IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-4360-2001 (O&M)
Reserved on:-17.09.2025
Date of Decision : 18.09.2025

Gurmail Singh ....Appellant

VERSUS

Mohinder Singh and Others ....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Hardip Singh, Advocate for the appellant.

Ms. G.K.Turka, Advocate for respondents No.1 to 4.

Mr. Ashok K. Sharma, Advocate for respondents No.5(i) and 5(ii)

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MANDEEP PANNU,J.

1. Appellant-defendant No.1 has preferred the present Regular Second Appeal against the judgments and decrees dated 31.05.2000 and 01.08.2001 passed by the learned trial Court and learned Appellate Court, whereby the suit filed by the respondent-plaintiff has been decreed.

Brief facts

2. The plaintiffs and the defendants are real brothers and sisters, being the sons and daughters of late Pritam Singh (son of Jeon Singh). The suit concerns agricultural land which, according to the plaintiffs, constitutes joint family co-parcenary property of Pritam Singh and his legal heirs. The plaintiffs and defendants claim rights in the disputed property by birth. The plaintiffs alleged that the defendants obtained a judgment and decree dated 21.09.1992 passed by Shri Surinder Gupta (then Sub-Judge, First Class, Patiala), which purported to

determine the share of Pritam Singh in the land in dispute. The plaintiffs contend that the decree of 21.9.1992 is illegal, being the product of fraud and misrepresentation, and that necessary parties i.e. the sons of Pritam Singh were deliberately concealed from the earlier proceeding. It is pleaded that the decree was obtained collusively and amounts to a paper transaction. Further, the plaintiffs assert that the 1992 decree has not been registered though it created rights for the first time, and therefore is inoperative and ineffective as against their rights.

3. The defendants, in their written statement, denied the maintainability of the plaintiffs' suit in the form brought and admitted certain relationships. The defendants asserted that the property specified in the plaint is not situated in the village Karampur @ Batta, as alleged (contention was raised that villages Karampur and Batta are distinct revenue villages), that the land was never ancestral or joint in the sense alleged by the plaintiffs, and that partition had already taken place. According to the defendants, the agricultural land at village Karampur was given to the plaintiffs about 12–15 years earlier by the father and the land at village Batta was given to defendant No.1. The respective parties have been cultivating their allotted lands since the time of partition and enjoy separate possession and cultivation. The defendants asserted that the decree of 21.9.1992 is legal and valid and that the grounds urged by the plaintiffs to impeach that decree are without merit.

4. Plaintiffs sought a declaration that the decree dated 21.9.1992 is null, void, inoperative and ineffective and does not affect their rights; consequential reliefs were also claimed. Defendants relied, inter alia, upon a family settlement / partition document dated 14.12.1989 (produced as Ex.DW-3/1) and urged that the

private settlement and long possession and cultivation gave them valid title and possession.

5. The trial court framed the issues enumerated below:-

1. Whether the decree dated 21.09.1992 passed is null and void? OPP

1-A. Whether the parties have entered into a family settlement dated 14.12.1989? If so, its effect? OPP

1-B. Whether the property in dispute is joint, ancestral and joint Hindu family property? OPP

2. Whether the plaintiff is entitled to the declaration as prayed for? OPP.

3. Relief.

6. The parties have led their evidence.

Findings of the trial court

On Issue No.1-A — Whether the parties have entered into a Family settlement dated 14.12.1989? (Ex. DW-3/1)

7. The trial court examined Ex. DW-3/1 (the copy of the alleged partition deed/family settlement) and the evidence adduced in its support. The trial Court recorded the findings that Ex.DW-3/1 could not be accepted as a legal and valid proof of partition or family settlement. The instrument, in the opinion of the court, did not constitute a proper memorandum of any concluded transaction or partition between the parties. As per settled legal position, partition of agricultural land is generally proved by (a) registered documents which are given effect in the revenue records by mutation and separation, or (b) by a family settlement which has been implemented and accepted by the revenue authorities and given effect to

in the revenue record, in accordance with the procedure under the Punjab land Revenue Act (sections 111–121 and analogous provisions were adverted to by the court). It is further observed that mere private arrangements not acted upon in revenue records are insufficient to prove partition of agricultural land between coparceners. Ex.DW-3/1 was not a registered document and there was no evidence that the document was produced before or accepted by the revenue authorities so as to obtain mutation and give it effect in revenue record. No independent witness was examined to prove the execution of the document in the presence of others. The attesting witnesses to the instrument were not examined on the crucial point of execution and the circumstances of execution were left unproved. In view of the lacunae above, the defendants failed to prove the execution, registration/acceptance, or the legal efficacy of Ex. DW-3/1. Consequently, the court held that Ex. DW-3/1 could not be treated as sufficient evidence of partition or family settlement between the parties. The court thus answered Issue No.2 in the negative (i.e., the alleged family settlement was not proved and had no legal effect).

On Issue No.1-B — Whether the property in dispute is joint, ancestral and joint Hindu family property?

8. The trial Court considered evidence on title, long possession, and antecedent history of the land. The plaintiffs bore the burden to establish that the property in dispute was ancestral and remained joint, and that no valid partition had taken place which would deprive them of their co-parcenary rights. The court observed that the plaintiffs did not lead convincing or legal evidence to establish the character of the land as admittedly joint ancestral property in the requisite sense. Documents or oral testimony sufficient to establish that the property

remained unpartitioned and that the plaintiffs retained co-parcenary rights were not placed before the court to the required standard. The evidence regarding identification of the plot(s), revenue entries, mutation history and other indicia of jointness and continuity of title was not adequate. For these reasons, the trial court recorded a finding that the plaintiffs failed to prove that the property in dispute was, at the relevant time, an unpartitioned ancestral co-parcenary property such as would entitle them to the reliefs claimed on that basis. Issue No.1-B was therefore answered against the plaintiffs.

On Issue No.1 — Whether decree dated 21.09.1992 is null, void?

9. The plaintiffs alleged the decree dated 21.9.1992 being a result of fraud, misrepresentation and concealment of necessary parties. They also urged collusion and that the decree was a paper transaction which should not bind them. The trial court critically examined the evidence led on these allegations. On the allegation of fraud and concealment, the Court found that the plaintiffs failed to prove the allegations of fraud, misrepresentation or suppression of necessary parties in the 1992 proceeding. No cogent evidence was placed on record to establish that the decree was tainted and obtained by fraud or collusion to the extent that the decree should be set aside on that ground. In short, the specific complaints of fraud and concealment were not proved to the requisite standard. On the contention of non-registration of the 1992 decree, plaintiffs contented that the decree of 21.9.1992 created, for the first time, rights, title or interest in immovable property (of value exceeding Rs.100) in favour of the decree-holder and, therefore, the decree was a compulsorily registrable document, since the said decree was not registered, it could not operate to create such right and was inoperative/ineffective as against the plaintiffs. The trial court considered this question in the light of the

settled rule that a document which creates a right, title or interest in immovable property for the first time is compulsorily registrable and non-registration renders the document ineffective to create that right. Applying this legal principle to the facts on record, the trial court held that the decree dated 21.9.1992 did create rights in favour of the decree-holder in respect of the land in dispute for the first time. As the decree was not got registered, it ought not to have created any right, title or interest in favour of the decree-holder vis-à-vis the plaintiffs. The trial court, therefore, concluded that the decree of 21.9.1992 did not operate to cut off or bind the rights of the plaintiffs.

10. Accordingly, although the trial Court did not find proof of fraud, it nevertheless held that on the separate and independent ground of compulsory registration the decree of 21.9.1992 was inoperative and ineffective as against the plaintiffs.

On Issue No.2 — Whether plaintiff is entitled to declaration as prayed for?

11. The trial Court considered the cumulative effect of the findings on the previous issues and held that the plaintiffs failed to establish the family settlement or private partition relied upon by the defendants, and the defendants thus failed to prove partition and exclusive titles flowing from Ex. DW-3/1.The plaintiffs also failed to prove fraud in the passing of the 1992 decree, however, the plaintiffs successfully established that the decree of 21.09.1992 was not registered despite creating rights for the first time and, therefore, could not have the effect of extinguishing or affecting the plaintiffs' rights. On these combined findings the trial court held that the plaintiffs were entitled to the primary relief claimed i.e to have the decree dated 21.09.1992 declared inoperative / ineffective insofar as it purported to affect the share of Pritam Singh in the agricultural land in dispute.In

consequence, the trial court decreed the plaintiffs' suit, declared the judgment and decree dated 21.09.1992 to be ineffective and not binding on the plaintiffs with respect to the share of late Pritam Singh in the land in dispute.

12. **Conclusion by the trial court**

1. The suit was decreed.

2. The judgment and decree dated 21.09.1992 passed by Shri Surinder Gupta was held to be inoperative and ineffective and not binding upon the rights of the plaintiffs in respect of the share of Pritam Singh in the agricultural land in dispute.

3. Ex. DW-3/1 (family settlement / partition document dated 14.12.1989) stood unproved and could not be given effect.

Findings of the First Appellate Court

13. Feeling aggrieved by the judgment and decree dated 31.05.2000, defendant-appellant Gurmail Singh preferred an appeal before the learned Additional District Judge, Patiala, wherein defendant No.2 Shamsher Singh was impleaded as proforma respondent. The lower appellate court, after hearing the counsel for the parties, observed that except the contention relating to whether the decree dated 21.09.1992 required compulsory registration or not, no other argument was urged before it.

14. The Lower Appellate Court noticed the settled position of law that a decree recognizing a pre-existing right of the parties does not require registration, whereas a decree which creates rights in immovable property for the first time is compulsorily registrable under Section 17 of the Registration Act, 1908. It was further noticed that the plaintiffs had pleaded that the property in the hands of Pritam Singh was co-parcenary and ancestral property, whereas the appellant-

defendant had denied this position. The appellate court reasoned that once the appellant himself had denied the ancestral/co-parcenary character of the property in his written statement, he could not subsequently be heard to contend that he had a pre-existing right therein. The admission made in the written statement had neither been withdrawn nor explained. Therefore, the appellate court concluded that the property was not co-parcenary property in the hands of Pritam Singh and consequently, the appellant did not have any pre-existing right. It was thus held that the judgment and decree dated 21.09.1992 created rights in favour of the appellant for the first time, and being unregistered, the same was inoperative and ineffective.

15. The Lower Appellate Court further observed that even assuming that the property was co-parcenary property, the appellant could not claim exclusive ownership over a particular parcel of the land of Pritam Singh, as every co-sharer, including Pritam Singh, would have a right in every inch of the co-parcenary property, and none could claim an exclusive right to a defined portion unless partition was duly effected.

16. The Appellate Court also considered the plea of the family settlement set up by the appellant. It was noted that in the written statement the appellant had pleaded an oral family settlement, under which the land at village Batta was allegedly allotted to him, whereas in evidence reliance was placed on a written family settlement (Ex. DW-3/1). However, the trial court record showed that only a photocopy of Ex. DW-3/1 had been tendered in evidence without leave to lead secondary evidence, and the original document was never produced despite opportunity. Consequently, the appellate court held that the family settlement had

not been proved on record. Thus, the appellant could derive no benefit from the same.

17. In these circumstances, the Lower Appellate Court found the appeal devoid of merit and dismissed the same, thereby affirming the judgment and decree of the trial court.

18. Feeling aggrieved by the judgments and decrees of the Courts below, appellant-defendant No.1 preferred the present Regular Second Appeal.

19. Upon notice, respondents appeared and contested the appeal.

Submissions of learned counsel for the appellant.

20. Learned counsel for the appellant-defendant has vehemently argued that both the courts below have committed material irregularity and illegality by ignoring the documentary evidence of family settlement, Ex.DW-3/1, while recording findings on Issue No.1A and other allied issues. It is submitted that the signatures of the plaintiffs on Ex. DW-3/1 had been admitted by PW-2 Jarnail Singh, one of the plaintiffs himself, and once such admission was on record, the burden shifted upon the plaintiffs to prove that the said document was fabricated or forged. It is further contended that the trial court itself had permitted the appellant to prove the family settlement by way of secondary evidence vide order dated 06.08.1998 on the basis of the admission made by PW-2 Jarnail Singh, and thereafter the document was duly tendered and admitted in evidence without objection. In such circumstances, both the courts below were not justified in discarding Ex. DW-3/1.

21. It is further urged that even in cross-examination, suggestions were put to the appellant that Ex. DW-3/1 was forged and fabricated and did not bear the signatures of the plaintiffs, which itself amounted to an implied admission that the

plaintiffs' signatures were indeed appearing on the document. According to the learned counsel, the entire approach of both the courts below in ignoring Ex. DW-3/1 is perverse and contrary to the record. It is also contended that the lower appellate court committed an error apparent on the face of the record by not considering the amended written statement filed by the appellant and has thereby rendered findings against the pleadings and evidence available on record.

22. The appellant's counsel has further argued that both the courts below have misapplied the ratio of ***Bhup Singh vs. Ram Singh Major, (1995) 5 SCC 709***, by holding that the family settlement and the decree required compulsory registration. It is submitted that a memorandum of family arrangement does not fall within the mischief of Section 17(2) of the Registration Act and, therefore, does not require registration. It is also urged that the decree dated 21.09.1992 was not the result of fraud or misrepresentation, and rather it was based on the memorandum of family settlement, Ex.DW-3/1, and Pritam Singh, being the father of the appellant, had rightly suffered the decree in favour of his son on that basis. It is argued that the appellant, being the son of Pritam Singh, had a pre-existing right in the joint family property, and therefore, the decree of 21.09.1992 did not create rights for the first time and did not require registration. The concurrent findings of the courts below are, therefore, urged to be perverse, the result of misreading and non-reading of evidence, and liable to be set aside.

23. Reliance has been placed by the learned counsel for the appellant on the judgment of the Hon'ble Supreme Court in ***Ripudaman Singh vs. Tikka Maheshwar Chand, 2021 (3) RCR (Civil) 428***, wherein it has been held that where the decree holder had a pre-existing right in the property, a compromise decree does not require registration.

Submissions of learned counsel for the respondents-plaintiffs

24. On the other hand, learned counsel for the respondents/plaintiffs has supported the concurrent findings recorded by both the courts below. It is argued that the suit property was never proved to be ancestral or joint Hindu co-parcenary property and, therefore, the appellant had no pre-existing right therein. It is further contended that the so-called family settlement was never proved, as only a photocopy of the document was produced and the original was withheld. In such circumstances, the courts below rightly held that Ex. DW-3/1 could not be relied upon. Counsel for the respondents has relied upon the judgment of a coordinate Bench of this Court reported as ***Smt. Ishawpati and others vs. Smt. Chhoto (since deceased) through her LRs and others, 2024 NCPHHC 133745***, wherein it has been held that a consent decree which creates new rights, title or interest in immovable property for the first time requires registration and that an unregistered decree cannot convey such rights. It was further observed that bona fide purchasers for value without notice are protected under Section 41 of the Transfer of Property Act.

25. Counsel for the respondents has further argued, on the same lines as before the lower appellate court, that since the appellant himself denied the ancestral character of the property in his written statement, he cannot now be permitted to turn around and contend that he had a pre-existing right in the property. Once the property is not ancestral or co-parcenary, the decree of 21.09.1992 created rights in favour of the appellant for the first time, and therefore, compulsory registration was required under Section 17 of the Registration Act. The concurrent findings are sound, legal, and based on proper appreciation of the evidence on record.

Findings

26. Having considered the rival submissions and having perused the record of the case, this Court is of the opinion that the appeal does not merit interference. The first and foremost contention raised by the learned counsel for the appellant/defendant No.1 is that the family settlement dated 14.12.1989, produced as Ex. DW-3/1, stood admitted in evidence and once the signatures of the plaintiffs thereon were admitted by PW-2 Jarnail Singh, one of the plaintiffs himself, the burden shifted upon the plaintiffs to prove that the document was fabricated. However, a careful reading of the trial court's record shows that what was produced by the appellant/defendant No.1 was only a photocopy of the alleged family settlement, without production of the original. The permission to lead secondary evidence was conditional upon proof of loss or non-availability of the original document, but no such foundation was laid by the appellant/defendant No.1 and no effort was made to summon the original. The attesting witnesses to the document were also not examined, nor was there any evidence of its acceptance by the revenue authorities. In such circumstances, the courts below were right in holding that Ex. DW-3/1 could not be relied upon to prove partition or family settlement. Merely because a witness admitted that his signatures appeared on the photocopy is not sufficient in law to prove due execution of a family arrangement which affects immovable property. A family settlement to be acted upon must either be evidenced by a registered document where it creates or extinguishes rights in immovable property, or it must be duly acted upon and accepted by revenue authorities in order to effectuate separation of holdings. As none of these conditions are satisfied in the present case, I am of the considered

opinion that the family settlement has not been proved on record and the findings of the Courts below in this regard cannot be termed perverse.

27. The second contention raised is that the property in the hands of Pritam Singh was ancestral and co-parcenary and therefore the appellant/defendant No.1 had a pre-existing right by birth. This argument again cannot be accepted. The respondents/plaintiffs themselves had pleaded that the suit property was ancestral and co-parcenary, but the defendant in his written statement had categorically denied this position. Once such a denial was made, the defendant No.1 cannot be permitted to approbate and reprobate by taking a contrary stand in appeal that he had a pre-existing right. The Lower Appellate Court has rightly observed that an admission in the written statement binds the party unless withdrawn or explained, and since the defendant No.1 did not do so, he cannot claim the benefit of ancestral property at this stage. Even otherwise, the evidence adduced does not prove that the land in dispute retained its ancestral character or that no partition had taken place earlier. Further, even if the property were to be regarded as co-parcenary, the appellant/defendant No.1 could not claim ownership of a defined portion of land situated in village Batta, since each co-sharer would be deemed to have a right in every inch of the property until partition. On this ground also, the defence set up by the defendant No.1 fails.

28. Coming to the third aspect, namely whether the decree dated 21.09.1992 required compulsory registration, it has to be kept in mind that under Section 17 of the Registration Act, a decree which merely recognises pre-existing rights of parties does not require registration, but a decree which creates rights for the first time in immovable property of a value exceeding one hundred rupees requires registration. The defendant No.1 has placed reliance on the judgment of

the Hon'ble Supreme Court in ***Ripudaman Singh's case (supra)*** to contend that since he had a pre-existing right in the property, the decree did not require registration. However, as already observed, it is not established that the property was co-parcenary in nature or that he had a pre-existing right therein. On the contrary, by denying the ancestral character of the property in his pleadings, defendant No.1 foreclosed himself from raising the plea of pre-existing right. Consequently, the decree dated 21.09.1992 created rights in favour of defendant No.1 for the first time, and therefore it was compulsorily registrable under Section 17 of the Registration Act.

29. The plaintiffs, on the other hand, have rightly relied upon the judgment of this Court in ***Smt. Ishawpati's case (supra)***, wherein it was held that a consent decree which creates new rights in immovable property for the first time requires registration and an unregistered decree cannot convey such rights. The principle laid down in that case fully applies to the facts of the present case. The decree dated 21.09.1992 was never registered, and therefore it cannot confer any right, title or interest upon the appellant in the suit property.

30. The fourth question which then arises is the effect of the unregistered decree of Shri Surinder Gupta, the then Sub Judge, Ist Class, Patiala dated 21.09.1992. Both the courts below have concurrently held that the decree is inoperative, ineffective and not binding upon the plaintiffs for want of registration. Once it is found that the decree created rights for the first time and was compulsorily registrable but remained unregistered, its legal effect is only that of an unenforceable instrument which does not alter the legal rights of the parties in the property. Such a decree cannot be acted upon to oust the plaintiffs from their lawful share in the property. Therefore, the findings recorded by the courts below

on this aspect are well founded and in accordance with law. Interference is warranted only where the findings of the courts below are perverse, illegal or based on misreading of evidence. In the present case, both the courts below have carefully examined the pleadings and evidence and have given concurrent findings that the family settlement was not proved, that the property was not shown to be co-parcenary so as to give defendant No.1 a pre-existing right, and that the decree dated 21.09.1992 required compulsory registration and, not having been registered, was ineffective. These findings are based on sound appreciation of evidence and correct application of legal principles. They cannot be said to be perverse or contrary to record so as to justify interference by this Court.

Conclusion

31. In view of the aforesaid discussion, I find no merit in the contentions raised by the appellant/defendant No.1. The concurrent judgments and decrees passed by the courts below are upheld.

32. Accordingly, the present Regular Second Appeal is dismissed

33. Pending application(s), if any, also stands disposed of.

September 18, 2025 **(MANDEEP PANNU)**
tripti **JUDGE**

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.