

(1992) 02 P&H CK 0142

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1169 of 1979

Smt. Jaswant Kaur and Others

APPELLANT

Vs

Hardial Singh and Others

RESPONDENT

Date of Decision : 10-02-1992

Acts Referred:

Registration Act, 1908 — Section 7(2)

Citation : (1992) CivCC 741 : (1992) 102 PLR 107

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : R.K. Battas, G.S. Punia and P.C. Chaudhary, for the Appellant; R.S. Bindra and Renu Bala, for the Respondent

Judgement

N.K. Kapoor, J.—Ishar Singh, "karbans Kaur, Jaswant Kaur, Rajbans Kaur; Tejinder Singh, minor son, Inderprit Kaur and Manpreet Kaur, Minor daughters of Sukhdiai Singh, husband of Rajbans Kaur; Narain Kaur and Satwant Kaur filed a suit against Hardial Singh and others for declaration to the effect that they are owners-in-possession of the land shown in sub-heads (A) and (B) as given in the plaint or in the alternative for possession of 6/7th share of the land measuring 41-IC 9-M comprised in Hadbast Khasras detailed as A B C D E (as per plaint) situated in the area of village Kokari Kalan, Ajitwal and Kokari Hairan, Tehsil Moga, on the ground that a distance arose between Ishar Singh, defendant for the reason that the latter was cultivating the land as son of Ishar Singh and started claiming hostile possession whereupon Ishar Singh, instituted a suit against him The case of the plaintiffs further is that Smt. Attar Kaur, wife of Ishar Singh died and Hardial Singh set up a Will claiming ownership of the land left by her on the basis of the Will which was the subject-matter of dispute between the parties. In fact, appeal filed by the plaintiffs against the mutation sanctioned in favour of Hardial Singh was accepted by the Collector and thereafter at the behest of near relations a compromise-cum-family settlement was executed and put in the court in the aforesaid suit which was acted upon. As per the said document, Ishar Singh was given 260 mounds of grains also. This order of the

Collector was challenged by Hardial Singh, defendant, and the Commissioner accepted the appeal. Thereafter, Hardial Singh ignoring the compromise, with an intent to take back the possession, started interfering in the peaceful possession of plaintiffs which led Ishar Singh to file a suit for injunction seeking a restrain order against him. It is further stated that Hardial Singh resiled from the above arrangement (as per family settlement-cum-compromise). Hence the present suit.

2. Defendant No. 1 put in appearance and asserted that Shmt. Attar Kaur made a valid will in his favour. He further alleged that the alleged compromise-cum-family settlement pertained to the property extraneous to the pending suit and, thus, required compulsory registration. Since the compromise-cum-family settlement had not been got registered, the same could not be acted upon. The defendant further stated that he did not part with possession of any piece of land in favour of Ishar Singh, plaintiff. He also urged that the suit of Ishar Singh for declaration and injunction having already been dismissed the present suit was incompetent. Defendants No. 3 to 8 claimed to have become owners on the basis of sale deed duly executed by Hardial Singh. Besides, they urged that they were bona fide purchasers for value.

3 On the pleadings of the parties, the following issues were framed :-

- (1) Whether there was a family compromise-cum-settlement between the plaintiff and defendant No. 1 as alleged in para 8 of the plaint ? OPP
- (2) If issue No. 1 is proved, whether the said settlement-cum- compromise was acted upon by the parties as alleged in para 9 of the plaint? OPP
- (3) If issue No. 1 is proved, whether the said settlement- cum-compromise is inadmissible in evidence for want of registration ? OPD
- (4) Whether the suit is barred by res judicata or its principles ? OPD
- (5) Whether the plaintiffs are in possession of the suit land ? If not, to what effect ? OPD
- (6) Whether Shmt. Attar Kaur deceased, mother of defendant No. 1, made a valid will in favour of defendant No. 1 ? OPD
- (7) Are defendants No. 3 to 8 bona fide purchasers for value and without notice ? OPD
- (8) Relief.

The trial court on the basis of evidence came to the conclusion that the alleged compromise cum-settlement deed was not a family settlement as the same was not acted upon and that it required registration. It also held that the suit was barred by principles of res judicata. It however, rejected the will. The court further held that the vendee- defendants had failed to prove themselves to be bona fide purchasers without notice. Accordingly, the suit of the plaintiffs for

possession of land as shown in sub heads (A) and (8) as per the plaint land measuring 2K. 14-M. out of sub-head (C) and for joint possession of land in sub-heads (A) and (B) decreed. Against the judgment and decree of the trial Court, both the parties filed appeal which were disposed of by judgment and decree of the District Judge dated December 26, 1978, whereby the appeal of the present appellants was dismissed whereas the appeal preferred by the defendants was partly allowed. The lower appellate court reversed the finding of the trial court with regard to plea of res judicata holding that the judgment Ex. D. 7 (dated July 25, 1972) operates as res judicata between the parties.

4. Before me, learned counsel for the appellants has challenged the finding of the courts below with regard to the compromise-cum- family settlement deed as well as the finding of the lower appellate Court in respect of Issue No. 4 as to whether the suit is barred by res judicata or its principles. Much emphasis has been laid by learned counsel for the appellants in respect of the compromise-cum-family settlement deed Ex. PA. The counsel also referred to the statements of Ganda Singh PW-3, Jaswant Kaur PW-4, Harbans Kaur PW-6, Gurdit Singh PW-7 and Ishar Singh PW-9, who deposed in the Court with regard to the alleged compromise-cum-family settlement between Ishar Singh (Plaintiff), Hardial Singh (defendant) and his sisters. Jaswant Kaur and Harbans Kaur (plaintiffs), daughters of Ishar Singh, have come in support of the contention that Hardial Singh and all of them and Ishar Singh had agreed to enter into the family settlement at the behest of near relations and thus compromise deed Ex. PA was reduced into writing on the basis of earlier family settlement and put in the court in the pending suit. The statement of Hardial Singh was also recorded in that suit which is Ex. P-3 and on the basis of the statements of the parties, Sub Judge, vide judgment and decree Ex. P6, disposed of the matter. In support of his above contention, the counsel relied upon the following observations of the Supreme Court in Ram Charan Dass v. Girja Nandini Devi. AIR 1956 S. C. 323.

"Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property against members of a family. 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. That consideration having passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter."

Reliance is also placed on the following observations of another Supreme Court case reported as Kale and Others Vs. Deputy Director of Consolidation and Others, .

"The family arrangement may be even oral in which case no registration is

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 family arrangement had already been made either for the purpose of the 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 family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same."

Counsel for the defendants accepted that a compromise deed took place between Ishar Singh and Hardial Singh as per Ex. PA but he vehemently denied the assertion of the appellants that it was a family settlement-cum-compromise. In support of his contention he mentioned that the said document bears the signatures of Ishar Singh and Hardial Singh alone. Had it been a family settlement, Shmt Jaswant Kaur, Shmt. Harbans Kaur and other sisters who were alleged to be present at the time the said deed was executed would also have been, signatories to it. Thus, in the absence of the same, mere assertion by the plaintiffs that the compromise is a family settlement has no legal foundation. Counsel contended that even the Courts below have not found the evidence of witnesses in support of the compromise Ex. FA worthy of credence. There is no denying the fact that the said compromise deed bears the signatures of Ishar Singh, plaintiff, and Hardial Singh, defendant. As per terms of the compromise recorded wherein, it is nowhere mentioned that this compromise was recorded on the basis of previous settlement which might have taken place between Hardial Singh, Ishar Singh and other members of the family. Incase the other members were also a party to this alleged settlement, there is no reason why they should not have appended their signatures upon it. The judgments referred to by the counsel for the appellants are not applicable to the facts of the present case. There is no denying the proposition that in case a family settlement takes place even among members who have even a remote chance of succession, such a settlement would be deemed to be a family settlement. In the present case, evidence with regard to the alleged family settlement is, in fact, lacking. Thus, I find no merit in submissions of the learned counsel for the appellants in this regard.

5. The next dispute between the parties pertains to Issue No. 3 as to whether

the so-called family settlement-cum-compromise deed is inadmissible in evidence for want of registration. As per contention of the appellants, since it is a family settlement it did not require registration *Kale and Others Vs. Deputy Director of Consolidation and Others*, . However, learned counsel for the defendants seriously contests this proposition of law. Since I have already held under Issue No. 1 that the document in question is a compromise and not a family settlement, the same is to be examined in the light of the provisions of Section 17 of Indian Registration Act. Section 17(2)(vi) of the Act specifically mentions that a decree or an order made on the basis of a compromise and comprising immovable property other than which is the subject-matter of the suit or the proceeding is compulsorily registrable. Admittedly, in the alleged compromise deed, reference was to the immovable property belonging to Attar Kaur which was not the subject-matter of the earlier suit in which this compromise was filed and, thus, such a compromise requires compulsory registration and the same cannot be admitted into evidence as far as property of Attar Kaur is concerned. I derive support for this view from the judgment in *Mohinder Pal Singh v. Lachhman Dass*. 1968 70 P. L. R. 1120.

6. Lastly, learned counsel for the appellants has assailed the finding of the lower appellate court on Issue No. 4 as to whether the suit is barred by *res judicata* or its principles. The trial Court examined this issue in two parts, i.e., in the light of judgment and decree dated 6-5-'969 (Ex. ?6) and judgment and decree dated 23.7.1971 (Ex. D7). Ex. P6 is the judgment passed by Sub Judge 1st Class in Civil Suit No. 119/246 of 67-68 filed by Ishar Singh against Hardial Singh defendant, wherein compromise Ex. PA was tendered and the matter disposed of in terms of the said compromise. Since Ishar Singh agreed to abide by the compromise, the court held that Ishar Singh was estopped by rules of *res judicata* from challenging its correctness. The court held that so far as the suit land is covered by Ex. P6, the same bars the plaintiffs from re-agitating. As regards judgment dated 23-7-1971 (Ex. D7), the trial court came to the conclusion that the same is not *res judicata* for the reason that the question of title was not involved nor were all the plaintiffs party to that suit. The lower appellate court, however, reversed the finding of the trial court thereby rejecting the claim of the plaintiffs, holding that the suit is barred by the principles of *res judicata*. The appellants have seriously contested the conclusion of lower appellate Court on Issue No. 4 on the ground that neither all the plaintiffs were party to the earlier proceedings nor was the question of ownership in issue. I find merit in the contention of learned counsel for the appellants. The defendant have not placed on record a copy of the plaint and the written statement on the basis of which judgment Ex D7 was pronounced. Besides, the matter directly and substantially in issue, as in the present case was neither a matter directly in issue in the earlier suit nor was it adjudicated upon by the Court. Resultantly, I set aside the judgment and decree of the lower appellate Court and affirm the judgment and decree of the trial Court dated September 2, 1974. The parties are, however, left to bear their own costs.