

2011 SCeJ 006

SUPREME COURT OF INDIA

HON'BLE MR. JUSTICE P. SATHASIVAM
HON'BLE MR. JUSTICE JASTI CHELAMESWAR
JASWANT SINGH

versus

GURDEV SINGH

Civil Appeal No. 8879 Of 2011 & 8880 Of 2011
(Special Leave Petition (Civil) No. 2708 Of 2008 &
2709 Of 2008
21.10.2011

**Evidence Act, , 1872 (1 of 1872) S. 74 –
Compromise had become a part of the decree
which was passed by the court of Sub-Judge 1st
Class – Hence, it is a public document in terms
of Section 74 of the Indian Evidence Act, 1872 (in
short 'the Act') and certified copy of the public
document prepared under Section 76 of the Act
is admissible in evidence under Section 77 of the
said Act - A certified copy of a public document
is admissible in evidence without being proved
by calling witness.**

P. Sathasivam, J.

1) Leave granted.

2) These appeals are filed against the common
final judgment and order dated 24.09.2007
passed by the High Court of Punjab & Haryana at
Chandigarh in Regular Second Appeal (RSA) Nos.
4473 and 4776 of 2004 whereby the High Court
dismissed both the appeals filed by the appellant
herein.

3) Brief facts:

a) Jaswant Singh-appellant herein filed a Civil
Suit being No. 3 of 1997 in the court of Civil
Judge, (Jr. Division) Hoshiarpur for declaration to
the effect that he was the owner and in
possession of land measuring 101 kanals 16
marlas situated in village Simbli, H.B. No. 272,
Tehsil and District Hoshiarpur and for correction
of the revenue entries in Column No. 4 of
Jamabandi Register wherein the respondents
herein had been wrongly shown to be the
owners. It was claimed in that suit that one Shri
Hazara Singh, s/o Shri Nihal Singh was the owner
of the properties in village Simbli, Bajraur and
Chabbewal and after his death on 06.12.1972, by

virtue of a Will dated 05.12.1971, he transferred
his properties in favour of the appellant herein
and the names of the respondents mentioned in
the Jamabandi Register were wrong, illegal and
liable to be corrected.

b) Even as early as on 05.06.1972, a civil suit
was filed by the appellant herein in the court of
sub-Judge, First Class, Hoshiarpur seeking
permanent injunction against one Amar Kaur and
others restraining them from interfering in the
land situated in Simbli. During the pendency of
the suit, the parties entered into a compromise
dated 27.11.1972 and on that basis the suit was
decreed on 08.12.1972 and Mutation No. 1536
was sanctioned in favour of the appellant herein
with respect to 12-1/2 acres of land and the same
was delivered to him which he had been in
possession since 16.02.1973. Respondent No. 1
herein and others considered Jaswant Singh to be
the owner of 8 acres and regarding the remaining
4-1/2 acres of land, he was considered to be in
mere permissive possession as it was given to
him in lieu of his fathers share in village Simbli,
Chabbewal and Bajrawar for the purposes of
cultivation only. The appellant took various steps
to change the names in the revenue entries but
during this whole period, the revenue entries
remained unchanged in the name of Hazara Singh
and hence the appellant herein filed civil suit for
correction of those entries in Jamabandi.

c) Gurdev Singh-Respondent No. 1 herein, s/o
Shri Karnail Singh filed a civil suit being RBT CS
No. 145 of 1998 in the same Court and the
matter was clubbed with Civil Suit No. 3 of 1997
alleging therein that he was co-sharer in 1/4th
share of land of Hazara Singh in village Simbli, =
share in village Chabbewal and 1/4th share in
village Bajraur as Hazara Singh was brother of
their grand father. Vide order dated 20.04.2001,
the civil Judge decreed the suit filed by Jaswant
Singh-appellant herein and dismissed the suit
filed by Gurdev Singh-Respondent No. 1 herein.

d) Aggrieved by the order dated 20.04.2001,
Respondent No. 1 herein filed RBT Civil Appeal
Nos. 68 & 75 of 07.06.2001/04.06.2004 before
the court of Additional District Judge (Ad-hoc),
Fast Track Court-II, Hoshiarpur. Vide order dated
28.09.2004, the Additional District Judge set
aside the judgment and order dated 20.04.2001

passed by the Civil Judge (Jr. Division), Hoshiarpur and allowed the appeal filed against Civil Suit No. 3 of 1997 to the extent that Jaswant Singh-appellant herein is the owner of 8 acres of land and in possession of 4-1/2 acres of land at village Simbli, in view of compromise dated 27.11.1972. Feeling aggrieved, Jaswant Singh-appellant herein filed RSA Nos. 4473 and 4776 of 2004 before the High Court of Punjab & Haryana at Chandigarh whereby vide common judgment and order dated 24.09.2007, the High Court dismissed both the appeals. The said order is under challenge before this Court in these appeals by way of special leave.

4) Heard Mr. A.V. Palli, learned counsel for the appellant and Shri Chinmay Khaladkar, learned counsel for the respondents.

5) As stated earlier, the appellant filed a suit for permanent injunction on 05.06.1972 alleging himself to be in possession as a co-sharer of land situated in village Simbli. In the said suit, the parties entered into a compromise and on the basis of the said compromise (Ex.P1), a decree was passed on 08.12.1972. The interpretation of the said compromise is in dispute in the present proceedings. As per the appellant, he became the owner and in possession of 12 = acres of land situated in village Simbli whereas as per the defendants, the plaintiff was admitted to be the owner of 8 acres of land situated in village Simbli but was given possession of another land measuring 4= acres of land in respect of his share situated in village Chhabewal and Bajrawar. The compromise decree was produced as Ex. P1 and the compromise deed was produced as Ex.D3.

6) In order to substantiate his claim, the appellant-plaintiff examined one Ajit Kumar Walia as PW-1 who deposed before the Court that the file relating to the decree is not available since the record was burnt due to fire which broke out in the record room on 16.06.1998. Ashwani Kumar, PW-3, was also examined who in turn, deposed that Rupt No. 242 dated 16.02.1973 is not available in his record despite best efforts made by him.

7) On the other hand, from the side of the respondent- Defendant, one Harbhajan Singh was examined as DW-1, who had endorsed the fact that a compromise had taken place between the

parties and a decree was passed on the basis of that compromise. He along with Dhan Kaur, Pritam Kaur, Arjan Singh, Bakshish Singh and Karam Singh were the witnesses to the compromise. He asserted that as per the compromise, the plaintiff-Jaswant Singh was given only 8 acres of land in village Simbli. Ashwani Kumar, Patwari who was examined as DW-3, had brought Mutation No. 1536 of Hazara Singh, certified copy of which is produced as Ex. DW 3/A and the entry of mutation is at S.No. 22.

8) It is further seen that based on the terms arrived at in the compromise and the decree dated 08.11.1972, the mutation of the land situated in village Simbli was sanctioned. Even though the appellant-Jaswant Singh raised an objection as to the compromise dated 27.11.1972, (Ex.D3), admittedly, the same has not been challenged by him either in his plaint or in the suit filed by him or in the written statement filed in the suit by the defendant-Gurdev Singh. It is relevant to point out that in paragraph 3 of the plaint, the appellant-Jaswant Singh categorically mentioned that the parties have compromised and the decree dated 08.12.1972 was passed. In the written statement filed by the defendant-Gurdev Singh and others, it was categorically pleaded that the decree dated 08.12.1972 was passed solely on the basis of the compromise entered into between the parties. The details of the compromise were also given in the written statement filed on 21.01.1999 by Gurdev Singh. Though in the replication to the amended written statement filed by Jaswant Singh, the terms and conditions of the compromise were not admitted but were also not denied and even it was pleaded that these terms and conditions of the compromise are a matter of record. The compromise dated 27.11.1972 was not challenged by Jaswant Singh rather it can be said that he also relied upon it because the decree upon which he claims ownership, has been passed only on the basis of this compromise dated 27.11.1992 (Ex. D3).

9) Now the other question which remains to be decided is whether the compromise Ex. D3 is admissible in evidence or not? The compromise dated 27.11.1972 has become the basis of the decree dated 08.12.1972 passed by the Sub-

Judge, Hoshiarpur. The perusal of Ex. D4 i.e., judgment and decree were passed as per the terms and conditions of compromise placed on file. As rightly observed by the courts below, the compromise has merged into a decree and has become part and parcel of it. To put it clear, the compromise had become a part of the decree which was passed by the court of Sub-Judge 1st Class, Hoshiarpur. Hence, it is a public document in terms of Section 74 of the Indian Evidence Act, 1872 (in short 'the Act) and certified copy of the public document prepared under Section 76 of the Act is admissible in evidence under Section 77 of the said Act. A certified copy of a public document is admissible in evidence without being proved by calling witness. Inasmuch as the decree was passed and drafted in the light of the compromise entered into between the parties, viz., the plaintiff and the defendants, the certified copy of such document which was produced before the Court, there is presumption as to the genuineness of such certified copy under Section 78 of the Act. We have already noted that the appellant-Jaswant Singh has not challenged the genuineness of certified copy in any manner. Although the record of the Court has been proved to be burnt in a fire in Judicial Record Room, Hoshiarpur on 16.06.1998, but the certified copy of the compromise (Ex.D3), which is the part of the decree was obtained from the record room on 24.08.1988 and the Decree Ex.D4 was got issued on 12.09.1984. In those circumstances, there is no reason to doubt the authenticity of compromise (Ex.D3). Even otherwise, as rightly observed by the courts below, the appellant-Jaswant Singh had not filed any other substitute of the document Ex.D3, on the basis of which the decree (Ex.D4) had been said to be passed. As stated earlier, in view of the fact that the decree dated 08.12.1972 clearly says that the suit is partly decreed in favour of the plaintiff as per the terms of the compromise placed on file, there can be no other way to interpret the decree except in terms and conditions of the compromise (Ex.D3).

10) Thus, in view of the above discussion, it is to be held that the decree dated 08.12.1972 is to be read and interpreted in terms of the compromise (Ex.D3) dated 27.11.1972. We are

satisfied that the judgment and decree passed by the lower appellate Court as affirmed by the High Court is based upon proper appreciation of the terms of compromise (Ex.D3) and do not find any illegality or irregularity for interference.

11) Consequently, the appeals fail and are accordingly dismissed. There shall be no order as to costs.