Before Anil Kshetarpal, J.

KANHA —*Appellant*

versus

MANGE RAM AND OTHERS—*Respondents*

RSA-2452 of 2007

March 2, 2020

1. Registration Act, 1908— Civil Procedure decree acknowledging prior family settlement—Need no registration.

Held, that civil court decree acknowledging a prior family settlement is not an instrument of transfer of title and therefore, not required to be registered.

(Para 21)

2. Hindu Succession Act, 1956—S. 8—Property received under Section 8 by Class-1 legal heirs—Loses character of coparcenery property.

Held, that once the property has been received by class I heirs under Section 8 of the Hindu Succession Act, coparcenary ceases to exist and the property in the hands of the heirs does not continue to be coparcenary property.

(Para 20)

A.K.Khubbar, Advocate
for the appellant

Ajay Vijarania, Advocate
for the respondents

ANIL KSHETARPAL, J.

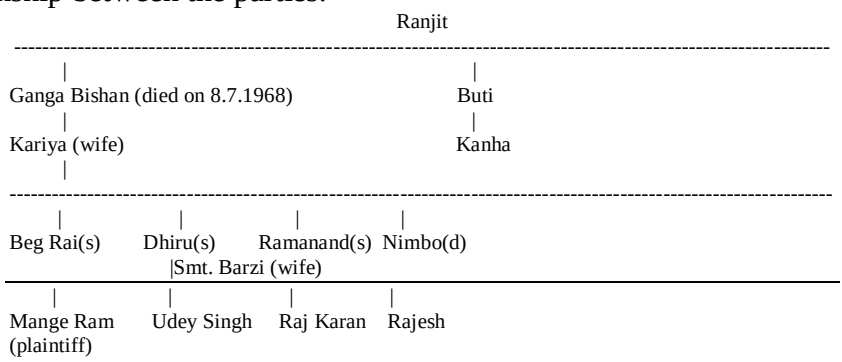
(1) The defendant-appellant has filed the present Regular Second Appeal against concurrent finding of facts arrived at by the Courts below while decreeing suit filed by the plaintiff-respondent no.1 (herein) -Mange Ram for declaration to the effect that the plaintiff and defendants no.2 to 5 are members of a joint Hindu Family and judgment and decree suffered by defendant no.2 in civil suit no. 568 of 1995 decided on 19.7.1995 in favour of defendant no.1 is illegal, null and void and not binding on the rights of the plaintiffs and performa defendants. It has been contended that coparcenary property cannot be

alienated by way of a judgment and decree passed against defendant no.2 and in favour of defendant no.1.

(2) In the considered view of this Court, following questions of law arise for determination:-

> (i) Whether property received by way of natural succession under Section 8 of the Hindu Succession Act, 1956 by a member of the family continues to be a coparcenary property.
>
> (ii) Whether a civil court decree acknowledging a prior family settlement is required to be registered.
>
> (iii) Whether a document which acknowledges a prior family settlement is a deed of relinquishment and therefore requires compulsory registration.

(3) Facts of the case are required to be noticed in detail. It would be appropriate to draw a pedigree table to understand inter se relationship between the parties:-



(4) Plaintiff-respondent no.1-Mange Ram is son of Dhiru-defendant no.2 whereas Kanha is defendant no. 1. Dhiru and Kanha are cousins because their grandfather was common and father of both the parties were brothers.

(5) Defendants no. 3, 4 and 5 are children of Dhiru whereas defendant no.6 is wife of Dhiru.

(6) Family of Dhiru was owner of agriculture land in two different villages i.e Village Badal Tehsil Charkhi Dadri and village Damkora , Tehsil Loharu. It is the case of the defendants that Dhiru that he alongwith his family members had shifted to village Damkora almost 100 years before filing of the suit. It has also come on record that Shri Dhiru transferred agricultural land and other property

situated in village Badal in favour of his four sons namely Mange Ram, Udey Singh, Raj Karan and Rajesh. The aforesaid family settlement was recognized and acknowledged through a civil court decree passed on 2.4.1990. The copy of the order passed on 2.4.1990 is extracted as under:-

> "Since the parties to the suit are not at issue on any question of facts and law and, therefore, keeping in view the admission made by the defendant in his written statement as also in his statement recorded in the court, I decree the suit of the plaintiffs for declaration that they are owners in possession of the suit land in equal shares as prayed for. No order as to costs. Decree sheet be prepared accordingly. File be consigned."

(7) Shri Kanha defendant no.1-appellant herein filed a civil suit no. 568 dated 17.7.1995 claiming land measuring 36 kanals 14 marlas on the basis of a family settlement and partition/adjustment. In this suit, Dhiru was defendant no.1. Dhiru filed a written statement admitting the claim of the plaintiff in the aforesaid suit. Dhiru appeared in evidence and suffered a statement that he admit the claim of the plaintiff – Kanha in the aforesaid suit. Pursuant thereto, learned Court came to a finding that the parties were not at issue and hence, decreed the suit vide judgment and decree dated 19.7.1995.

(8) Plaintiffs-Mange Ram, Udey Singh, Raj Karan and Rajesh executed a document which is in the form of a family settlement wherein it was acknowledged that Mange Ram would have no right, title or interest in the land at village Badal. Mange Ram, thereafter, filed a civil suit no. 656 dated 5.10.1986 challenging the correctness of the judgment and decree passed in suit no. 568 of 17.7.1995 decided on 19.7.1995. Defendant no.1 as well as defendants no.2 to 6 filed separate written statements contesting the suit. Defendant no.1 pleaded that Dhiru alongwith his family had shifted to village Damkora, Tehsil Loharu about 100 years back and the decree suffered is on account of an adjustment. It is claimed that the family settlement took place 10-11 years back and since then Kanha continued to be in possession of the property as owner. Locus standi of Mange Ram to file a suit was also questioned. Defendants no. 2 to 6 filed separate written statements while submitting that the suit filed by the plaintiff is false and therefore, liable to be dismissed while submitting that defendant no.2-Dhiru was absolute owner of the property and in a family settlement it had fallen to the share of Kanha. It was claimed that defendant no.2 Dhiru had

already distributed the land situated in village Damkora in the year 1990 to Mange Ram and other sons and thereafter, when Mange Ram-plaintiff demanded his share in land situated in village Badal, a family settlement was arrived at on 16.5.1993 and thus the claim of Mange Ram was satisfied and he acknowledged the same by signing on the memorandum of the family settlement.

(9) In evidence Mange Ram appeared as PW3. He admitted writing Ex. D-1 dated 16.5.1993. He also admitted that 110 bighas of land was transferred by way of family settlement by Dhiru in favour of his sons including the plaintiff.

(10) Learned Trial Court as well as learned First appellate Court have decreed the suit of the plaintiff by recording following reasons:-

> i) That the property is coparcenary property in the hands of Dhiru which he inherited from his father Ganga Bishan and therefore, the property being joint Hindu Family coparcenary property, Dhiru had no right to suffer decree in favour of Kanha because Mange Ram and defendant no. 3 to 5 had pre-existing right in the aforesaid property.
>
> ii) The decree passed on 19.7.1995 is a device to evade stamp duty as no family settlement could be arrived at between Kanha and Dhiru.
>
> iii) The writing in the Bahi Ex.D1, dated 16.5.1993 is not admissible in evidence as the writing is recorded in present and amounts to transfer of the property in favour of Udey Singh. Hence, required to be compulsorily registered.

(11) Learned First Appellate Court by a brief judgment had dismissed the appeal while affirming the finding of the learned Trial Court.

Submission of the learned counsel for the appellant

(12) Learned counsel appearing for the appellant-Kanha has submitted that in the present case Ganga Bishan died on 8.7.1968. On his death, property was inherited by natural succession as per Section 8 of the Hindu Succession Act in favour of class I heirs. On the death of Ganga Bishan, property was succeeded by Beg Raj, Dhiru and Rama Nand, the three sons, Nimbo - daughter and Kriya, widow of Ganga Bishan. He, hence, submitted that once Section 8 of the Hindu Succession Act has been applied to succeed to the property left behind by Ganga Bishan, the property does not remain coparcenary property.

He further submitted that after the decree was passed in the year 1990 i.e on 2.4.1990 and there was division amongst the family members, hence, no coparcenary existed thereafter. He further submitted that Ex.D-1, the writing in the Bahi is in fact a family settlement and therefore, the plaintiff has no right to claim share in the property as a joint coparcenary property.

(13) On the other hand, learned counsel for the respondent has submitted that both the Courts have concurrently recorded a finding and this Court has no jurisdiction to interfere with the findings of fact.

Findings

(14) On critical analysis of the arguments of the parties, this Court has come to the conclusion that questions of law framed in the beginning of this judgment arise for consideration.

(15) It is not in dispute that family of Dhiru had shifted from Village Badal to Village Damkora almost 100 years before filing of the suit. Dhiru, the father had divided land situated in village Damkora measuring 110 bighas amongst his four sons Mange Ram, Raj Karan, Udey Singh and Rajesh. Mange Ram admitted that before dividing the agricultural land, Dhiru had also sold 30 bighas of land. It is also not in dispute that when Ganga Bishan died on 8.7.1968, property owned by Ganga Bishan came to be inherited by his widow, three sons and a daughter. Thus, the succession of Ganga Bishan took place in accordance with Section 8 of the Hindu Succession Act, 1956. Mutation in this regard was sanctioned in the year 1968. Copy of the mutation is Ex.P-3, produced by the plaintiff himself. Thus, once under Section 8 of the Hindu Succession Act property came in the hands of class 1 heirs, such property would not continue to be a coparcenary property. In this regard, reference can be made to the judgments passed by the Hon'ble Supreme Court in ***Commissioner of Wealth Tax, Kanpur*** versus ***Chander Sen***[1]. ***Bhanwar*** versus ***Puran***[2] and ***Uttam*** versus ***Saubhag Singh***[3]. The conclusion drawn in the case of Uttam (supra) is extracted as under:-

> "20. Some other judgments were cited before us for the proposition that joint family property continues as such even with a sole surviving coparcener, and if a son is born to such

[1] 1986 (3) SCC 567
[2] 2008 (3) SCC 87
[3] (2016) 4 SCC 68

coparcener thereafter, the joint family property continues as such, there being no hiatus merely by virtue of the fact there is a sole surviving coparcener. Dharma Shamrao Agalawe versus Pandurang Miragu Agalawe (1988) 2 SCC 126, Sheela Devi versus Lal Chand, (2006) 8 SCC 581, and Rohit Chauhan versus Surinder Singh (2013) 9 SCC 419, were cited for this purpose. None of these judgments would take the appellant any further in view of the fact that in none of them is there any consideration of the effect of Sections 4, 8 and 19 of the Hindu Succession Act. The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarized as follows:-

(i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self- acquired

property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.

(vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants.

(16) Still further, once again, there was a family settlement/ division after Dhiru had sold 30 bighas of land situated at village Damkora. Mange Ram, Uday Singh Raj Karan and Rajesh, sons of Dhiru had filed a suit against Dhiru with respect to land measuring 110 bighas in which Dhiru filed a written statement admitting the claim of the plaintiffs, resulting in the judgment and decree dated 2.4.1990. This fact was admitted by Mange Ram when he had appeared in evidence. Thus, after 1990 once again there was division and thereafter, no joint Hindu Family or coparcenary property existed. Thus, both the Courts were incorrect in recording a finding that the property continues to be a coparcenary property. Dhiru succeeded to the property under Section 8 of the Hindu Succession Act, 1956 Act. Hence, Dhiru was not holding the property as a coparcenary property.

(17) This aspect can be further examined from another angle. In 1993, again, a family settlement took place amongst four sons of Dhiru. In the aforesaid family settlement, execution whereof is admitted by Mange Ram, it was settled that Mange Ram would have no right, title or interest in the land situated at village Badal. No doubt, after assessing the value of the land some amount was exchanged. However, such document cannot be said to be a relinquishment deed. In fact, it is specifically recorded that two brothers have entered into a settlement wherein it is agreed that Mange Ram would get certain land near the well and in lieu of the share of Udey Singh in the land situated in village Badal, Udey Singh was paid certain amount. Such settlement is not a relinquishment deed. In fact Mange Ram had no pre-existing right in the land at village Badal after he ceased to be the member of the coparcenary on receipt of 27 ½ bighas of land in a family settlement. Even no coparcenary existed after Dhiru had succeeded to the property under Section 8. Further on division of the property between the family members of Dhiru, Mange Ram cannot claim that he had any pre-

existing right in the property left with Dhiru. The Courts below have also erred in recording a finding that Kanha had no pre-existing right and therefore, family settlement and the decree passed on 19.7.1995 required registration. In the considered view of this Court, both the Courts have taken a narrow view of the word 'family' in the context of family settlement. Dhiru and Kanha are cousin brothers. Grandfather of both the parties, Dhiru and Kanha was common i.e Ranjit. Therefore, Kanha and Dhiru were members of a larger family. While interpreting rights of the family members in the context of a family settlement, a broader view has to be taken and it is not necessary that each member must show some semblance of right. Reference in this Court can be made to a judgement passed by the Hon'ble Supreme Court in, ***Krishna Beharilal*** versus ***Gulabchand***[4]**.** Para 8 of the judgment reads as under:-

> "8. The next question that we have to consider is whether the compromise in question can be considered as a settlement of family disputes. It may be noted that Lakshmichand and Ganeshilal who alongwith Pattobai were the principal parties to the compromise were the grandchildren of Parvati who was the aunt of Bulakichand. The parties to the earlier suit were near relations. The dispute between the parties was in respect of a certain property which was originally owned by their common ancestor namely Chhedilal. **To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in Ram Charan Das** versus **Girija Nandini Devi, (1965) 3 SCR 841 at pp.850 and 851 = (AIR 1966 SC 323 at pp.328 and** *329) the word "family" in the context of a family* arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement-see Ramcharan Das's case 1965-3 SCR 841 = (AIR 1966 SC 323) (Supra)*"*

(18) As regards requirement of registration of a consent decree,

[4] AIR 1971 SC, 1041

this Court has already examined the aforesaid issue in ***Dhian Singh and others*** versus ***Mohinder Singh and others***[5].

(19) Keeping in view the aforesaid discussion, this Court has come to a conclusion that the present appeal filed by defendant no.1 deserves to be allowed and the judgments and decree passed by the Courts below are required to be set aside. Before concluding the questions of law framed herein before are answered as under:-

(20) With respect to question no.(i) it is held that once the property has been received by class I heirs under Section 8 of the Hindu Succession Act, coparcenary ceases to exist and the property in the hands of the heirs does not continue to be coparcenary property.

(21) In answer to question no.(ii), it is held that a civil court decree acknowledging a prior family settlement is not an instrument of transfer of title and therefore, not required to be registered.

(22) In answer to question no.(iii) it is held that a document acknowledging a prior family settlement does not amount to a deed of relinquishment or transfer deed and hence, it is not required to be registered.

(23) Appeal allowed.

Tejinderbir Singh

[5] 2017 (4) PLR 729