IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A No. 3699 of 2009 (O&M)
Date of decision : September 11, 2012

Salamu Deen,

..... Appellant

v.

Niajju & Others,

..... Respondents

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CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Mr. Pritam Saini, Advocate
for the appellant.

Mr. S.M.Sharma, Advocate
for the respondents.

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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AJAY TEWARI, J (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit of the appellant whereby he had challenged the decree suffered by his father in favour of his brother, namely, Niajju-defendant No.1.

Brief facts are that the plaintiff-appellant and his brother-defendant No.2 filed a suit for permanent injunction against defendants No.1 and 3. Defendant No.1 took the stand that in a settlement the father had agreed that he would become the owner of his entire property. The father had appeared in the Court and had accepted the same. Consequently, the father-defendant No.3 suffered a decree in favour of defendant No.1

which was challenged by way of the instant civil suit. In the instant suit again, the father appeared and corroborated the fact that he had filed the consented written statement. One of the pleas was taken that the suit property was ancestral. Another plea taken was that the transaction required to be compulsorily registrable. The Courts below found that the suit property was self acquired property by the father and that the transaction was not compulsorily registrable.

The following questions of law have been proposed :-

> " I. Whether collusive decree dated 12.11.1994 passed by the learned Sub Judge in a collusive suit is no decree in the eyes of law as there was no family settlement between the family prior to passing of the decree ?
>
> II. Whether the oral family settlement arrived in the family has to be proved on record in which the whole family was not joined as a party ?
>
> III. Whether the appellant and the respondent No.2 being sons of Khair Deen were necessary party in a suit wherein the collusive decree was passed on 12.11.1994 ?
>
> IV. Whether the decree can be passed on the basis of family settlement ignoring the other sons who were also members of the family when the property is owned by head of the family ?
>
> V. Whether the decree required registration as the respondent No.1 was not having pre-existing right in the suit property ?
>
> VI. Whether the judgments and decrees passed by the Courts below being contrary to the settled principles of law are not sustainable in the eyes of law and liable to be set aside ?"

Counsel for the appellant has argued that there is no concept of family settlement in the Muslims.

Counsel for the respondents has argued that the mere words `family settlement' used would not determine the real character of the

transaction and if the entire conspectus of facts is seen, it is clear that the father had executed a gift in favour of defendant No.1.

In Hafeeza Bibi and others v. Shaikh Farid (Dead) by Lrs and others, (2011) 5 SCC 654, the Hon'ble Supreme Court has held as follows :-

> "27. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by a Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting a valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law."

In this view of the matter, the only question of law which is relevant is question No. (V) and the same has to be rejected.

Resultantly, this appeal is dismissed with no order as to costs.

(AJAY TEWARI)
JUDGE

September 11, 2012.
`kk'