



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

RSA-551-1998 (O&M)

Phullo

. . . . **Appellant**

Vs.

Giala Singh and Another

. . . . **Respondents**

**Reserved on: 20.05.2025
Pronounced on: 22.05.2025**

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Arihant Jain, Advocate and
Mr. Kanish Jindal, Advocate
for the appellant.

None for the respondents.

DEEPAK GUPTA, J.

This Regular Second Appeal has been filed by plaintiff of the case against reversal.

2. The sole plaintiff, Phullo (*appellant herein*) and the second defendant Surjit Kaur (*respondent No.2*) are sisters, while the first defendant, Giala Singh (*respondent No.1*) is their brother. All three are children of Budh Singh. Phullo filed a suit seeking a declaration and permanent injunction, asserting her ownership and possession of the suit land as a co-owner with a 1/5th share. She alleged that the first defendant, in collusion with the second defendant, had fraudulently obtained a decree dated 28.09.1990 in Civil Suit No. 413 of 1990 from the Court of the Sub-Judge 1st Class, Sunam, titled *Giala Singh v. Surjit Kaur and another*. According to the plaintiff, she never consented to the decree, and it was procured through misrepresentation. She claimed that her thumb impressions were taken on blank papers under the pretext of issuing a 'No Objection Certificate' for a bank loan, as she was a co-sharer in the land. These impressions were allegedly misused to obtain the decree. She (Phullo) discovered the fraudulent decree approximately two months before filing the suit, when



she approached the Patwari to obtain a copy of the *jamabandi*. Based on these allegations, she sought appropriate declaratory relief and a permanent injunction.

3. In response, both defendants contested the suit, raising preliminary objections. On merits, they maintained that the decree dated 28.09.1990 was voluntarily suffered by the plaintiff as part of a family settlement and denied any coercion or fraud. They prayed for dismissal of the suit.

4. Necessary issues were framed. Evidence produced by the parties was taken on record.

5. Trial Court vide judgment dated 30.03.1996 decreed the suit and set aside the judgment & decree dated 28.09.1990 by holding that the impugned decree created right in immovable property worth more than ₹100/- regarding 1/5th share of plaintiff in favour of Giala for the first time and therefore, it required registration and since the impugned decree was unregistered, so, it did not create any right in his favour. Reliance was placed upon **“Bhoop Singh v. Ram Singh Major” AIR 1996 (Supreme Court) 196.**

6. The above judgment dated 30.02.1996 passed by learned Additional Civil Judge (Senior Division), Sunam, by holding the decree dated 28.09.1990 to be null and void and decreeing the suit of the plaintiff Phullo, was challenged by defendant Giala Singh by filing appeal. The first Appellate Court of learned Additional District Judge, Sangrur accepted the appeal vide his judgment dated 03.12.1997 and dismissed the suit by holding that the impugned judgment & decree dated 28.09.1990 being a consent and compromise decree, did not require registration, as the same was based upon a prior family settlement.

7. The aforesaid reversal has been assailed by the plaintiff of the case before this Court. The sole contention raised by learned counsel for the appellant- plaintiff is that since the impugned decree dated 28.09.1990 created right in immovable property worth more than ₹100/- for the first time *qua* the share of the plaintiff in favour of the defendant- respondent Giala Singh, therefore, it required registration and therefore, the view taken by the trial Court in this re-

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gard has been wrongly reversed by the first Appellate Court without appreciating the legal position correctly.

8. The respondents were duly represented through counsel but at the time of final hearing, despite intimation sent to the counsel for the respondents, nobody appeared for them and as such, the arguments were heard in the absence of counsel for the respondents.

9. I have considered submissions of learned counsel for the appellant- plaintiff at length and have appraised the record.

10. It is undisputed that the impugned decree dated 28.09.1990 was passed on the basis of an admitted written statement filed by the plaintiff Smt. Phullo, along with her sister Surjit Kaur, and that their statements were recorded in court. The plaintiff has challenged the decree on grounds of fraud and misrepresentation. The first appellate court, relying on the evidence, noted that in the original suit leading to the impugned decree, it was pleaded that the suit property was co-parcenary and had been given by Phullo to her brother Giala under a family settlement in 1989. However, the trial court found that, since the property was co-parcenary in nature as far as Phullo was concerned, such a settlement could not have legally taken place. The appellate court rightly observed that the jurisdiction of a civil court to examine the validity of a prior judgment or decree is confined to instances, where it is proved that such judgment or decree was obtained through fraud or misrepresentation. Reliance was correctly placed on the Supreme Court judgments in ***Bishundeo Narain v. Seogeni Rai and Jagemath (AIR 1951 SC 280)*** and ***Shanker Sitaram Sontakke v. Balkrishna Sitaram Sontakke (AIR 1954 SC 352)***, which held that a consent decree carries the same binding force as a decree passed on contest, unless it is vitiated by fraud, misrepresentation, misunderstanding, or mistake. This principle was reaffirmed by a Division Bench of this High Court in ***Gurdev Kaur & ors. v. Mehar Singh & ors. (1989 PLJ 182)***, which was later approved by the Hon'ble Supreme Court in ***Bhoop Singh v. Ram Singh Major***. It was held that a compromise decree cannot be challenged unless fraud, coercion, or misrepresentation in its procurement is specifically pleaded and proved.



11. By applying the ratio on all the aforesaid judgments to the facts of this case, it has been observed by learned first Appellate Court, based upon the evidence on record, as under:

“11.....Applying the ratio of above said Judgment to the facts of the present case, a careful perusal the pleadings and evidence shows that the earlier decree dt. 28.9.1990 passed by SJIC, Sunam was challenged on the ground that Gaila had obtained thumb impressions of Phullo, plaintiff on the pretext of obtaining a loan from the bank, but the said stand was rebutted by the testimony of DW-2 Prem Chand, Advocate, who deposed that he was appointed as an Advocate on behalf of Surjit Kaur as well as Phullo in the earlier suit and statements of Phullo and Surjit Kaur were recorded in the Court in the presence of Lamberdar. Ajmer Singh, DW-4 has proved that a decree was passed in favour of defendant-appellant and he is owner in possession of 3/5th share of the land in dispute and Phullo has got no concern with the same. DW-5 Gurtej Singh, Lamberdar has proved that Phullo had made a statement on oath in the Court in his presence and he had identified her. In view of the said overwhelming evidence it stands proved that there has not been any fraud, misrepresentation or coercion to make a ground to set aside the earlier judgment and decree, as the plaintiff respondent No.1 has not been able to establish any of the above said three grounds, the subsequent civil court will not have any jurisdiction to go behind the consent decree to find out whether the facts stated in the plaint which culminated in compromise decree were right or wrong as laid down in Division Bench Judgment of Punjab and Haryana High Court in Gurdev Kaur Vs. Mehar Singh's case. The judgment Gurdev Kaur Vs. Mehar Singh was brought to the notice of Hon'ble Supreme Court in Bhoop Singh's case (Supra). In para 11 of the judgment of Bhoop Singh's case the ratio of Gurdev Kaur's case (Supra) was not set aside and was rather observed that this decision had rightly been pressed into service by the counsel before the Hon'ble Supreme Court and in para No.12 it was observed that the decisions of said cases did not cover the whole ground, however, they meet the approval of Hon'ble Supreme Court as far as they go. It was observed that something more was required to be said to find out the real purport of clause (vi) of Sub Section (I) of Section 17. The Hon'ble Supreme Court after approving the ratio of Division Bench Judgment of Gurdev Kaur's case (Supra) further laid down certain guidelines imposing a duty



on the courts to examine in each case whether the parties have pre-existing right to the immovable property or whether under the order or decree of the Court one party having right, title or interest therein agreed or suffered to extinguish the same and create right, title or interest in praesenti in immovable property of value of Rs.100/- or upwards in favour of other party for the first time either by compromise or pretending consent. A perusal of judgment of trial court indicates that the earlier suit in favour of the plaintiff respondent No.1 was decreed on the basis of consent regarding a family settlement arrived between the parties in 1989. A family settlement or family arrangement can be oral and has always been granted sanctity when it is entered into between the close relations and it is not the at open to either of the parties to back out of the family settlement as per Division Bench judgment 1979 CLJ 229 Ramji Dass etc. Vs. Dhanti Ram etc. Hon'ble Supreme Court in Mr. Shakuntla Sawhney Vs. Mrs. Kaushalya Sawhney 1979 Current law Journal 374 observed that it is the duty of the court to take a lead in giving a shape of settlement in matters of family disputes by following the view of Gandhiji quoted therein. AIR 1976 Supreme Court 807 Kale & Ors. Vs. Deputy Director of Consolidation & Ors. laid down that a family arrangement may be even oral and does not require any registration. The suit of the plaintiff, who is none else, but sister of defendant, was decreed on 28.9.90 on the basis of a family settlement. It was alleged in that suit that the rights had accrued to Gaila by way of family settlement. Thus, recognition of the existing right was claimed by Gaila which was admitted by Phullo and Surjit Kaur his sisters. It is not open for another civil court to go beyond the said decree. Thus, the compromise decree Ex.P-1 had not itself created new rights, title or interest, but was a declaration regarding the pre-existing right and would fall within the exception of Clause (vi) of Sub Section (2) of Section 17 of Registration Act. I have also examined the right of the plaintiff-respondent in the light of the guidelines laid down by the judgment of Hon'ble Supreme Court in Bhoop Singh's case (Supra) as well on the basis of the ratio of Division Bench judgment of Gurdev Kaur's case and find that the earlier consent decree Ex.P-1 was not obtained by Gaila by any fraud, misrepresentation or coercion and it was bonafide based upon a family settlement, the said decree was not a device to obviate to payment of stamp duty and frustrate the law relating to registration; the consent decree did not create right for the first time in immovable property in favour of plaintiff; the decree falls with the ex-



ception of Section 17(1).”

12. It is, thus, clear that plaintiff of this case Phullo failed to prove that the decree dated 28.09.1990 was the result of any fraud or misrepresentation or that her thumb impressions were obtained on the pretext of obtaining a loan from the bank. Her stand in this regard was rebutted not only by the testimony of DW-2 Prem Chand, Advocate, who had appeared for her as well as on behalf of her sister Surjit Kaur in the earlier suit, even Lamberdar Ajmer Singh (DW-4) proved that decree was passed in favour of defendant Giala in his presence. DW-5 Gurtej Singh Lamberdar further proved Phullo had made a statement in the Court in his presence and that he had identified her. Learned 1st Appellate Court rightly held that in view of this overwhelming evidence, it stood proved that there was not any kind of fraud or misrepresentation to the plaintiff, as was alleged by her, for setting aside the decree and as such, the subsequent Court could not set aside the earlier decree based upon any fraud or misrepresentation.

13. Learned 1st Appellate Court by applying the legal position correctly has rightly held the impugned decree cannot be set aside on the ground of non-registration having regard to the fact that it was based upon a prior family settlement between the parties.

14. In view of the aforesaid discussion, this Court holds that there is no scope for interference in the judgment and decree as passed by the 1st Appellate Court, as the same is based upon proper appreciation of the legal as well as factual position. Finding no illegality or perversity therein and holding the present appeal to be devoid of any merit, same is hereby dismissed.

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

(DEEPAK GUPTA)
JUDGE

22.05.2025

Neetika Tuteja

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No