

**RSA-2680-2003 (O&M)**

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

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**RSA-2680-2003 (O&M)
Reserved on:-28.10.2025
Date of Decision : 30.10.2025**

Batti

....Appellant

VERSUS

Roshan & Others

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Adarsh Jain, Senior Advocate assisted by
Ms. Kamaldeep Kaur and Ms. Amandeep Kaur, Advocate
for the appellant.

Respondent No.1 and 2 have already compromised the matter
With the appellant vide order dated 11.10.2021.

Mr. Kulbhushan Sharma, Advocate
for respondent No.3.

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MANDEEP PANNU, J.

1. The present Regular Second Appeal has been filed by Smt. Batti wife of Murari Lal challenging the concurrent findings of fact recorded by both the Courts below whereby the learned Trial Court, vide judgment and decree dated 29.11.1999, decreed the suit filed by the plaintiffs on 14.06.1995, and the learned First Appellate Court dismissed the appeal preferred by the defendant vide judgment and decree dated 07.01.2003.

Brief Facts

2. Briefly stated, the facts of the case are that the plaintiffs instituted a suit for declaration to the effect that the judgment and decree dated 01.04.1988, Ex.P3 and Ex.P4, passed in Civil Suit No.319 of 1988 titled Smt. Batti vs. Smt.

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Ram Bhuli by the Court of learned Sub Judge 1st Class, Palwal, be declared illegal, null and void, and not binding upon the rights of the plaintiffs, along with consequential relief of possession regarding the land in dispute.

3. The case of the plaintiffs, as pleaded, is that Hukam Chand alias Hukma was their father and Smt. Ram Bhuli, their mother, was owner in possession to the extent of 1/3rd share of land measuring 150 kanals 5 marlas situated in village Thanthari, Tehsil Palwal, District Faridabad, referred to as the “suit land.” Smt. Ram Bhuli died on 22.02.1993 leaving behind the plaintiffs as her legal heirs and representatives. It has been further averred that when the plaintiffs made an effort to get the mutation of inheritance sanctioned in their favour after the death of Smt. Ram Bhuli, they came to know that the suit land already stood transferred in the name of defendant Smt. Batti by virtue of a judgment and decree dated 01.04.1988. The said decree, according to the plaintiffs, was the result of fraud and misrepresentation played by the defendant upon Smt. Ram Bhuli, as she never appeared before the Court, nor made any statement, nor filed any written statement. It was alleged that the impugned judgment and decree were passed in conspiracy and without adhering to the due procedure of law. It was further stated that no family settlement ever took place between Smt. Ram Bhuli and the defendant, and hence, the impugned decree was obtained by misrepresenting the facts. The plaintiffs averred that despite being requested, the defendant refused to admit their claim, compelling them to institute the present suit seeking declaration and possession of the land in dispute.

4. The defendant contested the claim of the plaintiffs by filing a written statement raising preliminary objections that the plaintiffs had no locus standi to file the present suit as they were not the children of Smt. Ram Bhuli. The plaintiffs

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had no cause of action. They were estopped from filing the suit by their own acts and conduct. The suit was not maintainable in the present form. It was barred by limitation. It was bad for non-joinder of necessary parties and the suit was based on wrong facts and hence liable to be dismissed.

5. On merits, the defendant admitted that Smt. Ram Bhuli was owner in possession of the land in dispute but denied that the plaintiffs were her children. It was stated that Smt. Ram Bhuli had no issue and that the defendant was her sister-in-law. It was further pleaded that out of her own free will, Smt. Ram Bhuli had alienated the land in favour of the defendant through the impugned decree dated 01.04.1988. She had herself engaged a counsel, appeared in Court, and admitted the claim, whereupon the decree was passed in accordance with law. It was denied that any fraud or misrepresentation had been played upon Smt. Ram Bhuli. It was thus submitted that the plaintiffs had no cause of action and the suit was liable to be dismissed.

6. After the pleadings of the parties were complete, the following issues were framed by the then learned Civil Judge (Junior Division), Palwal, vide order dated 20.01.1997:

1. Whether the decree and judgment dated 01.04.1988 passed by the Court of Shri Dharam Pal, the then learned Sub Judge 1st Class, Palwal, in case titled Batti vs. Ram Bhuli in Civil Suit No.319 of 1988, and the revenue entries entered in pursuance thereof, are wrong, illegal and void, having been obtained by way of misrepresentation and fraud, and as such are not binding on the rights of the plaintiffs and thus liable to be set aside? OPP

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2. Whether the plaintiffs have no locus standi to file the present suit? OPD
 3. Whether the suit is not maintainable? OPD
 4. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
 5. Whether the plaintiffs have no cause of action? OPD
 6. Whether the suit is time barred? OPD
 7. Whether the suit is bad for non-joinder of necessary parties? OPD
 8. Whether the defendant is entitled to special costs, if so how much? OPD
 9. Relief.
7. In order to prove their case, the plaintiffs examined Pyare as PW1, Roshan (plaintiff No.1) as PW2, Bhagwan Dass as PW3, and Het Ram as PW4. In documentary evidence, the plaintiffs produced on record jamabandi for the years 1984–85 as Ex.P1, mutation No.2158 sanctioned on 03.12.1993 as Ex.P2, the impugned judgment and decree dated 01.04.1988 as Ex.P3 and Ex.P4 respectively, the plaint dated 09.02.1988 as Mark A, the written statement dated 01.04.1988 as Mark B, the power of attorney as Mark C, and copies of the voters list as Mark X/A and Mark/B.
8. On the other hand, the defendant herself appeared as DW1 besides examining Karan Singh as DW2 and Chatar Singh as DW3. In documentary evidence, the defendant produced on record the copy of plaint dated 09.02.1988 as Ex.D1, the impugned judgment and decree dated 01.04.1988 as Ex.D2 and Ex.D3 respectively, jamabandi for the years 1984–85 as Ex.D4, jamabandi for the years

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1989–90 as Ex.D5, jamabandi for the years 1994–95 as Ex.D6, mutation No.1810 as Ex.D7, mutation No.1874 as Ex.D8, and mutation No.2203 as Ex.D9. The defendant also placed on record copies of roznamchas dated 03.05.1993, 27.09.1993, 23.12.1993, and 18.01.1994, which were marked as Mark X/1 to Mark X/4, respectively.

Findings of the trial Court

9. The learned Trial Court, after appreciating the oral and documentary evidence led by both the parties, recorded a categorical finding that the plaintiffs had been able to establish that they were the children of Smt. Ram Bhuli and that Hukam Chand @ Hukma was their father. The statements of PW2 Roshan Lal, corroborated by PW1 Pyare and PW4 Het Ram, along with mutation No. 2158 (Ex.P2), wherein the plaintiffs were shown as the legal heirs of Smt. Ram Bhuli, were found sufficient to prove their relationship. The testimony of DW1 Smt. Batti and her witnesses, upon close scrutiny, was held to be inconsistent and self-contradictory, further strengthening the plaintiffs' case.

10. The Court then examined the validity of the judgment and decree dated 01.04.1988 (Ex.P3 and Ex.P4) and held that Smt. Ram Bhuli never appeared before the Court, nor did she engage any counsel or sign any written statement. The record of the previous suit clearly showed that no advocate represented her, and no statement was made by her in Court. It was thus concluded that the impugned decree was obtained by the defendant through fraud and misrepresentation, and being an unregistered document, could not confer any valid title upon the defendant. Accordingly, the said decree was declared illegal, null, and void and not binding on the rights of the plaintiffs, who were also held entitled

to possession of the land in dispute.

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11. As regards the remaining issues, the learned Trial Court briefly observed that, in view of the findings on Issue No. 1, the plaintiffs had both the locus standi and the cause of action to file the present suit. No evidence was brought on record to show estoppel, non-joinder, or lack of maintainability, and therefore Issues Nos. 2 to 5 and 7 to 8 were decided against the defendant.

12. On the question of limitation i.e Issue No. 6, the Court held that since Smt. Ram Bhuli had never appeared before the Court in the previous proceedings, the plaintiffs acquired knowledge of the impugned decree only after her death in the year 1993, when they initiated steps to correct the revenue record. The present suit having been filed on 14.06.1995 was thus held to be within three years from the date of such knowledge and consequently within limitation.

13. Ultimately, the learned Trial Court decreed the suit, declaring the impugned judgment and decree dated 01.04.1988 as illegal, null, and void, and not binding upon the rights of the plaintiffs. A decree for joint possession of the suit land to the extent of 1/3rd share, as detailed in paragraph 1 of the plaint, was also passed in their favour, leaving the parties to bear their own costs.

Findings of the Lower Appellate Court

14. The learned Lower Appellate Court, while hearing the appeal filed by Smt. Batti against the plaintiffs, reappraised the entire evidence and upheld the findings of the Trial Court. It was observed that the plaintiffs had successfully proved their relationship with Smt. Rambhulli (Ram Bhuli) as her children and heirs. The Court found that the oral testimonies of PW2 Roshan Lal, PW1 Pyare, and PW4 Het Ram were consistent and supported by documentary evidence, particularly mutation No. 2158 (Ex.P2), showing the plaintiffs as legal heirs of

Smt. Rambhulli. The contradictory statements of the defendant herself and her

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witnesses, especially regarding the identity of Hukam Chand @ Hukma, were held to reinforce the plaintiffs' version rather than the defendant's.

15. The Appellate Court also held that the impugned judgment and decree dated 01.04.1988 (Ex.P3 and Ex.P4) had been obtained fraudulently. It was found that Smt. Rambhulli never appeared before the Court, had not engaged any counsel, and her alleged written statement and power of attorney did not bear any advocate's signatures. Her statement was never recorded in court, and no one identified her in the earlier proceedings. Consequently, the Court concluded that the defendant had failed to prove that Smt. Rambhulli had suffered the decree voluntarily, and the same was void for want of proper appearance and consent.

16. It was further held that even if the decree was claimed to be a consent decree or based on a family settlement, it could not be treated as valid in the absence of registration, particularly when it purported to transfer immovable property exceeding ₹100 in value. The plea of family settlement was found baseless, and no suspicious circumstances were explained by the defendant. The Court agreed that the decree was an unregistered document incapable of conveying title. On the question of limitation, it was reiterated that the plaintiffs acquired knowledge of the impugned decree only after the death of Smt. Rambhulli in 1993, and the suit filed in 1995 was well within time.

17. Lastly, the Court held that the alleged compromise (Ex.C1) between some of the plaintiffs and the defendant could not validate an otherwise void decree, as once it was established that Smt. Rambhulli never appeared before the Court, the entire decree was *void ab initio* and could not be severed. The appeal was accordingly dismissed with costs, and the judgment and decree of the learned

Trial Court were affirmed in toto.

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18. Aggrieved by the concurrent findings of the Courts below appellant-defendant approached this Court by way of present regular second appeal.

19. Upon notice, only respondent No.3 contested the appeal. Respondents No.1 and 2 stated to have compromise the matter with the appellant, vide order dated 11.10.2021.

Submissions of learned counsel for the Appellant

20. It has been contended by learned counsel for the appellant-defendant that both the Courts below have committed grave illegality and perversity in decreeing the suit of the plaintiffs-respondents on wholly untenable and misconceived grounds. The approach adopted by the Courts below in appreciating the material questions of law and fact is contrary to the record and settled principles of law, resulting in serious miscarriage of justice to the appellant.

21. It is submitted that the record itself establishes that Smt. Ram Bhuli was the daughter of Shri Chunni, who was the grandfather of Murari Lal, husband of the appellant. The jamabandi (Ex.P-1) clearly proves that one-third share out of 150 kanals 5 marlas of land devolved upon Smt. Ram Bhuli on the death of her father Chunni. This share formed part of the joint family property owned by Ram Bhuli, her brother Kanni alias Karan Singh, and their legal heirs. The plaintiffs-respondents Nos.1 and 2, being sons of Hukam Chand @ Hukma, are residents of Uttar Pradesh and have no concern with the suit property. Roshan Lal (PW-2) was about 60 years of age in 1998, while Smt. Ram Bhuli was more than 70 years old when she suffered the decree dated 01.04.1988 in favour of the appellant.

22. It is further submitted that Smt. Ram Bhuli was the absolute owner of her one-third share and was fully competent to transfer or alienate the same in favour of any person of her choice. She voluntarily suffered the decree dated

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1.4.1988 in the civil suit instituted by the appellant on the basis of a bona-fide family settlement arrived at about one year prior to the filing of the suit. By the said settlement, Smt. Ram Bhuli had agreed to return to the family of her father the land which she had inherited from him. The decree was thus only a lawful acknowledgment of the pre-existing arrangement.

23. Learned counsel submits that the plaintiffs have failed to produce any convincing evidence to show that the thumb impression on the statement or written statement in the earlier suit was not that of Smt. Ram Bhuli. There is nothing on record to suggest that any fraud or misrepresentation was practised upon her. Both Courts below erred in discarding the lawful decree solely on conjectures and surmises.

24. It is urged that the Courts below also ignored the admissions of the plaintiffs themselves. Roshan Lal (PW-2) admitted in cross-examination that he had raised objections at the time of sanctioning of mutation No. 1874 (Ex.D-8) based on the impugned decree, which mutation was sanctioned on 28.07.1988. PW-3 Het Ram likewise stated that he came to know of the passing of the decree within 10 to 12 days of its pronouncement. Hence, the plaintiffs had complete knowledge of the decree in the year 1988 itself. The suit filed on 14.06.1995 was therefore hopelessly barred by limitation, and the Courts below erred in deciding Issue No. 6 in favour of the plaintiffs by reckoning limitation from the date of death of Smt. Ram Bhuli in 1993.

25. It is also submitted that the Courts below failed to appreciate that the plaintiffs had no locus standi to challenge the decree after the death of Smt. Ram Bhuli, particularly when the property had already stood validly transferred in

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favour of the appellant during Ram Bhuli's lifetime. The suit instituted after her death was legally not maintainable.

26. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Bachan Singh v. Kartar Chand, 2002(1) PLJ 59*, wherein it has been held that a consent decree, even if based on a family settlement, does not require registration and cannot be treated as invalid merely for want thereof. Similarly, reference is made to *Gurdev Kaur v. Mehar Singh 1990(1) PLR 334*, wherein it was held that a compromise decree creating or recognising title in immovable property does not require registration. The ratio of *Dhian Singh v. Mohinder Singh 2018 (4) RCR (Civil) 387* has also been relied upon to submit that oral or written family settlements acknowledged through a consent decree stand on the same footing and are valid in law.

27. The learned counsel further contends that both Courts below gravely erred in upsetting the decree dated 1.4.1988 on the ground of fraud when no particulars of fraud were pleaded in the plaint, nor any cogent evidence was led to substantiate such a plea. In the absence of specific pleadings and proof, a finding of fraud could not have been returned against the appellant.

28. It is lastly argued that the lower Appellate Court ignored the compromise (Ex.C-1) entered into between plaintiffs Nos.1 and 2 and the defendant-appellant, wherein the plaintiffs themselves admitted the legality of the decree dated 1.4.1988 and acknowledged it as binding upon them. Once such admission was on record, the lower Appellate Court ought to have accepted the appeal and dismissed the suit filed by the plaintiffs.

29. On the cumulative strength of the aforesaid facts and legal propositions, it is submitted that the concurrent findings recorded by the Courts



below are perverse, unsustainable, and contrary to settled law. The impugned judgments and decrees are therefore liable to be set aside, and the suit filed by the plaintiffs–respondents deserves to be dismissed with costs.

Submissions of learned counsel for respondent No.3

30. Learned counsel for the contesting respondent No.3, while opposing the appeal, submitted that the findings recorded by both the Courts below are based upon correct appreciation of oral and documentary evidence and do not suffer from any illegality or perversity warranting interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

31. It is argued that the appellant–defendant cannot be permitted to raise pleas beyond her own pleadings. The consistent stand taken by her from the very inception has been that Smt. Ram Bhuli had no child of her own and that the consent decree dated 01.04.1988 was suffered in her favour because Ram Bhuli wanted to return the land inherited from her father to the family of her father. However, this stand has been proved to be false from the appellant’s own evidence, wherein her witnesses admitted that the plaintiffs are, in fact, the sons of Hukam Chand @ Hukma, husband of Smt. Ram Bhuli. During the course of arguments, even learned counsel for the appellant did not dispute the relationship of the plaintiffs with Smt. Ram Bhuli. Once it stands established that the plaintiffs are the sons of Smt. Ram Bhuli, the entire foundation of the appellant’s case collapses.

32. It was further contended that the documentary record clearly demonstrates that Smt. Ram Bhuli never appeared before the Civil Court which passed the decree dated 01.04.1988. Except for an alleged thumb impression appearing on the written statement and power of attorney, which has not been

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participation in the said proceedings. The so-called power of attorney filed in that case does not bear the signatures of any advocate; nor does the written statement carry the verification or endorsement of any counsel. Even below the verification part, there is no mark of Smt. Ram Bhuli's thumb impression. All these circumstances, as rightly noted by the learned Courts below, unmistakably indicate that Smt. Ram Bhuli never appeared before the Court and that the impugned decree was obtained by playing fraud upon her.

33. It was next urged that the plea of family settlement sought to be relied upon by the appellant is wholly an afterthought and beyond pleadings, as no such plea was ever raised in the written statement before the Trial Court. Even otherwise, no evidence was led to prove existence of any such settlement. The relationship between the parties was not such as to attract the concept of a family settlement. The appellant is merely the daughter-in-law of the brother of Smt. Ram Bhuli, and therefore, had no pre-existing right in the suit property. Hence, even assuming that the decree was voluntarily suffered, it was compulsorily registerable in view of the fact that it purported to transfer immovable property of value exceeding ₹100 to a person having no pre-existing right therein. The absence of registration renders the decree void and inoperative in law.

34. On the question of limitation, it was argued that the plaintiffs acquired knowledge of the impugned decree only after the death of Smt. Ram Bhuli in 1993, when they approached the revenue authorities for sanction of mutation on the basis of natural succession and discovered the existence of the decree in favour of the appellant. The suit having been filed on 14.06.1995 was thus within three years from the date of knowledge and clearly within limitation. The Courts below have

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on title for possession of immovable property. Reliance is placed on the judgments of the Hon'ble Supreme Court in *Shanti Devi v. Jagan Devi 2025(4) RCR (Civil) 202*, where it was held that in cases where a transaction or decree is *void ab initio*, no separate declaration is necessary under Article 59 and the suit for possession would be governed by Article 65, which provides a limitation of 12 years.

35. Learned counsel for the respondents further placed reliance upon *S.P. Changalvaraya Naidu (dead) by LRs v. Jagannath (dead) by LRs 1994 AIR (Supreme Court) 853*, to contend that a decree obtained by playing fraud upon the Court is a nullity in law and can be challenged even in collateral proceedings. Fraud vitiates the most solemn proceedings, and any judgment or decree so obtained is non est in the eyes of law. The learned Courts below, after detailed examination of the record and the evidence, have rightly held that the consent decree dated 01.04.1988 was the result of fraud and misrepresentation, as Smt. Ram Bhuli, an illiterate lady, was made to affix her thumb impression under the pretext of some other proceedings.

36. It was also submitted that the reliance placed by the appellant upon *Bachan Singh's case (supra)* and *Dhian Singh's case (supra)* is wholly misplaced, as those cases involved genuine family settlements where parties had pre-existing rights. In contrast, in the present case, no such family settlement was either pleaded or proved. Moreover, the absence of any statement of Smt. Ram Bhuli recorded before the Civil Court, or any identification by a witness, conclusively proves that the impugned decree was obtained by deceit.

37. Lastly, it was argued that the concurrent findings recorded by the trial Court and the Lower Appellate Court are findings of fact, based on appreciation of evidence, and cannot be interfered with in second appeal. The findings that the



decree dated 01.04.1988 is fraudulent, void, and not binding on the rights of the plaintiffs are fully supported by evidence and sound reasoning.

Findings of this Court

38. After hearing learned counsel for the appellant as well as learned counsel for respondent No. 3 and having carefully perused the record of the Courts below, this Court is of the considered opinion that there is no merit in the present Regular Second Appeal filed by Smt. Batti. Both the Courts below have concurrently and rightly held that the decree dated 01.04.1988, allegedly suffered by Smt. Ram Bhuli, was obtained by practising fraud upon her and upon the Court, that it was unregistered, and that the plaintiffs being her natural heirs are entitled to succeed to her estate by inheritance. The concurrent findings being fully supported by the evidence on record and consistent with the settled position of law, call for no interference in second appellate jurisdiction.

39. It is the first and principal contention of the learned counsel for the appellant that Smt. Ram Bhuli was the absolute owner of her one-third share and had voluntarily suffered the decree in favour of the appellant on the basis of a family settlement. This plea, however, stands demolished on the very face of the record. The so-called family settlement was never pleaded in the written statement before the Trial Court, nor was any material produced to suggest that any pre-existing arrangement ever existed between Smt. Ram Bhuli and the appellant. The record of the earlier civil proceedings leading to the decree dated 1 April 1988 unmistakably reveals that Smt. Ram Bhuli never appeared before the Civil Judge, nor did she sign or verify any written statement or power of attorney through an advocate engaged by her. The alleged power of attorney bears merely a thumb-impression without any authentication by an advocate or attesting witness, and the

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written statement neither bears the signature of any counsel nor the verification of Smt. Ram Bhuli herself. Even below the verification clause, there is no endorsement or mark. These circumstances, taken cumulatively, establish that the entire proceeding was manipulated behind the back of Smt. Ram Bhuli, and that she was never present before the Court. Both the Courts below have, therefore, rightly concluded that the decree was obtained by deception and misrepresentation, and that Smt. Ram Bhuli had never consciously or voluntarily suffered the same.

40. The plea of a “family settlement” advanced by the appellant is equally untenable and an afterthought. It is a settled law that a family arrangement can be recognised in law only when the parties thereto have some antecedent or pre-existing right in the property. In the present case, the appellant had no such right; she is merely the daughter-in-law of the brother of Smt. Ram Bhuli. Her status, therefore, was that of a remote relation by marriage, and not of a member of the family entitled to a share in ancestral or joint family property. The land in dispute was inherited by Smt. Ram Bhuli from her father Chunni as her absolute property under Section 14 of the Hindu Succession Act, 1956. There was, thus, no occasion or necessity for any family settlement. Consequently, the reliance placed by learned counsel for the appellant upon *Bachan Singh’s case (supra)* and *Dhian Singh’s case (supra)* is wholly misconceived. Both those cases dealt with genuine family settlements between near relations having pre-existing rights. They do not lend any assistance to the appellant whose alleged right was created for the first time under an unregistered consent decree. The distinction drawn by the Courts below between those authorities and the facts of the present case is well-founded, and this Court finds no reason to take a different view.



41. It was next argued by learned counsel for the appellant that the decree could not have been annulled in the absence of specific pleadings or proof of fraud. This contention also deserves rejection. Fraud is an act of deliberate deception with a view to securing some unfair or unlawful gain, and in civil proceedings, it can be proved by circumstantial evidence. The record of the earlier case, the absence of any signed pleading or statement by Smt. Ram Bhuli, the lack of appearance through any authorised counsel, and the false assertion of her presence are all circumstances which unmistakably establish that fraud was practised upon her and upon the Court. In *S.P. Chengalvaraya Naidu's case (supra)*, the Hon'ble Supreme Court authoritatively laid down that a decree obtained by playing fraud upon the Court is a nullity, non-existent in the eyes of law, and can be challenged even in collateral proceedings. Fraud, it was observed, vitiates the most solemn proceedings. Once fraud is established, every order and decree founded upon it must fall. Applying that principle, both the Courts below rightly held that the decree dated 01.04.1988, having been procured by fraudulent means, is a nullity and cannot be permitted to stand.

42. The next submission regarding registration of the decree is also without substance. The decree purports to convey immovable property exceeding ₹100 in value to a person who had no pre-existing right in it. Such a decree, even if consented to, operates as an instrument of transfer and is compulsorily registerable under Section 17(1)(b) of the Registration Act, 1908. An unregistered decree of this nature cannot create, declare, assign, or extinguish any right in immovable property. The Courts below have, therefore, correctly held that even assuming that the decree was voluntary, it was legally ineffective in the absence of registration.

The principle laid down in *Bachan Singh's case (supra)* cannot assist the

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appellant because that case concerned a decree acknowledging a pre-existing family settlement, whereas in the present case no such antecedent right or settlement has been proved.

43. As regards limitation, the argument of the appellant that the plaintiffs were aware of the decree in 1988 and that their suit filed in 1995 was barred by time, is equally untenable. The evidence of PW2 Roshan Lal and PW3 Het Ram clearly establishes that the plaintiffs acquired knowledge of the impugned decree only after the death of Smt. Ram Bhuli in 1993, when they approached the revenue authorities for sanctioning mutation on the basis of natural succession and discovered the existence of the decree in favour of the appellant. Immediately thereafter, they instituted the present suit on 14.06.1995. The Courts below, therefore, rightly reckoned limitation from the date of knowledge and held the suit to be within time. Reliance of the appellant on Article 59 of the Limitation Act is misplaced. The decree in question, being void and non-existent in law, did not require cancellation under Article 59. The correct provision applicable is Article 65, which prescribes a limitation of twelve years for suits based on title for possession of immovable property. This view finds complete support from the recent pronouncement of the Hon'ble Supreme Court in *Shanti Devi's case (supra)*, wherein it was held that when a document or decree is void ab initio on account of fraud or want of jurisdiction, it is non est in the eyes of law and the plea of its invalidity can be raised in any proceedings without seeking a separate declaration. The Hon'ble Court further held that in such cases the limitation would be governed by Article 65, and not Article 59. Applying that principle, the suit of the plaintiffs is clearly within limitation and was rightly entertained.



44. It was faintly suggested by learned counsel for the appellant that the plaintiffs are estopped from challenging the decree since mutation was sanctioned on its basis. This contention is devoid of merit. Mutation proceedings are fiscal in nature and do not confer or extinguish title. More importantly, estoppel cannot operate against fraud. The Hon'ble Supreme Court in *S.P. Chengalvaraya Naidu's case (supra)* categorically held that no one can be allowed to take advantage of his own fraud, and a decree vitiated by fraud cannot be permitted to stand on grounds of technical estoppel or waiver. In the present case, since the decree itself is a nullity, all proceedings founded upon it, including the mutation, stand automatically vitiated.

45. The Court also finds no substance in the argument that the plaintiffs had no locus standi to challenge the decree after the death of Smt. Ram Bhuli. Once it is established that the decree was never validly passed and that the property continued to remain vested in Smt. Ram Bhuli, her heirs acquired the right to inherit and were fully competent to challenge the fraudulent decree which had clouded their title. Their cause of action arose only after the death of Smt. Ram Bhuli when they came to know of the decree, and the suit was, therefore, rightly filed thereafter.

46. The judgments relied upon by learned counsel for the appellant have been rightly distinguished by both the Courts below. The decisions in *Bachan Singh's case (supra)* and *Dhian Singh's case (supra)* dealt with bona fide family settlements between co-sharers or close relations having antecedent rights. They have no application where the transferee had no pre-existing title and the decree purports to create a new right in his favour. On the other hand, the authorities cited

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and *Shanti Devi's case (supra)*, lay down the correct proposition that fraud vitiates all judicial acts and that a void decree does not require cancellation. The findings of the Courts below are in strict consonance with these authoritative pronouncements.

Conclusion

47. In view of the foregoing discussion, this Court finds that the learned Courts below have correctly appreciated the pleadings and evidence and have recorded well-reasoned findings on each issue. There is no perversity or illegality in their conclusions that the decree dated 01.04.1988 was obtained by practising fraud upon Smt. Ram Bhuli. The said decree, being unregistered and void, conferred no title upon the appellant. The plaintiffs' suit was within limitation and the plaintiffs, as the legal heirs of Smt. Ram Bhuli, are entitled to possession of her estate. The concurrent findings are based on sound reasoning and supported by unimpeachable documentary and oral evidence.

48. Accordingly, the present Regular Second Appeal fails and is hereby dismissed. The judgments and decrees passed by the learned Trial Court and affirmed by the learned Lower Appellate Court are upheld

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

October 30, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.