

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.346 of 2007

DATE OF DECISION: November 20, 2012

HARBIR AND OTHERS

...APPELLANTS

VERSUS

BHABHUTI

...RESPONDENT

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR.SURJIT SINGH, SR. ADVOCATE
AND MS. ISHNAT KAUR PANNU, ADVOCATE
FOR THE APPELLANT.

DR. SURYAPARKASH, ADVOCATE
FOR THE RESPONDENT.

M.JEYAPPAUL, J.

1. The unsuccessful defendants who suffered a decree for declaration and permanent injunction at the hands of both the Courts below have preferred the present second appeal.

2. The plaintiff has contended in the plaint that he was owner in possession of the agricultural land described in the plaint. The defendants have no right, title or interest in the suit property. The defendants filed a Suit No.653 against the plaintiff with a view to grab the suit land from the plaintiff. On 20.9.1994, the defendants made illegal and unauthorized compromise playing fraud upon him and obtained 6 kanals 8 marlas of land comprised in Rect.No.31 killa No.12 and in lieu thereof defendants had given 1 kanal 12 marlas of land comprised in Rect.No.33 killa No.14. The plaintiff has suffered a loss in respect of land measuring 4 kanals 16 marlas.

The plaintiff was an illiterate person. He had no knowledge of the terms and conditions of the compromise. The same was never read over and explained to him. The defendants obtained the signatures/thumb marks of the plaintiff on blank papers with an assurance that he would be given equivalent land to that of defendants. In this manner, the defendants had obtained a decree dated 20.9.1994 by playing fraud upon the plaintiff. The defendants also had got entered mutation No.1343 on the basis of the aforesaid decree. Alleging that the defendants in the guise of the impugned decree and the mutation entered in their names threatened alienation of alienate the suit land, the suit has been filed by the plaintiff seeking the aforesaid reliefs.

3. The defendants contended in the written statement that only in terms of the compromise arrived at between the plaintiff and the defendants, a judgement/decreed dated 29.9.1994 was passed and thereby the defendants were declared as owners in possession of the land measuring 6 kanals 8 marlas towards Western side of Rectangle No.31 Killa No.12, whereas the plaintiff was declared owner of land measuring 1 kanal 12 marlas towards Eastern side of Rectangle No.31 Killa No.12. It was also agreed by the plaintiff that after passing of the decree dated 29.9.1994, the defendants would give him land measuring 1 kanals 12 marlas out of their land comprised in killa No.33/14 and in this manner the entire suit land comprised in killa No.31/12 would fall under the ownership and possession of defendants. As the comprise was duly signed by the parties, the plaintiff has no right to back out from the terms and conditions of the said

compromise. No fraud was played upon the plaintiff by the defendants. Contending that the plaintiff was not entitled to get any relief in the suit, the defendants had sought for dismissal of the suit.

4. Both the Courts below having assessed the evidence on record returned a finding that a fraudulent decree was obtained by the defendants as against the plaintiff. Even a compromise decree obtained by fraud could be challenged by way of filing a separate suit, it was held. Ultimately, the trial Court granted a decree in favour of the plaintiff and the same was confirmed by the first appellate Court. At the time of admission of appeal, the following question of law was formulated by this Court:-

“Whether the statement recorded in Court can be said to be rebutted by statement of the plaintiff alone.”

5. On 22.10.1992, an earlier suit was filed by the defendants herein seeking a relief of declaration that they were owners in possession of the suit property and also for permanent injunction as against the plaintiff herein. Ex.CI compromise deed was filed before the trial Court which tried the suit earlier filed by the defendants herein. As per the aforesaid compromise deed marked as Ex.C1 in the earlier suit, the defendants herein would be owner in possession of 6 kanal 8 marlas of land on the Western side of the disputed land in Rect. No.31 killa No.12 and the plaintiff herein would be the owner in possession of 1 kanal 12 marla on the Eastern side of Rect.No.31 killa No.12. After passing of the decree in the said suit in terms of the compromise, the defendants herein would be entitled an exchange of 1 kanal and 12 marlas of land in the Western side of the land owned by them

in Rect.No.33 Killa No.14 with plaintiff's land measuring 1 kanal 12 marlas in Rect. No.31 killa No.12.

6. Based on the aforesaid compromise in the earlier suit, the parties were called before the Court. The plaintiff herein gave a statement before the learned Civil Judge (Jr.Divn.) on 29.9.1994 to the effect that he had entered into a compromise with the defendants herein. The compromise produced as Ex.CI might be accepted and the suit filed by the defendants herein be decreed in terms of the said compromise. After recording the statements of the parties concerned, in the background of the compromise Ex.CI produced by the parties in the earlier suit, compromise decree was passed by the trial Court in the said suit.

7. Learned counsel appearing for the appellants/defendants would submit that the plaintiff/respondent failed to establish the fraud alleged to have been played by defendants/appellants upon the plaintiff. Therefore, the defendants had no occasion to enter into the box to rebut any evidence. It was not the case of the plaintiff that a fraud was played while recording a compromise and passing decree by the trial Court. It is his further submission that in terms of the compromise decree passed by the trial Court in the earlier suit, it was only the plaintiff who chose to alienate 1 kanal 12 marlas of land in Rect.No.31 killa No.12 ignoring the right of the defendants to exchange equal extent of property to get the aforesaid land earmarked for the plaintiff under the compromise decree. The compromise decree as such need not be registered as per Section 17(2)(vi) of the Registration Act, 1908 inasmuch as no right in the immoveable property

which was not the subject matter of the suit was transferred either in the present or in the future. The parties had intended to exchange property fell under the share of the plaintiff herein with the property which was not the subject matter of the said suit. Such a clause in the decree passed as per the terms of the compromise does not transfer any right in the property which was not the subject matter of the suit. Therefore, the aforesaid provision under the Registration Act, 1908 does not apply to the facts of the case. The oral testimony of the plaintiff in this suit would not rebut the statement recorded by the trial Court in the earlier suit for the purpose of passing a decree of compromise. Both the Courts below have erred in granting a decree as prayed for by the plaintiff/respondent, it is further submitted.

8. Learned counsel appearing for the respondent/plaintiff would vehemently submit that Ex.P1 would go to establish that the plaintiff was not owner in possession of the entire extent of 8 kanals in Rect. No.31/12 in village Karna and Ex.P2 would go to establish that the defendants were the owners in possession of 8 kanals in Rect. No.33/14 in village Karna. The plaintiff has let-in evidence to show that in the guise of exchanging the properties of the plaintiff with the properties of the defendant, the signatures of the plaintiff were obtained in blank papers and thereby a fraud has been played upon the plaintiff by the defendants. It is his further submission that in the trial Court which passed the compromise decree the plaintiff has chosen to give a statement that a compromise was entered into between the parties and a compromise decree could be passed in terms of the compromise. There is no evidence to show that the content of compromise

was read over and explained to the illiterate plaintiff. In the absence of any evidence on the side of the defendants, it is his submission that the Courts below have rightly accepted the evidence of the plaintiff and held that fraud was played upon the plaintiff by the defendants and the resultant compromise decree fraudulently obtained was void. He would also submit that compromise decree is not at all valid inasmuch as the same was not registered in terms of Section 17(2)(vi) of the Registration Act, 1908. The Courts below have rightly presumed that defence set up by the defendants was false inasmuch as none of the defendants had entered into the box to rebut the evidence let-in by the plaintiff. It is his last submission that the deposition of the plaintiff which was accepted by the Courts below could very well rebut the bald statement of the plaintiff recorded by the trial Court in the earlier suit. Therefore, he submits that there is no merit in the appeal preferred by the defendants.

9. The plaintiff has categorically deposed that he was an illiterate person who owned 8 kanals of land in Rect. No.31/12 in village Karna and the defendants owned equal extent of land in Rect. No.33/14 in the same village. In the guise of exchanging the property of the plaintiff with the property of the defendants, the defendants had obtained signatures of the plaintiff in blank papers and drafted the compromise.

10. Of course, some suggestions had been put on the side the defendants to the plaintiff who was in the witness box to the effect that no fraud was played upon the plaintiff by the defendants. Mere suggestion to the witness in the absence of any admission from him would not amount to

legal evidence. Further the defence set up by the defendants would be hanging in balance if such a defence had not been properly established by the defendants by leading cogent evidence.

11. In the instant case, there is no evidence let-in by the defendants for the reasons best known to them rebutting the cogent evidence let-in by the plaintiff to show that he being an illiterate person was made to believe that the land of the defendants would be exchanged with the lands of the plaintiff and thereby his signatures on blank papers were obtained by the defendants to scribe the compromise. The above version of the plaintiff in his testimony will have to be believed by the Court of law in the absence of any contra evidence let-in by the defendants to demolish such evidence of the plaintiff.

12. On a careful perusal of the statement Ex.D2 given by the plaintiff before the trial Court which passed the compromise decree in the earlier suit, I find that a very innocuous statement was given by the plaintiff before the trial Court. There is nothing on record to show that the content of the compromise was read over and explained to him. Nor had he come out with a statement before the trial Court in the earlier suit that he had come to know of the content of the compromise entered into between the parties. He has simply given a statement that he entered into a compromise with the defendants herein. Even in the present lis, the plaintiff admits that a compromise was entered into, but not with the adverse terms and conditions as projected by the defendants.

13. Further the plaintiff was found to be the owner of 8 kanals of

land in Rect No.31/12 in village Karna and the deceased were the owners of 8 kanals of land in Rect. No.33/14 in the same village. No prudent man would part with 6 kanal 8 marlas of land owned by him without receiving anything in exchange. The second part of the compromise also recognized the right of the defendants herein in the matter of exchange of their property consisting of 1 kanal 12 marlas of land in Rect. No.33/14 with that of 1 kanal and 12 marlas of land in Rect. No.31/12 retained by the plaintiff herein. But the above terms had not come into effect inasmuch as both the parties had chosen to alienate the properties sought to be exchanged subsequent to the passing of the compromise decree.

14. As per Section 17(2)(vi) of the Registration Act, 1908, a decree or order passed based on the compromise comprising immoveable property which is not the subject matter of the suit shall be registered if right, title or interest in the said property was transferred. The compromise Ex.CI would read that the defendants herein would be entitled to exchange 1 kanal 12 marla in Rect. No.33/14 which was not the subject matter of the suit with the property of the plaintiff herein measuring 1 kanal 12 marla of land in Rect.No.31/12 which was the subject matter of the said suit. Execution of separate exchange deed was in the contemplation of the parties based on such a right conferred on the defendants herein in the compromise decree passed in the earlier suit. It is to be noted that there was virtually no exchange of immoveable property which was not the subject matter of the suit in the compromise decree. Only the right to have such an exchange has been recognized under the compromise decree. Mere entitlement of the

defendants herein to have exchange of property recognized in the compromise decree would not fall under the scope of Section 17(2)(vi) of the Registration Act, 1908. Therefore, in my considered view, the above compromise decree passed by the trial Court need not be registered.

15. As far as the maintainability of the suit is concerned, I find that there is a bar under Order 23 Rule 3A CPC to file a suit to set aside a compromise decree on the ground that the compromise on which a decree was passed was not lawful. But the present suit has been filed on the ground that a fraud was played upon to obtain a compromise decree. A separate suit can be filed in the light of the explanation found under Order 23 Rule 3 CPC to declare such a compromise decree as void on the ground that a fraud was played upon to obtain such a compromise.

16. The Hon'ble Supreme Court in S.P. Chengalvaraya Naidu (Dead) by LRs. vs Jagannath (dead) by LRs. and others, 1994(1) SCC 1 has held as follows:-

“It is the settled proposition of law that a judgement or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgement/decreed - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”

In view of the above, I find that the suit filed by the plaintiff is maintainable.

17. A statement recorded in the Court can very well be rebutted by

the plaintiff by adducing cogent evidence that a fraud was played upon him and as a result of which such a statement was given by him before the Court.

18. In my view, the Courts below have rightly held that the plaintiff has established that a fraud was played upon him by the defendants in getting a compromise from him and also in passing a decree based on such compromise in the absence of any contra evidence rebutting cogent evidence let-in by the plaintiff. I do not find any perversity in the findings rendered by the Courts below.

19. The substantial question of law formulated by this Court is answered in favour of the respondent-plaintiff and the appeal is dismissed. There is no order as to costs.

November 20, 2012
Gulati

(M.JEYAPPAUL)
JUDGE