
(2005) 04 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 729 of 2002

Parkash

APPELLANT

Vs

Pritam Singh and Another

RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Citation : (2005) 140 PLR 761

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

Advocate : Anil Kshetarpal, for the Appellant; Sanjiv Ghai and B.R. Vohra, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—The respondent-plaintiffs filed suit for declaration to the effect that decree dated 24.4.1984, Ex.P.2 suffered by their mother, Smt. Kasturi Devi in favour of the appellant, their brother, with regard to her share of the suit property, was void for want of registration.

2. The appellant contested the suit, explaining the reasons for relinquishing of her rights by Smt. Kasturi Devi (who was also alive at the time of filing of the suit and who also supported the case of the defendant-appellant) who suffered decree in favour of the appellant. Further plea of the defendants was that the suit property was absolute property of defendant No. 2 and the plaintiffs could not question her decision to relinquish her share in favour of defendant No. 1 - appellant.

3. The trial Court decreed the suit holding that the decree being transfer of immovable property of the value of more than Rs. 100/-, was void in absence of registration.

4. On appeal, the said decree was affirmed.

5. Learned counsel for the appellant submitted that substantial question of law

arises for consideration as to whether decree suffered by mother in favour of her son by way of family settlement can be held to be void on the ground that the son did not have preexisting right and the decree required registration.

6. Learned counsel for respondent No. 2 supported the judgments of the courts below while learned counsel for respondent No. 1 conceded the claim of the appellant. He also filed an affidavit in support of the appellant which was considered vide order of this court dated 1.2.2005.

7. I have considered the rival submissions and perused the record of the case.

8. In *Ram Charan Das Vs. Girjanandini Devi and Others*, , it was held "the word "family" in the context is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute....The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another...." "The courts lean strongly in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all."

9. In *Tek Bahadur Bhujil Vs. Debi Singh Bhujil and Others*, , it was held that family arrangement may be oral as its terms may be reduced into writing as a memorandum of what was agreed upon between the parties and in such a case, registration is not required. In *Kale and Others Vs. Deputy Director of Consolidation and Others*, , the view that family settlement was not required to be registered, was approved by the Apex Court. In para 24 of the. above said judgment, it was observed by the Apex Court that family arrangement was binding on the parties and operated as an estoppel against a party who took advantage thereof. In para 27, it was observed that "the word "family" cannot be construed in a narrow sense so as to confine the parties to the family arrangement only to persons who have a legal title to the property". In para 36, reference was made to Privy Council judgment in AIR 1927 227 (Privy Council) to the effect that even a person who does not have a right of inheritance but was closely related member of the family, could be covered by the family settlement. Referring to the said judgment, it was observed "yet having regard to the near relationship which the brother and the son-in-law bore to the widow, the Privy Council held that the family settlement by which the properties were divided between three parties was a valid one."

10. Accordingly, answer to the question has to be in favour of the appellant.

11. For the above reasons, this appeal is allowed. Decree of the courts below is set aside and the suit of the plaintiff is dismissed. No costs.