

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 950 of 1992

Vijay Laxmi and Others

... Appellant(s)

Versus

Kundan Lal and Others

... Respondent(s)

2. Regular Second Appeal No. 4426 of 2000

Pankaj Kumar and Others

... Appellant(s)

Versus

Shivdarshan (Deceased) through his Legal Representatives and Others

... Respondent(s)

AND

3. Regular Second Appeal No. 253 of 2001

Darshan Kaur and Others

... Appellant(s)

Versus

Satish Kumar and Others

... Respondent(s)

Reserved On: 04.09.2023
Pronounced On: 14.09.2023

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Amit Jain, Senior Advocate
with Mr. Anupam Mathur, Advocate
for the appellant(s) (In RSA-950-1992 and
RSA-4426-2000).

Mr. P.C.Chaudhary, Advocate
for the appellants (In RSA-253-2001).

Mr. Amit Dhawan, Advocate
for the respondents.

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Anil Kshetarpal, J.

1. With the consent of the learned counsel representing the parties, three connected regular second appeals, namely Regular Second Appeal No. 950 of 1992, Regular Second Appeal No.4426 of 2000 and Regular Second Appeal No.253 of 2001, shall stand finally decided by this common judgment.

2. In fact, Regular Second Appeal No.4426 of 2000 and Regular Second Appeal No.253 of 2001 are arising from a common judgment passed by the Court of first instance on 01.06.1994, which was reversed by the First Appellate Court vide judgment dated 26.05.2000.

3. The pivotal issue, which arises for consideration, is “Whether late Sh.Mohan Lal, predecessor-in-interest of the appellants in Regular Second Appeal No.4426 of 2000, was adopted by late Sh.Thandu Mal before the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as “the 1956 Act”) come into force?”

4. It would be noted here that Regular Second Appeal No.4426 of 2000 was admitted for regular hearing on 07.12.2004, on the following law points:-

“The following law points are made out for adjudication:-

- 1. Whether reversal of judgment and decree passed by the learned Subordinate Judge is erroneous?*
- 2. Whether the suit is barred by limitation?*
- 3. Whether the learned Additional District Judge erred in giving the finding regarding adoption of Hohan Lal without framing any issue in this respect?*

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4. *Whether the alleged adoption of Mohan Lal by Thandu Mai is not based on any material and whereas overwhelming evidence on the record proves to the contrary?*
5. *Whether plaintiff Gyan Chand is estopped by his act and conduct to file the suit?*
6. *Whether Gyan Chand plaintiff is estopped by his act and conduct to plead adoption of Mohan Lal by Thandu Mal?*
7. *Whether the question of adoption is barred by res judicata on account of earlier judgment/order. Exhibit D-32 Exhibits and documents D-30, D-31 and D-1?*
8. *Whether adoption of Lalit Kumar by the widow of Thandu Mal proves that Mohan Lal was not adopted by Thandu Mal?*
9. *Whether Thandu Mal could not adopt Mohan Lal and he was not childless?*
10. *Whether Mohan Lal inherited the property of Thandu Mal by virtue of will and not on account of alleged adoption?*
11. *Whether during the long period, when Mohan Lal was minor till he became major, Gyan Chand plaintiff and their mother acted on his behalf as natural son of Des Raj and not as adopted son of Thandu Mal?*
12. *Whether the learned Additional District Judge failed to*

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draw adverse inference against the plaintiff for not producing material evidence/witnesses?

13. *Whether the learned Additional District Judge wrongly interpreted the documents, Exhibits P-1, P-4 and P-5?*

And

14. *Whether the property mentioned in Clause D of the heading of the plaint was property of Thandu Mal which Mohan Lal got by virtue of the will, with which Gyan Chand plaintiff had nothing to do so?"*

5. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the requisitioned record of the trial Court in Civil Suit No. 190 of 1991.

6. The Civil Suit No. 424 of 11.11.1989 was subsequently re-numbered as Civil Suit No.190 of 18.03.1991.

7. The learned counsel representing the parties have also filed their written notes of submissions, respectively.

8. The learned senior counsel representing the appellant in Regular Second Appeal No.4426 of 2000, in his written note of submissions, has contended that the following points require decision of the Court:-

“(i) *Whether the plaintiff is estopped from his own act and conduct from claiming exclusive inheritance to the estate of his Des Raj?*

(ii) *Whether the alleged adoption can be upheld in the absence of any cogent evidence to prove the formalities of alleged adoption of defendant Mohan Lal by Thandu*

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- a) *1/12 share out of land men suring 90 kanals 5 marles bearing khewat no.23, khatauni no.56, khasra no.2013(29-14), Khatouni no.57, Khasra no.2013(60-1) , 2012(0-10), situated in village Kapurthala hadbast no.134, District Kapurthala as per, jamabandi for the year 1985-86.*
- b) *Che shop in dilapidated condition in the main Bazar Sheikhupur, Tehs1 and District Kapurthala fully depicted in the site plan enclosed and bound as under:-*

East: Shop of Tulsi Ram

West: Shop of Jawala Dass

North: Bazar

South: Gali
- c) *1/3 share of out of land measuring 28 anals consisting of thewat no.1249 Khatauni no.197: bearing khasta no.124//15/2(4-0), 125//1(8-0) 10(8-0), 11(8-0), situated in village Talwandi Chaudhrian, Tehsil Sultanpur Lodhi, District kapurthala.*
- d) *1/2 share in land measuring 3 kanals 17 marlas bearing khewat khatauni no.41/313 comprised in khasra no.217(3-13) situated within the abadi of village Sheikhupur, Tehsil and District Kapurthala as per Jamabandi for the year 1986-87.*

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Suit for permanent injunction restraining the defendants from alienating or transferring the property detailed above in the earlier part of the head note in any manner what so ever.”

11. In order to comprehend the controversy involved in these appeals, the relevant facts, in brief, are required to be noticed. Originally, late Sh.Pala Mal/Ram was the owner in possession of the suit property. He had three sons, namely late Sh.Des Raj, late Sh.Thandu Mal and late Sh.Puna Mal. Late Sh.Des Raj had two sons, namely Sh.Gian Chand and Sh.Mohan Lal. It is the case of the plaintiff-Gian Chand that Sh.Mohan Lal was adopted by his uncle late Sh.Thandu Mal when he was 2½ years old. Late Sh.Thandu Mal was not blessed with a son, hence, it is alleged that he adopted Sh.Mohan Lal. Sh.Ram Jass and Harkishan Lal are the sons of late Sh.Puna Mal. Sh.Des Raj died on 17.02.1951, whereas Sh.Thandu Mal died on 25.09.1957.

12. Late Sh.Thandu Mal had executed a Will in favour of Sh.Mohan Lal on 08.08.1956 (Ex.P1). In the aforesaid Will, it has been stated by late Sh.Thandu Mal that Sh.Mohan Lal was adopted when he was 2½ years old and now he is a young boy of 13 years. However, since no formal document with respect to adoption was executed, therefore, in order to settle the dispute with regard to succession he is executing the Will. There is also no dispute that on the basis of Will dated 08.08.1956, late Sh.Mohan Lal succeeded to the entire property left by late Sh.Thandu Mal.

13. It has also come on record that a partition deed was executed between the parties on 15.07.1963 which is again signed by Sh.Mohan Lal

as the adopted son of late Sh.Thandu Mal. The parties have produced the

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various other documents. The trial Court dismissed the suit filed by Sh.Gian Chand, whereas, the First Appellate Court, in appeal, has reversed the judgment and decree passed by the trial Court.

14. It is the case of the legal representatives of late Sh.Mohan Lal claim that late Sh.Thandu Mal never adopted late Sh.Mohan Lal and they claim that share in the property of late Sh.Des Raj also, apart from the property inherited from late Sh.Thandu Mal on the basis of Will.

15. Now, let us analyze the points projected by the learned counsel representing the appellant for consideration. The first point is with regard to estoppel. The first argument of the learned counsel is with reference to the fact that Sh.Gian Chand, on the death of late Sh.Thandu Mal, appeared before the Revenue Authorities for sanction of the mutation of the property of late Sh.Thandu Mal and he described late Sh.Mohan Lal as the son of late Sh.Des Raj. It would be noted here that in the school and college records, late Sh.Mohan Lal was described as the son of late Sh.Des Raj, who died in the year 1951. There was no written document to prove that late Sh.Mohan Lal was the adopted son of late Sh.Thandu Mal except the Will. Moreover, the aforesaid mutation was sanctioned exclusively in the favour of late Sh.Mohan Lal because of the Will dated 08.08.1956. Therefore, even if late Sh.Mohan Lal was described as a son of late Sh.Des Raj, it would not make any difference.

16. The next argument of the learned counsel is with reference to four sale deeds Ex.D8, Ex.D9, Ex.D10 and Ex.A3 executed by Sh.Gian Chand on his behalf as well as the guardian of late Sh.Mohan Lal in respect

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Sh.Des Raj died on 17.02.1951. The mutation of the land was entered in the favour of Sh.Gian Chand and late Sh.Mohan Lal. That is how Sh.Gian Chand executed the four sale deeds on his behalf as well as on behalf of late Sh.Mohan Lal. However, this would not operate as estoppel against late Sh.Des Raj.

17. The next argument of the learned counsel is based on the civil suit jointly filed by Sh.Gian Chand and late Sh.Mohan Lal as sons of late Sh.Des Raj. For the reasons noted above, there is no substance in it.

18. Similarly, the next argument is with reference to Ex.D1, a written statement filed by Sh.Gian Chand in the suit filed by late Sh.Mohan Lal. In para No.4 of the aforesaid written statement, late Sh.Mohan Lal specifically claimed to be the son of late Sh.Des Raj. In the considered view of this Court, there is an overwhelming evidence which shall be discussed subsequently to prove that these documents pale into insignificance because on 15.07.1963, the parties entered into a settlement wherein late Sh.Mohan Lal admitted that he was adopted by late Sh.Thandu Mal. On the basis of the aforesaid settlement, the properties were divided. Subsequently, late Sh.Mohan Lal filed a civil suit to challenge the correctness of the settlement dated 15.07.1963. However, during the pendency of the suit, the parties, once again, entered into the settlement and reiterated that the settlement dated 15.07.1963 is final between the parties and they would abide by the same. Pursuant to the aforesaid statement, the civil suit was decided by the Court on 29.12.1969 while observing that the settlement deed dated 15.07.1963 shall form part of the decree. In view of the aforesaid

overwhelming document, the document referred to by the learned counsel

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representing the appellant cannot be given precedence. Similarly, the next reference by the learned counsel is to the sale deed dated 15.02.1968 when Smt.Vijay Laxmi describing her as the wife of late Sh.Mohan lal son of late Sh.Des Raj sold some property along with Sham Lal and Shiv Darshan sons of Gian Chand. Similar is the position with regard to the mutation dated 28.03.1973 with respect to inheritance of the property late Smt.Chanan Devi who is stated to be the first wife of late Sh.Thandu Mal. This mutation was entered in favour of Smt.Ram Pyari and late Sh.Mohan Lal.

19. The next reference by the learned counsel is with regard to the order passed by the Collector in the mutation proceedings. It is well settled that the Revenue Authorities while deciding the dispute with regard to the sanction of the mutation do not have the power of the Court and these matters are decided on the administrative side. The order passed by the Revenue Authority is in exercise of the administrative powers and the Civil Court is expected to decide the case on the basis of the evidence uninfluenced by the orders passed by the Revenue Authorities. Similar is the position of the jamabandi for the year 1975-76, a joint petition filed by Sh.Gian Chand and Late Sh.Mohan Lal under Section 42 of the Consolidation Act, 1948.

20. The last argument of the learned counsel representing the appellant is with reference to a suit filed by Sh.Gian Chand on 02.05.1978 seeking exclusive ownership of the property of late Sh.Des Raj which was dismissed in default on 03.02.1979. The aforesaid decision was not on merits, therefore, does not finally decide the dispute.

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is based on the doctrine of Estoppel which is provided in Chapter 8 of the Indian Evidence Act, 1872 (hereinafter referred to as “the 1872 Act”). The rule of estoppel under Section 115 of the 1872 Act, can be invoked only against the person when on the declaration or intentional omission he has permitted another person to believe a thing to be true and that another person has acted on the aforesaid false representation and changed his position accordingly. In this situation, the first person is stopped from claiming the things as they were otherwise. However, it is not the case of the appellant that on the false representation of Sh.Gian Chand, they changed their position or acted on their behalf.

22. The second point is with regard to adoption. This Court has carefully read the translated copy of the Will dated 08.08.1956. In the aforesaid bequest late Sh.Thandu Ram/Mal had specifically stated that when late Sh.Mohan Lal was 2½ years old, he adopted him and thereafter, took care of him. Now he is 13 years old. But there is no document in this regard, hence, he is executing the Will. At that time, late Sh.Mohan Lal was a minor. At more than one places, late Sh.Thandu Mal has described late Sh.Mohan Lal as his adopted son. Moreover, there has been various documents including Ex.P3 which prove that late Sh.Mohan Lal was adopted by late Sh.Thandu Mal. Firstly, late Sh.Mohan Lal exclusively inherited the property of late Sh.Thandu Mal. Secondly, late Sh.Mohan Lal entered into a settlement on 15.07.1963 admitting that he was adopted by late Sh.Thandu Mal. DW.4 Sh.Shiv Darshan Lal admitted that late Sh.Mohan Lal cremated the body of late Sh.Thandu Mal and the last rites were also performed by

him. Even in a civil suit filed by late Sh.Mohan Lal in the year 1965, the

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parties reiterated the settlement dated 15.07.1963. The argument of the learned counsel based upon the fact that Sh.Lalit Kumar, son of late Sh.Mohan Lal, was adopted by Smt.Ram Pyari, widow of late Sh.Thandu Mal, vide registered adoption deed dated 08.11.1969 wherein she stated that she had no child, also has no substance. However, this would not efface the Will dated 08.08.1956 and the settlement deed dated 15.07.1963 which was reiterated in the year 1965.

23. The next argument of the learned counsel representing the appellant is based on the fact that in the year 1963, late Sh.Mohan Lal was under the influence of his elder brother Sh.Gian Chand. It would be noted here that in the year 1963, late Sh.Mohan Lal was 21 years old. This fact was reiterated in the year 1965 before the Civil Court and the settlement deed dated 15.07.1963 was part of the decree. In such circumstances, it would not be appropriate to hold that late Sh.Mohan Lal was under the influence of his elder brother. Undoubtedly, in the school and university certificates, late Sh.Mohan Lal is recorded to be the son of late Sh.Des Raj, however, that itself would not be sufficient to hold that no adoption took place particularly when the various documents have been produced which prove adoption.

24. The next argument is based on the fact that the suit filed by the plaintiff in the year 1991 was barred by the limitation period. The learned counsel relied upon the judgment passed by the supreme Court in *Shyam Lal alias Kuldeep v. Sanjeev Kumar and Others 2009 AIR (Supreme Court) 3115*. The entire argument of the learned counsel is based upon the

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the dispute regarding mutation. This Court has considered the submissions. The sanction of mutation does not confer any title and the property was joint between the parties till the year 1965. Late Sh.Mohan Lal was not in the exclusive possession of the property. The sanction of mutation does not affect the rights of the plaintiff. Moreover, the sanction of mutation is not always the reason for giving rise to a cause of action to file a suit. In this case, the parties were litigating from the year 1963. In fact, the rights of the parties were finally decided in the year 1963 when the settlement was arrived at. Hence, subsequent sanction of mutation is not binding. This Court has carefully read the judgment passed in ***Shyam Lal alias Kuldeep's case (supra)***. In that case, the real dispute was with regard to the legitimacy of the children during the subsistence of marriage. The Court, while relying upon Section 112 of the 1872 Act which is regarded as a conclusive proof held that during the subsistence of marriage, the children are presumed to have been born from the marriage as the parents have access to each other. While deciding the issue No.8, certain observations were made by the Court which were peculiar to the facts involved in that case. With highest respect, the aforesaid judgment does not stand as a *ratio decidendi* while laying down that if the mutation is not challenged within a period of three years, the suit claiming the property on the basis of natural succession would be barred by the limitation period.

25. The last argument of the learned counsel representing the appellant has some substance. A perusal of Ex.P3, a deed of settlement, it is evident that the total land in the village Sheikhupur was 110 kanals and 7

marlas. It was agreed by the parties that the aforesaid property belonged to

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late Sh.Thandu Mal, therefore, as per the Will dated 08.08.1956, the same would exclusively vests in late Sh.Mohan Lal, the adopted son of late Sh.Thandu Mal. Even in the penultimate para, it was recorded that late Sh.Mohan Lal is the exclusive owner of the land situated in village Shekhupur and Sh.Gian Chand, Sh.Harkishan Lal and Sh.Ram Jass will have no right, title or interest in the land located in the aforesaid village. Moreover a perusal of the copy of the plaint filed by late Sh.Mohan Lal on 11.06.1965, it is evident that the land comprised in khasra No. 217 measuring 3 kanals and 3 marlas was a part of the aforesaid suit. As per the statement of the parties, recorded on 29.12.1965 (Ex.D31), the settlement dated 15.07.1963 was acknowledged to be correct. On 29.12.1965, the Court passed the order on the basis of the statement of the parties and compromise deed (Ex.C1) which would form part of the decree. It was also recorded that the parties would be bound by the terms of the agreement dated 15.07.1963 (Ex.P1). Hence, the suit of the plaintiff qua the land located in village Shekhupur under Clause (d) of the caption shall stand dismissed.

26. It would be noted here that apart from the aforesaid documents, there are other documents which prove that late Sh.Mohan Lal was adopted. In fact, Sh.Kundan Lal filed a suit against Smt.Vijay Laxmi and others wherein again the issue of adoption of late Sh.Mohan Lal by late Sh.Thandu Mal was in issue. Vide judgment ExP4 dated 15.09.1988, the Court held that late Sh.Mohan Lal was the adopted son of late Sh.Thandu Mal. This judgment was upheld in appeal vide judgment dated 13.08.1991. In fact,

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judgments.

27. Apart from this, the Umpire's award (Ex.P10) wherein the joint properties between the parties were partitioned. In that award, late Sh.Mohan Lal was described as the son of late Sh.Thandu Mal. This award was proved by PW.4 Sh.Jawahar Lal. In the year 1976, a police report was filed by Sh.Satish wherein also late Sh.Mohan Lal was also described as the son of late Sh.Thandu Mal. PW.2 Harnam Dass, while proving the Will, has stated that late Sh.Mohan Lal was adopted by late Sh.Thandu Mal. Moreover, Sh.Satish Kumar filed a suit against late Sh.Mohan Lal and others (Ex.D26) and Gian Chand had also filed a suit in the year 1976 against late Sh.Mohan Lal. In both these suit, late Sh.Mohan Lal was described as the adopted son of late Sh.Thandu Mal. This award was proved by PW.4 Sh.Jawahar Lal. In the year 1976, a police report was filed by Sh.Satish, there also late Sh.Mohan Lal was described as son of late Sh.Thandu Mal. PW.2 Sh. Harnam Dass, while proving the Will, has also stated that late Sh.Mohan Lal was adopted by late Sh.Thandu Mal. Moreover, Sh.Satish Kumar filed a suit against late Sh.Mohan Lal and others (Ex.D26) and Sh.Gian Chand had also filed a suit in the year 1976 against him. In both these suits, late Sh.Mohan Lal was described as the adopted by late Sh.Thandu Mal.

28. It is evident that on preponderance of the probabilities, the First Appellate Court has come to a conclusion. In the absence of misreading or non-reading of the evidence, this Court does not find it appropriate to interfere.

29. Now, let us analyze the law points noted in the order dated

07.12.2004. The first point has already been elaborately discussed, therefore,

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needs no repetition. The same is the position of law point No.2.

30. With reference to law point No.3, it would be noted that in fact, this was the pivotal issue which arose between the parties. The trial Court as well as the First Appellate Court have devoted the major part of the judgments on this issue. Hence, the absence of formal issue would not make any difference because the parties were aware of the point in issue.

31. The law point No.4, 5 and 6 have been elaborately discussed, hence, need no repetition.

32. The law point No.7 is based on the documents (Ex.D1, Ex.D30, Ex.D31 and Ex.D32). The documents (Ex.D1 and Ex.D31) have already been discussed. Both these documents prove that late Sh.Mohan Lal was adopted by late Sh.Thandu Mal. The document (Ex.D32) shall be explained later on.

33. As regards law point No.8, it would be noted that the aforesaid aspect has already been examined, therefore, needs no repetition.

34. The law point No.9 was never pressed by the learned counsel representing the appellant.

35. With regard to law point No.10, it would be noticed that late Sh.Mohan Lal inherited the property on the basis of Will in which, it has been specifically recorded that late Sh.Thandu Mal was bequeathing the property in favour of late Sh.Mohan Lal as he has been adopted by the Executor.

36. With regard to law point No.11, it would be noticed that the aforesaid contention is covered by the argument with regard to estoppel,

hence, need no repetition.

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37. With regard to law point No.12, it would be noticed that late Sh.Des Raj has produced the overwhelming evidence which prove that late Sh.Mohan Lal was adopted by late Sh.Thandu Mal.

38. The learned counsel representing the appellant did not press the law point No.13, hence, it does not require to be dealt with.

39. The law point No.14 has already been dealt with and held in favour of the appellant.

40. The learned counsel representing the appellant did not address any other argument in support of the Regular Second Appeal No. 950 of 1992. In fact, in the aforesaid suit, the legal representative of late Sh.Mohan Lal challenge the correctness of the concurrent findings of facts arrived at by both the Courts below while decreeing the suit for recovery of ₹1,434/- which was received by late Sh.Mohan Lal as rent from Sh.Kundan Lal. It is the case of Sh.Kundan Lal that late Sh.Mohan Lal was not entitled to any rent with respect to the shop in question because late Sh.Mohan Lal was adopted by late Sh.Thandu Mal. The aforesaid suit has been decreed by both the Courts below. As already noticed, the learned counsel representing the appellant did not address any separate argument to show that the findings of both the Courts below suffer from any error or defect. Hence, the aforesaid appeal is dismissed.

41. It would be noted here that pursuant to the sanction of mutation of late Sh.Des Raj, certain properties were sold jointly by Sh.Gian Chand and late Sh.Mohan Lal. Whereas certain properties were solely sold by late Sh.Mohan Lal by taking benefit of the mutation.

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defendant No.9 to 13, as they have purchased the property vide various sale deeds executed by Sh.Harkishan Lal in favour of Smt.Darshan Kaur on 01.06.1979 with respect to the land measuring 9 kanal and 7 marlas being 1/3rd share of 28 kanals and the sale deed No. 2003 dated 28.11.1980 with respect to the land measuring 4 kanals and 13 marlas being 1/6th share of the land measuring 28 kanals executed by Smt.Surjit Kaur in favour of Sh.Rajinder Singh and the sale deed dated 27.05.1981 with respect to the land measuring 14 kanals being 1/2 share of the land measuring 28 kanals by Smt.Lakhwant Kaur in favour of Sh.Rajinder Singh, Sh.Kashmir Singh and Sh.Balwinder Singh. It has been held that the plaintiffs have foregone their claim with respect to the aforesaid sale deeds.

43. Keeping in view the aforesaid facts and discussion, the suit qua the defendant No.9 to 13 shall stand dismissed. Accordingly, the relief under Clause (c) of the caption shall stand dismissed. The suit qua Clause (d) shall also stand dismissed, however, the suit of the plaintiffs qua the relief under Clause (a) and (b) shall stand decreed. There shall be a decree of permanent injunction in favour of the plaintiff restraining the defendants from alienating and transferring the property detailed in Clause (a) and (b).

44. With the observations made above, all the three appeals are disposed of.

**(Anil Kshetarpal)
Judge**

**September 14, 2023
“DK”**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No