Before Viney Mittal, J

HARI SINGH,—*Plaintiff/Appellant*

versus

GURCHARAN SINGH & OTHERS,—*Defendant/Respondents*

R.S.A. No. 1822 of 1996

15th May, 2003

Code of Civil Procedure, 1908—Collusive decree in favour of a son—After death of father another son claims share in the suit property—Ancestral nature of the suit property not proved by plaintiff—Father being absolute owner plaintiff could not make any grievance against the decree-Non-registration of decree is no ground to hold it invalid—Appeal liable to be dismissed.

Held, that once it is held that the property in dispute was not ancestral in the hands of Inder Singh then apparently the claim of the present plaintiff Hari Singh who is son of Inder Singh and claims share in the property only on the basis of the same being ancestral in nature falls to the ground. If the property was not shown to be ancestral in the hands of Inder Singh then obviously Hari Singh being his son could have no interest in the property and could not make any grievance against the decree sufferd by Inder Singh during his life time.

(Para 10)

Further held, that when the property in dispute was not shown to be ancestral in the hands of Inder Singh, then nobody else except Inder Singh could have any right to make a grievance against the said judgment and decree. Inder Singh himself could have challenged the decree on the basis of fraud if any, during his life time. No such grievance was made by him. Thus, the grievance made by the present plaintiff after the death of Inder Singh is not legally sustainable and in fact appears to be without any right to make any such grievance.

(Para 14)

Pritam Saini, Advocate for the appellant.

Bhag Singh, Advocate for the respondents.

JUDGMENT

VINEY MITTAL, J.

(1) Hari Singh plaintiff—appellant having remained unsuccessful concurrently in the two courts below has filed the present regular second appeal.

(2) A suit for declaration was filed by the plaintiff—appellant to the effect that the judgment and decree dated 4th February, 1987 in the suit Jagjit Singh and another *versus* Inder Singh was null and void, ineffective and not binding upon his rights. The plaintiff claimed that Inder Singh had two sons Hari Singh and Gurcharan Singh. The land is dispute was ancestral in the hands of Inder Singh. It is further claimed by the plaintiff that the parties were governed by the customary law wherein the ancestral property could not be alienated by the holder and, therefore, the judgment and decree dated 4th February, 1987 suffered by said Inder Singh in favour of Jagjit Singh and Karnail Singh were null and void, illegal and not binding upon his rights.

(3) According to the plaintiff the said land could not be transferred by Inder Singh except for a legal necessity.

(4) The defendants put in appearance and filed a written statement contesting the claim of the plaintiff. They supported the decree dated 4th February, 1987 as legal and valid. It was specifically pleaded by them that no fraud had been played by defendents No. 2 and 3 upon Inder Singh and, therefore, the said decree having been suffered by him voluntarily was perfectly legal and valid and binding upon the parties. The defendants further denied the factum of the land in dispute being ancestral.

(5) The learned trial court dismissed the suit filed by the plaintiff and it was held that the aforesaid decree was legal and binding. The matter was taken up in appeal by the plaintif before the learned first appellate court. The learned first appellate court affirmed the findings recorded by the learned trial court. Additionally, the learned first appellate court also held that the property in question was not shown to be ancestral in the hands of Inder Singh. On that basis, the suit filed by the plaintiff was dismissed.

(6) The plaintiff has now approached this court through the present regular second appeal.

(7) I have heard Shri Pritam Saini, the learned counsel for the appellant and Shri Bhag Singh, the learned counsel appearing for the respondents and with their assistance have also gone through the record of the case.

(8) Shri Pritam Saini, the learned counsel appearing for the appellant has submitted that in fact the finding recorded by the learned first appellate court that the property was not ancestral was erroneous and contrary to the record. According to the learned counsel, the property was shown to be ancestral in the hands of Inder Singh.

(9) After taking into consideration the said submission made by the learned counsel for the appellant. I find that the said submission is without any basis. In fact it has been specifically held by the learned first appellate court that there was no evidence on the record to show that the suit property in the hands of Inder Singh was inherited by him from his grand-father. On that basis the learned first appellate court has rightly observed that the ancestral nature of the suit property was not proved. Even during the present appeal nothing has been shown from the record that the said finding recorded by the learned first appellate court was contrary to the evidence on the record. Thus, I affirm the said findings recorded by the learned first appellate court to hold that the suit property in the hands of Inder Singh was not ancestral in nature.

(10) Once it is held that the property in dispute was not ancestral in the hands of Inder Singh then apparently the claim of the present plaintiff Hari Singh who is son of Inder Singh and claims share in the property only on the basis of the same being ancestral in nature falls to the ground. If the property was not shown to be ancestral in the hands of Inder Singh then obviously Hari Singh being his son could have no interest in the property and could not make any grievance against the decree suffered by Inder Singh during his life time. It may be relevant to notice here that the judgment and decree impugned in the present suit was suffered by Inder Singh on 4th February, 1987. The aforesaid Inder Singh died on 14th August, 1988. During his life time, no complaint or grievance was ever made by Inder Singh against the aforesaid decree nor the same was

ever challenged by him. In these circumstances, the plea that the said decree was suffered by Inder Singh because of a fraud played upon him is not sustainable. If the aforesaid decree would have been obtained by playing any fraud upon Inder Singh, then Inder Singh naturally would have challenged the said decree during his life time. He did not do so. After his death Hari Singh cannot be heard to make any grievance on that basis.

(11) Faced with this difficulty Shri Pritam Saini, the learned counsel for the appellant has submitted that the said decree dated 4th February, 1987 was suffered by Inder Singh by way of consent and since Jagjit Singh and Karnail Singh who were plaintiffs in the earlier suit were not shown to be having any antecedent title or pre-existing right, then the said decree as such could not confer any right, title or interest in them because of the fact that the same was not registered. For this submission, the learned counsel has vehemently relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Bhoop Singh** *versus* **Ram Singh Major and others (1)** and a single Judge judgment of this court in the case of **Balbir Singh** *versu* **Balwant Singh (2).**

(12) On the other hand Shri Bhag Singh the learned counsel appearing for the respondents has contested the proposition of law canvassed by the learned counsel for the appellant. According to the learned counsel for the respondents, the property in dispute was not ancestral property in the hands of Inder Singh. On that basis, it is submitted that since Inder Singh was the absolute owner of the property and had suffered the decree by way of free consent, therefore, the question of any-body else making a grievance in this regard did not arise. It has been submitted that as a matter of fact, the plaintiff Hari Singh had no *locus standi* to challenge the decree.

(13) I have given my thoughtful consideration to the rival contentions made on behalf of the respective parties.

(14) It is apparent that on the basis of the findings of fact recorded by the learned first appellate court and affirmed by me in the earlier portion of the judgment, the property in dispute was not shown to be ancestral in the hands of Inder Singh. When the property

(1) AIR 1996 S.C. 196
(2) 1996 HRR 586

in dispute was not shown to be ancestral in the hands of Inder Singh, then nobody else except Inder Singh could have any right to make a grievance against the said judgment and decree. Inder Singh himself could have challenged the decree on the basis of fraud if any, during his life time. No such grievance was made by him. Thus, the grievance made by the present-plaintiff after the death of Inder Singh is not legally sustainable and in fact appears to be without any right to make any such grievance.

(15) The Hon'ble Supreme Court of India in the case of **Sahu Madho Das** *versus* **Mukand Ram (3)** observed as follows :—

> "Reliance is placed on the following in support of the contention that the brothers, having no right in the property purchased by the other's money, could not have legally entered into a family arrangement. The observations are :—
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> It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognizing the right of the others, as they had previously asserted it to the portions allotted to them respectively.
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> These observations do not mean that some title must exist as a fact in the persons entering into a family arrangement. They simply mean that it is to be assumd that the parties to the arrangement had an antecedent title of some sort and that the agreement clinches and defines what that title is."

(16) In the case of **Ram Charan Dass** *versus* **Giri Nandini Devi (4)** the Hon'ble Supreme Court held as follows :—

> "Courts give effect to a family settlement upon the broad and general gound that its object is to settle existing or

(3) AIR 1955 S.C. 481
(4) AIR 1966 S.C. 323

future disputes regarding property amongst members of a family. In this context the word family is not to be understood in a narrow sense of being a group of persons whom the law recognizes as having a right of succession or having a claim to a share in the disputed property. The consideration for a family settlement is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst the relations. That consideration having passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be impeached thereafter."

In the aforesaid Ram Charan case *(supra),* the Hob'ble Apex Court further observed as follows :—

"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 take 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."

(17) Again in the case of **Kale** *versus* **Deputy Director of Consolidation (5)** the Hon'ble Apex Court observed as follows :—

"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

(5) AIR 1976 S.C. 807

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."

It was further observed in the aforesaid Kale's case *(supra)* as follows :—

"Even if *bona fide* disputes, present or possible which may not involve legal claims are settled by a *bona fide* family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

(18) In the case of **Jagdish and others** *versus* **Ram Karan and others (6)** I had the occasion to deal with the similar controversy and had held, as per the law laid down in the cases of Ram Charan Dass *(supra)*, Kale *(supra)* and Sahu Madho *(supra)*, that the decree in question passed on a family settlement was not required to be compulsorily registered. Even in the case of **Gurdev Singh and others** *versus* **Kartar Singh and others (7)** this Court had held that the pre-existing right could also cover a claim of a member of larger family under an oral arrangement which is subsequently confirmed in the court proceeding.

(19) In Bhoop Singh's case *(supra)* the Hon'ble Apex Court was dealing with the decree vide which the title in the suit property was sought to be conveyed and transferred to a person without any pre-existing title through the decree itself. In fact the decree under challenge in Bhoop Singh's case *(supra)* may be noticed as follows :—

"It is ordered that a declaratory decree in respect of the property in suit fully detailed in the heading of the plaint to the effect that the plaintiff will be the owners in possession **from today in lieu of the defendant after his death and the plaintiff deserves his name to be incorporation as such in the revenue papers, is granted in favour of the plaintiff against**

(6) 2003 (1) P.L.R. 182
(7) 2003 (1) P.L.R. 173

the defendant, in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct. Pleader's fee fixed Rs. 16. It is further ordered that there is no order as to costs "(emphasis supplied)."

(20) It is thus apparent that in Bhoop Singh's case *(supra)* the Hon'ble Supreme Court of India had held that when the conveyance or transfer was in pensent-ii being effected through a consent decree, then the same was not permissible and in such a situation such consent decree was compulsorily registerable. However, if a plaint in the suit was filed on the basis of a past transaction or past family settlement for the recognition thereof through a declaration, then the declaration sought was merely with regard to the existing facts on the date of the filing of the suit.

(21) In Bhoop Singh's case, the Hon'ble Apex Court had noticed the law laid down in **Tek Bahadur** *versus* **Debi Singh (8)** and observed as follows :—

"14. In **Tek Bahadur** *versus* **Devi Singh,** AIR 1966 SC 292, the Constitution Bench of this Court considered the validity of the family arrangement and the question was whether it requires to be compulsorily registered under Section 17. This Court, while up- holding oral family arrangement, held that registration would be necessary only if the terms of the family arrangements are reduced into writing. A distinction should be made between the document containing the terms and recital of family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the prupose 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 therefore does not fall within the mischief of Section 17(2) of the Registration Act. It was held that a memorandum of family arrangement made earlier which was filed in the Court for its information was held not compulsorily

(8) AIR 1966 S.C. 292

registrable and therefore it can be used in evidence for collateral purpose, namely, for the proof of family arrangement which was final and binds the parties. The same view was reiterated in **Maturi Pullaiah** *versus* **Maturi Narshimham,** AIR 1966 SC 1836, wherein it was held that the family arrangement will need registration only if it creates any interest in immovable property in present time in favour of the parties mentioned therein. In case where no such interest is created the document will be valid, despite it being non-registered and will not be hit by Section 17 of the Act."

(22) Thus, it is apparent that in Bhoop Singh's case the Hon'ble Apex Court was only dealing with a situation where the title was being conveyed and transferred for the first time through the consent judgment and decree and not a case where the said decree was based upon the past transaction.

(23) In view of the proposition of law laid down in the case of Ram Charan Dass's case *(supra),* Kale's case *(supra)* and Madho Dass's case *(supra),* the reliance placed upon by the appellant in the case of Balbir Singh *(supra)* is wholly without any basis.

(24) There is another aspect of the matter which needs to be noticed at this stage, as held in **Bachan Singh** *versus* **Kartar Singh and others** (9) (Supreme Court). The Hon'ble Supreme Court of India in Bachan Singh's case held that if the claim of the defendant was admitted by the plaintiff and on the basis of the said admission, a decree was passed and if there was no fraud in passing the decree, then the said decree was good and valid and could not be ignored on the gound that the same was not registered.

(25) In view of the above observation, I do not find that the claim made by plaintiff-appellant Hari Singh challenging the judgment and decree dated 4th February, 1987 was justified in any manner.

(26) Accordinly, the present appeal is without any merit and the same is hereby dismissed. There shall be no order as to costs.

R.N.R.

(9) 2002 (2) P.L.R. 512