



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(124)

RSA No.403 of 2025 (O&M)

Date of Decision: 15.09.2025

Ishwar

...Appellant

VS

Satnarain and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. R.S. Panghal, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

Plaintiff No.2 has filed the instant appeal against judgment and decree dated 29.10.2024, passed by the Court of Additional District Judge, Bhiwani, dismissing the appeal against judgment and decree dated 01.09.2017, passed by the Court of Additional Civil Judge (Senior Division), Tosham (District Bhiwani), vide which the suit for declaration filed by the plaintiffs, was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. One Balak Ram had five sons i.e., Plaintiffs No.1 to 3, the defendant and one Om Prakash (represented by his legal representatives-plaintiffs No.4 to 7)

3.1. Balak Ram was the owner in possession of land measuring 158 Bighas 3 Bighas (fully described in the plaint) situated in Village Sandwa, Tehsil Tosham, District Bhiwani (hereinafter referred to as 'the suit land').

3.2 The plaintiffs claimed that the suit land was a coparcenary property and, therefore, all the sons of Balak Ram had a birth right in the same. Balak Ram used to repose faith in the defendant (Satnarain). Taking

advantage of the same, he instituted Civil Suit No.694 of 1992 against Sh. Balak Ram and secured a judgment and decree dated 12.11.1992, vide which the entire suit land was transferred in favour of Satnarain.

3.3. It was claimed that since the suit land was coparcenary property, the same could not have been alienated by Balak Ram. It was further alleged that the judgment and decree dated 12.11.1992 had been obtained by fraud.

3.4. The suit was opposed by the defendant. In the written statement, preliminary objections as regards maintainability, *locus standi*, the suit being bad for non-joinder of necessary parties as the daughter of Balak Ram had not been impleaded as a party, limitation and the suit for declaration simplicitor not being maintainable etc., were raised. On merits, it was denied that the suit land was coparcenary property. It was averred that Balak Ram was fully competent to transfer the suit property. It was further averred that no fraud had been played in obtaining the decree and the same had been passed in accordance with law.

4. From the pleadings of the parties, following issues were framed:-

1. ***Whether plaintiffs are entitled to decree of declaration as prayed for ? OPP***
2. ***Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD***
3. ***Whether the suit is bad for misjoinder and nonjoinder of necessary parties? OPD***
4. ***Whether the plaintiffs are estopped to file the present suit by his own act and conduct? OPD***
5. ***Whether the plaintiffs have filed the present suit with a malefide intention as prayed for? OPD***
6. ***Whether the suit is barred by limitation? OPF***

7. ***Relief.***

5. Parties led their respective evidence. The trial Court dismissed the suit vide judgment and decree dated 01.09.2017 and the appeal preferred by the plaintiffs, was dismissed by the Court of Additional District Judge, Bhiwani, vide judgment and decree dated 29.10.2024, leading to the filing of the present Regular Second Appeal.

6. I have heard learned counsel for the appellant.

7. Learned counsel submits that both Courts erred in non-suiting the plaintiff. He submits that even if the property is not proved to be coparcenary property, it had been proved that the decree had been obtained by fraud. He submits that the plaintiffs were not in possession of the judgment and decree dated 12.11.1992 and that once they had pleaded fraud, the onus shifted upon the defendant to prove that the said judgment and decree had not been obtained by fraud. In support of his contentions, learned counsel has placed reliance upon the judgments of Hon'ble Supreme Court in the cases of *K.C. Laxmana Vs. K.C.Chandrappa Gowda and another, 2022(2) RCR (Civil) 799; Thimmaiah Vs. Ningamma, 2000(4) RCR (Civil) 609; Yudhister Vs. Ashok Kumar, 1987 AIR SC 558; Bhoop Singh Vs. Ram Singh Major, (1995) 5 SCC 709; Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd., 2005(1) RCR(Civil) 240; Krishna Mohan Kul @ Nani Charan Kul and another Vs. Pratima Maity and others, 2003 AIR SC4351; Anil Rishi Vs. Gurbaksh Singh, (2006) 5 SCC 558* and judgments of this Court in *Jagir Vs. Bachna (since deceased), 2024(2) RCR(Civil) 325, Kesar Bai (dead) through LRs Vs. Ran Singh, 2003(3) Civil Court Cases 115 (P&H)* and judgment of Bombay High Court in case *of Haroon*

***Rashid Nizamuddin Umatiya Vs. Jivatlal Purtapshi & Raj Developers,
2003(3) Civil Court Cases 120 (Bombay).***

8. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.

9. Though, learned counsel has, in a way, conceded that the plaintiffs were not able to prove that the suit land was coparcenary property with Balak Ram, still this Court would go into the question. To prove that the property was coparcenary property, no evidence worth its name was led. No revenue record was produced. On the contrary, the defendants were able to prove that as per mutation Ex.D-8, the suit land had devolved upon Balak Ram and his two sisters from Bihari, in equal shares. This devolution took place in 1976 i.e., after the Hindu Succession Act, 1956 had become operative. It is, therefore, clear that the devolution took place by virtue of Section 8 of the Act and not by virtue of Section 6 of the Act. Relying upon the judgment of Hon'ble Supreme Court of India in the case of ***Commissioner of Wealth Tax Versus Chander Sen., AIR 1986 SC 1752***, both Courts rightly held that Balak Ram and his sisters had acquired the property from Bihari as their self acquired property *vis-a-vis* their children. Mutation Ex.D-7 also revealed that after the devolution of the suit land from Bihari to Balak Ram and his two daughters, the daughters of Bihari had executed a release deed in favour of Balak Ram. Once Balak Ram acquired the share of his sisters also by way of a release deed, the suit property could not, under any circumstance, be termed to be coparcenary property. Balak Ram, therefore, had every right to deal with the suit property in the manner that he wished.

10. As regards the judgment and decree dated 12.11.1992, the plaintiffs did not produce any evidence to prove that the same had been obtained by fraud. They did not even produce the said judgment and decree on record. Nothing prevented them from summoning the record of the said judgment and decree and then leading evidence to prove the alleged fraud. It has to be borne in mind that fraud is to be pleaded and proved by leading cogent evidence and the same can never be proved on the basis of assumptions and presumptions.

11. The defendants, on the other hand, produced the judgment and decree Ex.D-2 and D-3 along with statement of Balak Ram etc., Ex-D-4 and D-5. No doubt, the plaint was not produced. However, it has to be borne in mind that it was a judgment and decree passed by a competent Court of law, after having been satisfied as regards the dispute raised and the manner in which it was being settled. It is well settled that decrees of Court cannot be upset or set aside on the mere asking of parties. Reference can be made to the judgment of a Coordinate Bench in the case of **Lichhami Devi and others Vs. Smt. Bharpai and others, 2011 (4) CCC 156 (P&H)**.

11.1 In so far as registration of the decree is concerned, no ground as regards non-registration was raised in the plaint and, therefore, the same cannot be agitated in second appeal. Even otherwise, registration would have been required had it been a settlement '*in Praesenti*'. Nothing in this regard has come on record.

12. Both Courts, therefore, rightly found that the judgment and decree dated 12.11.1992 did not deserve to be set aside.

13. I have perused the judgments relied upon by learned counsel for the appellant. In view of the factual and legal situation narrated above, the

said judgments would not come to the aid of the appellant. It has to be borne in mind that the onus to prove the case set up in the plaint, was upon the plaintiffs and as is evident from issue No.1, they miserably failed to prove the same.

14. Under the circumstances, I do not find any reason to interfere in the findings recorded by both Courts. Accordingly, the instant appeal is found to be devoid of merit and the same is, accordingly, dismissed.

Pending application (s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

September 15, 2025
Rekha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No