ltd. and Others Vs. Ladli Parshad Jaiswal and Another, that presumption of undue influence is raised where the court regards the transaction as prima facie unfair and the person who is benefited by it is required to show that in fact it was a fair and a reasonable deal and he did not take advantage of his position or of the necessities or inexperience of the other. Learned counsel for the appellant submitted that no coercion or undue influence was pleaded by Smt. Santosh Kumari while challenging the decree dated 12.3.1991. Suffice it to say in para 13 of the plaint, there are allegations constituting the plea of undue influence and coercion. Courts below have dealt with this averment while discussing issue No. 1 which is in omnibus issue.

24. Learned counsel for the appellant submitted that there should have been cogent evidence of the use of undue influence and coercion as far as Smt. Santosh Kumari is concerned in the obtaining of this decree and merely raising

atmosphere of suspicion would not be sufficient. In support of this submission, he drew my attention to Mst. Chandravati v. Pandit Janti Parshad and Anr. AIR 1938 Lah 333 where it was held that "to establish a case of undue influence, it is not sufficient to raise an atmosphere of suspicion but there must be clear and definite evidence of the case propounded."

25. In this appeal, no substantial question of law arises. Questions of law if arising are settled questions of law.

26. For the reasons given above, this appeal fails and is dismissed.