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IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

\*\*\*

RSA-905-1989(O&M)

Date of decision : 31.07.2024

Shanti Devi (deceased) through LRs and another

... Appellants

Versus

Iqbal Singh (deceased) through LRs and others

... Respondents

**CORAM:** *HON'BLE MR.JUSTICE VIKAS BAHL*

Present: Mr.Kanwaljit Singh, Senior Advocate with  
Ms.Navyuggeet Brar, Advocate for appellant No.1.

Mr.Garvit Mittal, Advocate and  
Mr.Ravinder Mailk (Ravi), Advocate  
for appellant No.2.

Mr.Sumeet Mahajan, Senior Advocate with  
Mr.Amit Kohar, Advocate, Mr.Saksham Mahajan, Advocate  
and Ms.Shruti Singla, Advocate  
for respondents No.1(i) to 1(vi).

Respondents No.2 and 3 were given up by the appellants on  
07.05.2024.

**VIKAS BAHL, J.(ORAL)**

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**Challenge in the present RSA**

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and Balwant Singh (presently LR of Balwant Singh), (the lis pendens purchaser), have filed the present appeal against the judgment and decree dated 21.09.1987 passed by the trial Court vide which the suit filed by the plaintiff (respondent No.1/presently LR of respondent No.1) Iqbal Singh for declaration with consequential relief of permanent injunction or in the alternate for possession has been partly decreed and it has been held that the judgment and decree passed in Civil Suit No.538 of 1981 in favour of Shanti Devi (defendant No.2) was illegal, null and void and was not binding on the rights of the plaintiff and the plaintiff (respondent No.1) was granted the relief of possession to the extent of 1/5<sup>th</sup> share of the suit land. Challenge is also to the judgment and decree dated 08.03.1989 vide which the appeal filed by the present appellants has been dismissed by the Ist Appellate Court. The present regular second appeal has been filed under Section 41 of the Punjab Courts Act 1918 and not under section 100 of CPC and in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme Court in the case of ***Pankajakshi (dead) through legal representatives and others v. Chandrika and others and other connected matters*** reported as ***(2016) 6 SCC 157***, it was observed that section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, which provision would necessarily continue as a law in force.

**Brief facts of the case**

2. Brief facts of the present case are that respondent No.1-Iqbal Singh/plaintiff (hereinafter referred to as “the plaintiff”) had filed suit for

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declaration to the effect that he was exclusive owner in possession of the suit land measuring 133 kanals 2 marlas comprised in Khewat No. no157, khasra No.1352(7-11), 1385(7-12), 2015(1-7), 2016(10-2), 2018(7-3), 2019/2(7-4), 2026/2(7-11), 2027 (8-0), 2028(5-3), 2029(9-16), 2030(8-0) khasra No.2031/2(7-11), 2041(8-0), 2042/2(4-16), Kittas 14, total 99 kanals 16 marlas vide mutation No.1326 and Khewat No.157 min, Khasra Nos.2038 (8-0), 2039(4-0), 2040 (4-0), 2046(8-0), 2047(8-0), 2019/1(0-8), 2026/1(0-9) 2031/1(0-9), kittas 8, measuring 33 kanals 6 marlas vide mutation No.1325, total land 133 K- 2 M situated in village Bakana Nos.93, Tehsil Thanesar vide jamabandi 1978-79. A further declaration was sought that the decree dated 13.11.1981 passed in Civil Suit No.538 of 1981 by the Court of Sub Judge IIIrd Class, Kurukshetra in favour of defendant No.2 (present appellant No.1) (hereinafter referred to as defendant No.2) with respect to a part of the suit land measuring 33 kanals 6 marlas was illegal, null and void. Consequential relief for permanent injunction restraining the defendants from alienating or creating any encumbrance over the suit land etc. was also prayed and in the alternative it was prayed that in case the Court comes to the conclusion that the plaintiff is not in possession of the suit land, then the plaintiff be put in possession of the suit land. The case of the plaintiff in the plaint was that the entire suit land was owned and possessed by Sher Singh, (father of the plaintiff as well as father of defendants No.2 to 5 and husband of defendant No.1) and the said land was ancestral and Jaagir property in the hands of Sher Singh who had died in the year 1982. It was further pleaded that since it was Jaagir property and

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ancestral one, thus, the same could not be alienated but Sher Singh in contravention of law transferred 33 kanals 6 marlas of the suit land vide a collusive decree dated 13.11.1981 in favour of defendant No.2. It was further averred that apart from the fact that the said decree was obtained by fraud and misrepresentation, the same was against the provisions of law and was null and void, inoperative, ineffective and not binding on the rights of the plaintiff.

3. A joint written statement was filed by defendants No.2 to 5 and in the said written statement, it was pleaded that the property in dispute was self acquired property of Sher Singh and that the same was not ancestral property. It was further averred that with respect to land measuring 33 kanals 6 marlas, the said Sher Singh had transferred the same to defendant No.2 in a family settlement which was recognised in the decree dated 13.11.1981. It was thus the case in the said written statement that by virtue of the said decree the defendant No.2 was owner in possession of the land measuring 33 kanals 6 marlas and with respect to the remaining land, all the legal heirs of Sher Singh which were the plaintiff, four daughters and the mother were entitled to inherit the estate. It would be relevant to note that in the written statement filed by defendants No.2 to 5, no date much less year in which the said family settlement had taken place, has been mentioned. It has not been stated that as to whether the said family settlement was oral or in writing.

4. A written statement was also filed on behalf of defendant No.1 who was the widow of Sher Singh and in the said written statement, it was



pleaded in paragraph 2 that the decree relied upon by defendant No.2 was merely a waste paper and the same was illegal, null and void and not binding on the rights of the answering defendant. Paragraph 2 of the said written statement is reproduced hereinbelow:-

*“2. Para 2 of the plaint is wrong and denied and not admitted for want of knowledge as the deft No.1 was not party to said decree. The impugned decree was passed by fraud and misrepresentation of facts. **The said decree is merely a waste paper and not binding on the answering defendant.**”*

5. Two separate replications were filed by the plaintiff, one to the joint written statement filed by defendants No.2 to 5 and other to the written statement filed by defendant No.1. In the replication filed to the written statement of defendants No.2 to 5, it was specifically stated in paragraph 1 on merits that there was no family settlement that had taken place.

6. The trial Court vide order dated 03.02.1984 had framed the issues, which are reproduced hereinbelow:-

*“1. Whether the suit property was ancestral property qua the plaintiff in the hands of Sher Singh if so its effect?OPP*

*2. Whether the decree dated 13.11.1981 passed in Suit no.538 of 1981 is liable to be set aside on the grounds mentioned in the plaint?OPP*

*2-A. Whether the plaintiff is entitled to possession as alternative relief?OPP*

*3. Whether the suit is not maintainable?OPD*

*4. Whether the plaintiff has no locus standi?OPD*

*5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD*

*6. Whether the suit is time barred?OPD*

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7. *Whether the plaintiff is estopped to file the present suit by his own act and conduct?OPD*
8. *Whether the suit is barred under Order 2 rule 2 C.P.C.?OPD*
9. *Relief.”*

7. With respect to issue No.1, it was held by the trial court that the property could be stated to be self acquired property and the plaintiff had failed to prove the nature of land in dispute to be ancestral property and accordingly, the said issue was decided against the plaintiff and in favour of the defendants. Under issue No.2, it was observed by the trial Court that the decree dated 13.11.1981 was passed on the basis of admission in the written statement and that the contesting defendant had failed to prove any family settlement between Sher Singh and his daughter Shanti Devi (defendant No.2) and that there was no pleading that the parties were Hindu or they formed Joint Hindu Family and thus, it was observed that the said decree could not operate in the absence of registration, as envisaged under Section 17 of the Registration Act, 1908. Further reference was made to the statement of Shanti Devi, who had appeared as DW-1 wherein in her cross-examination she had admitted the fact that the suit regarding which the consent decree was passed, was got filed by her father and there was no family settlement with respect to the same. Accordingly, issue No.2 was decided in favour of the plaintiff and against the defendants. Under issue No.2-A, it was observed that the plaintiff was entitled to possession of the suit land to the extent of 1/5<sup>th</sup> share of Sher Singh as defendant No.1 Har Kaur, who was the mother of the plaintiff and defendants No.2 to 5, had



died and since the property which was held to be owned by Sher Singh was self acquired property, thus the same was to be equally divided among the five children i.e., one son (plaintiff) and four daughters (defendants No.2 to 5). Under issues No.3 and 4, the suit was held to be maintainable and it was held that the plaintiff had locus standi to file the suit and accordingly, both the issues were decided in favour of the plaintiff and against the defendants. With respect to issues No.5 and 6, it was observed that the said issues were not pressed at the time of arguments and accordingly, were decided in favour of the plaintiff and against the defendants. Issues No.7 and 8 were also decided in favour of the plaintiff and against the defendants and it was observed that there was nothing on record to show that the plaintiff was estopped from filing the suit or the suit was barred. On the basis of the above said findings on the said issues, the suit of the plaintiff was partly decreed in terms which have been detailed hereinabove.

8. Defendant No.2 filed an appeal before the Ist Appellate Court challenging the said judgment and decree. Balwant Singh, who was a transferee pendente lite, was also joined as appellant No.2 in the said appeal. The Ist Appellate Court observed in paragraph 9 of the judgment that no argument had been raised with respect to issues No.1, 3, 4, 5, 6, 7 and 8 and thus, findings on the said issues were affirmed. It has not been argued before this Court that the said observations / findings are perverse or that the said issues were pressed before the Ist Appellate Court. The Ist Appellate Court found that the main issue in the case was that as to whether by virtue of an unregistered decree, a valid title was transferred in the suit

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land in favour of defendant No.2. While deciding the said aspect, it was observed that as has been admitted by DW-1, no family settlement had taken place in respect to the suit land prior to or at the time of the passing of the decree and that there were no pleadings to the effect that the parties were Hindu or that they formed a Joint Hindu Family and thus, came to the conclusion that the title in the suit land could not be transferred on the basis of an unregistered decree and thus, upheld the finding of the trial Court on the said aspect and dismissed the appeal filed by the appellants. Thus, by virtue of the judgments of the trial Court and the Ist Appellate Court, five legal heirs of Sher Singh had got equal share in the entire suit property owned by Sher Singh.

9. Aggrieved with the judgments of the trial Court and the Ist Appellate Court, the appellants have filed the present regular second appeal.

10. On 07.05.2024, a statement was made on behalf of the appellants that the appellants had no claim qua respondents No.2 and 3 and had given up respondents No.2 and 3. The relevant portion of the order dated 07.05.2024 passed by the Coordinate Bench of this Court is reproduced hereinbelow:-

*“As per the office report, notice issued to the respondents no.2 and 3 have been received back unserved with the report that both of them had died.*

*Learned senior counsel for the appellants submits that he has no intention to implead the legal representatives of respondents no.2 and 3, **as the present appellants have no claim qua them.***



***In view of the above, respondents no.2 and 3 are given up.***

*List on 04.07.2024, for arguments.*

*May 07, 2024”*

11. Respondents No.2 and 3 in the present case are Shiv Kaur and Kirpal Kaur, who are defendants No.3 and 4 before the trial Court and are also daughters of Sher Singh. Since the decree, which was being relied upon by the defendant No.2, had been held to be null and void and the land comprised in the said decree measuring 33 kanals 6 marlas was also ordered to be equally divided among all the legal heirs of Sher Singh, thus, in case, the present appeal is to be allowed, the share of respondents No.2 and 3 (defendants No.3 and 4) would be decreased and thus, giving up claim against them has been done by the appellants at their own peril.

**Arguments on behalf of the appellants**

12. Learned senior counsel for the appellant No.1/counsel for appellant No.2 have challenged the judgment and decree of the trial Court as well as Ist Appellate Court by raising the plea that Section 17 of the Registration Act, 1908 which enumerates the documents etc. which are required to be compulsorily registered, provides for certain exceptions which are contained in sub section (2). It is submitted that sub clause (vi) of Section 17(2) excludes any decree or order of the Court from being required to be registered except where the decree or order is expressed to be made on a compromise and the compromise is with respect to immovable property other than that which is the subject matter of the suit or proceedings. It has been argued that a perusal of the judgment and decree dated 13.11.1981

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(Annexures P-4 and P-5), Ex.D8 (written statement filed by Sher Singh in the Civil Suit No.538 of 1981), Ex.D9 (statement of Sher Singh in Civil Suit No.538 of 1981) would show that the consent decree has been passed in the case with respect to the suit land and not with respect to any land which is not the suit land and thus, as per the above provision, the decree would not require registration. In support of the said argument, learned senior counsel/counsel for the appellants have relied upon the judgments of the Hon'ble Supreme Court in the case of "***Gurcharan Singh and others Vs. Angrez Kaur and another, reported as 2020(10) SCC 250***; "***Mohammade Yusuf Vs. Raj Kumar***", ***reported as 2020(10) 264***; "***Khushi Ram and others Vs. Nawal Singh and others***", ***reported as (2021)16 SCC 279*** as well as the judgment of the Co-ordinate Bench of this Court ***dated 22.01.2019 passed in RSA-25 of 1999*** titled as "***Gurmail Singh and others Vs. Dev Singh***", against which, SLP has been dismissed vide order dated **06.05.2019**.

13. It is further submitted that the case of the plaintiff was that the property is an ancestral property and once it was held by the Court that the property is not ancestral property and is self acquired property of Sher Singh and the plea of the plaintiff has been found to be not proved, then, on the said ground the suit of the plaintiff should have been dismissed in toto. It is argued that in view of the above-said facts and circumstances and the law laid down by the Hon'ble Supreme Court in the above-said judgments, the appeal filed by the present appellants is meritorious and the same be allowed and the judgment of the trial Court as well as the 1<sup>st</sup> Appellate



Court be set aside and defendant No.2 be held to be exclusive owner of 33 kanals and 6 marlas of land in addition to having a share in the remaining suit land of Sher Singh.

**Arguments on behalf of respondent No.1 (i) to (vi)**

14. Learned senior counsel for respondent No.1 (presently LR of respondent No.1) has vehemently opposed the arguments raised on behalf of the appellants. It is submitted that in the present case, it is proved beyond doubt that there was no family settlement. It has been highlighted that a perusal of Exs.P-4 and P-5 as well as the documents (Ex.D-8 & D-9), which relate to the earlier suit, would show that there was no reference to any family settlement or to any fact which would even remotely show that there was any pre-existing right in the suit property in favour of defendant No.2 and thus, by virtue of the consent decree, a right was created for the first time in favour of defendant No.2 and that as per settled law, the same was a waste paper as the same was not registered. It is further submitted that with respect to family settlement neither any date nor any year has been mentioned and once the stand of defendant No.2 was to the effect that the property of Sher Singh is self acquired, then, defendant No.2 had no pre-existing right which could have been stated to have been declared by virtue of the consent decree. It is argued that a perusal of the decree (Ex.P-5) would show that the same is collusive, inasmuch as, there is no bona fide compromise recorded in the same and the same is only based on the written statement and the alleged statement of Sher Singh admitting the claim of the defendant No.2. Learned senior counsel for respondent No.1 has further



made a specific reference to the cross-examination of DW-2 in which it has been specifically admitted by her that there was no family settlement and thus, the plea raised in para 1 of the written statement filed by defendant No.2 was absolutely baseless. In support of his arguments, learned senior counsel for respondent No.1 has relied upon judgments of the Hon'ble Supreme Court in “*Bhoop Singh Vs. Ram Singh Major*”, reported as *(1995) 5 SCC 709* and in “*Phool Patti and another Vs. Ram Singh (dead) through Legal Representatives and another*”, reported as *(2015) 3 Supreme Court Cases 164*. Further reliance has been placed upon a judgment of the Co-ordinate Bench of this Court dated *18.01.2023* passed in case titled “*Siri Bhagwan Vs. Murti Devi (dead) through LRs and others and others*”, reported as *2022(3) R.C.R. (Civil) 360*, the *SLP (Civil) Diary No(s).25730/2023* against which has been dismissed by the Hon'ble Supreme Court *vide order dated 01.12.2023*. It is argued that the decree in the present case is more like a gift and thus, would be required to be compulsorily registered and in case the arguments on behalf of the appellants to the effect that the same is not to be registered is accepted, then, the same would legitimize the illegal actions of the persons to suffer such collusive / consent decrees in order to avoid stamp duty / registration charges.

### **Finding of the Court**

15. This Court has heard learned senior counsel/counsel for the appellants and learned senior counsel for respondent No.1 and has perused the paperbook and is of the opinion that the present Regular Second Appeal

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is meritless and deserves to be dismissed for the reasons which have been detailed hereinafter.

16. The substantial question of law which arises for consideration in the present case is:-

*“Whether the decree dated 13.11.1981 (Ex.P-5) required registration or not?”*

17. For the reasons stated hereinafter, this Court is of the opinion that the said decree required registration and the concurrent findings of the trial Court and the 1<sup>st</sup> Appellate Court on the said aspect are in accordance with law and deserve to be upheld.

18. It is the case of defendant No.2 (appellant No.1) that the entire suit property including the property which was a part of the decree dated 13.11.1981 was self-acquired property of Sher Singh. The trial Court as well as the 1<sup>st</sup> Appellate Court had come to the conclusion that the property in question was not ancestral property and it had further been observed by the trial Court in para 12 of the judgment that the entire property could be said to be self acquired property of Sher Singh. The said finding has not been challenged by any of the parties before this Court. The total suit land is 133 kanals 2 marlas, which has been as per the impugned judgment equally divided among the five legal heirs of Sher Singh i.e., plaintiff (son) and defendants No.2 to 5 (four daughters). The dispute in the present case only remains with respect to land measuring 33 kanals 6 marlas, which is part of the above-said land and which was the subject matter of the decree dated 13.11.1981.

19. The judgment and decree dated 13.11.1981 have been exhibited



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as Ex.P-4 and Ex.P-5 and have been referred to by both the sides. A perusal of the above judgment dated 13.11.1981 would show that there is no reference to any family settlement in the same nor is there reference to any fact which would show that there was any pre-existing right of defendant No.2, which right was sought to be recognized by virtue of the said judgment and decree. The relevant portion of the judgment and decree is reproduced herein below: -

*“IN THE COURT OF SHRI VIMAL KUMAR BAKSHI,  
HCS, SUB JUDGE, III CLASS, KURUKSHETRA*

*Civil Suit No. 538 of 1981*

*Date of Inst.: 6-11-81*

*Date of Decision: 13.11.81*

*Smt. Shanti Devi wife of Bakshish Singh and daughter of Sher Singh son of Narain Singh resident of Village Bakana Shergarh, Teh. Thanesar, Distt. Kurukshetra*

*Plaintiff*

*Versus*

*Sher Singh son of Narain Singh r/o Village Bakana Shergarh, Teh. Thanesar, Distt. Kurukshetra*

*...Defendant*

*Suit for Declaration*

*Present: Sh. CS Ahuja, Counsel for the plaintiff*

*Sh. Jan Pal Singh, Counsel for the defendant*

*Judgment:*

*The present suit is initiated by the plaintiff Smt. Shanti Devi wife of Bakshish Singh against the defendant Sher Singh son of Narain Singh resident of Bakana Shergarh, for a decree for declaration to the effect that the plaintiff is full owner in possession of the land measuring 33 Kanals 6 Marlas as fully*



*detailed in para No. 2 of the plaint and copy of Jamabandi for the year 1978- 79 attached.*

**2. The defendant Sher Singh son of Narain Singh has moved an application in the present case for taking the case as the defendant is ready to make the statement. This application is moved through his counsel Sh. Jan Pal Singh, Advocate.**

**3. The defendant Sher Singh son of Narain Singh filed written statement on 13.11.81, to the plaint of the plaintiff, in which he admitted the claim of the plaintiff and the defendant has prayed in his reply for the decree of the plaintiff's suit except costs. Thereafter the statement of the defendant Sher Singh was recorded. In his statement the defendant has stated on oath that he has heard the plaint of the plaintiff. He admitted the claim of the plaintiff in toto. He further has stated that he has no objection if the suit of the plaintiff be decreed except costs. The said defendant is identified by Sh. Jan Pal Singh Advocate. Thereafter the statement of Sh. C.S. Ahuja was recorded who also has stated that the suit may be decreed as per the statement of the defendant.**

**4. In view of the written statement of the defendant and statement on oath by the defendant wherein he admits the claim of the plaintiff the suit of the plaintiff for the decree of declaration to the effect that the plaintiff is full owner in possession of the suit land measuring 33 Kanals 6 Marlas fully detailed in para No. 2 of the plaint and Jamabandi for the year 1978-79 is hereby decreed. However, the parties are left to bear their owner costs. Decree sheet be prepared accordingly. File be consigned to the record room after preparation of the decree sheet.**

*Announced in open Court.*

*13-11-81*

*sd/-*

*Sub Judge, III Class*



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*Kurukshetra**Note: All pages signed by me.**Sd/-**S.J.III C, KRK 13-11-81”*

20. A perusal of the above-said would show that apart from the fact that there is no reference to any family settlement or any pre-existing right in favour of defendant No.2, it is apparent that the said judgment has been passed on the basis of the written statement of defendant Sher Singh therein admitting the claim of the plaintiff and for the said purpose an application was also moved by the defendant. Even a perusal of the decree sheet Ex.P5 as well as Ex.D8, which is the written statement of defendant Sher Singh in the said suit and Ex.D-9, which is the statement of said Sher Singh in the said suit, would also show that there was no averment regarding any family settlement or regarding any fact showing any pre-existing right in favour of defendant No.2. Admittedly, the plaint in the said suit has not been placed on record. Ex.P-7 is the plaint with respect to a subsequent suit for injunction filed by defendant No.2 and Shiv Kaur against the present plaintiff, who had been made defendant No.1 in the said suit and is not with respect to the suit in which the judgment and decree dated 13.11.1981 was passed.

21. Even DW-1 (defendant No.2) in her cross examination has specifically stated that there was no family settlement / compromise with respect to the land, which was the subject matter of the decree dated 13.11.1981, which was passed in her favour. True translation of the relevant portion of said evidence of DW-1 is reproduced herein below: -



*Agreement/ Compromise was not executed regarding the same.”*

22. The 1<sup>st</sup> Appellate Court in para 18 had also given an affirmative finding that no family settlement had taken place. The relevant paras No.18 and 21 of the judgment of the 1<sup>st</sup> Appellate Court are reproduced herein below: -

“xxx                      xxx                      xxx

***18. Coming to the question of family settlement I find that Smt. Shanti Devi appearing as DW1 has stated that the suit in which her father suffered a decree in her favour had been got instituted by her father on her behalf. She and her father had gone together for the institution of the suit. No quarrel took place between her and her father. No family settlement had ever taken place in respect of the land transferred in her name through the said decree. The abovesaid admission on the part of Smt. Shanti Devi has established on record that there was no family settlement and the impugned decree was not based upon it. There is not even an iota of evidence on record nor it is so pleaded that the parties were Hindus; that they formed Joint Hindu Family; and that there had been a family partition.***

***In Commissioner of Gift Tax vs. Mam Singh, 1980 Current Law Journal 447 (D.B.) it was held that ancestral property cannot be gifted by the Karta to his sons.***

xxx                      xxx                      xxx

***21. From the aforementioned surgical scrutiny of the evidence on record it has been found that Smt. Shanti Devi was in possession of the suit land but since the title in the suit land could not be transferred on the basis of the said***



*unregistered decree the plaintiff was certainly entitled to possession to the event of his share i.e. 1/5<sup>th</sup>. Finding of the learned trial Court returned issue No.2A is also affirmed.”*

23. Similarly, the trial Court also in para Nos.17 and 18 of the judgment had come to a conclusion that no family settlement was entered into between Sher Singh and his daughter Shanti Devi, and thus, the bald plea taken in the written statement in the present suit with respect to a family settlement being there is not even remotely proved. It is also relevant to note that even in the said written statement, there is no mention of any date much less year of the said family settlement, nor has it been stated as to whether the said family settlement was oral or in writing and thus, the finding of the trial Court and the 1<sup>st</sup> Appellate Court on the said aspect is absolutely in accordance with law and calls for no interference.

24. From the above-said discussion, it is apparent that even as per the case of defendant No.2, the entire suit property of Sher Singh is self acquired and there was no family settlement regarding the same prior to the passing of the decree on admission dated 13.11.1981 and thus, there was nothing to even remotely show that defendant No.2 had any pre-existing right in the property in question and therefore, the judgment and decree dated 13.11.1981 taken on its face value, created a right in favour of defendant No.2 in praesenti and thus, would require registration as per the settled law, which would be discussed hereinafter.

25. The Hon'ble Supreme Court in the case of ***Bhoop Singh*** (***supra***) after considering Clause (vi) of sub-section (2) of Section 17 of the



Registration Act, 1908, which has been relied upon on behalf of the appellants, had observed that the exception which had been engrafted in the said provision was meant to cover a decree or order of a court, including a decree or order expressed to be made on a compromise, which merely declared ***“a pre-existing right and did not by itself create new right, title or interest in praesenti”*** in the immovable property of the value of Rs.100/- or upwards. It has further been observed that any other view would find the mischief of avoidance of registration, which requires payment of stamp duty etc. and that it is the duty of the court to examine in each case, as to whether the parties have any pre-existing right in the immovable property in question or not or as to whether the order or decree of the court was extinguishing or creating any right, title or interest in praesenti in the immovable property of the value of Rs.100/- or upwards in favour of the other party for the first time, either by compromise or consent and in case the same creates, extinguishes any right, title or interest in praesenti, then, the document etc. would require to be compulsorily registered. While crystalizing the law on the point, it was specifically observed that if the compromise decree was to create, for the first time any right, title or interest in the immovable property of the value of Rs.100/- or upwards in favour of any party to the suit, the decree or order would require registration. Para Nos.16 to 20 of the said judgment are reproduced herein below: -

***“16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order***



*expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs.100/- or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.*

*17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs.100/- or upwards in favour of other party for the first time, either by compromise or presented consent. If latter be the position, the document is compulsorily registerable.*

*18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below :*

*(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.*

*(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100/- or upwards in favour of any party to the suit, the decree or order would require registration.*

*(3) If the decree were not to attract any of the clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.*

*(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were*



***to be disposed of because of the compromise in question.***

(5) *If the property dealt with by the decree be not the "subject matter of the suit or proceeding", clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated.*

19. *Now, let us see whether on the strength of the decree passed in Suit No.215 of 1973, the petitioner could sustain his case as put up in his written statement in the present suit, despite the decree not having been registered. According to us, it cannot for two reasons :*

***(1) The decree having purported to create right or title in the plaintiff for the first time that is not being a declaration of pre- existing right, did require registration. It may also be pointed out that the first suit cannot really be said to have been decreed on the basis of compromise, as the suit was decreed "in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct". Decreeing of suit in such a situation is covered by Order 12 Rule 6, and not by Order 23 Rule 3, which deals with compromise of suit, whereas the former is on the subject of judgment on admissions.***

(2) *A perusal of the impugned judgment shows that the first appellate court held the decree in question as "collusive" as it was with a view to defeat the right of others who had bona fide claim over the property of Ganpat. Learned Judge of the High Court also took the same view.*

20. *The result is that the impugned judgment does not suffer from any legal infirmity and the petition is, therefore, dismissed."*



A perusal of the above judgment would show that it was further observed therein that in case, the decree were not to embody the terms of the compromise, then, benefit of the terms of compromise would not be derived, even if a suit were to be disposed of because of the compromise in question. It is relevant to mention that in the present case, it is not the case of the appellants that there was any bona fide compromise which was placed on record and was made to form a part of the decree. The facts in the case of ***Bhoop Singh (supra)*** were similar to the facts of the present case, inasmuch as, even in the case of ***Bhoop Singh (supra)***, the suit was decreed on the basis of the written statement filed by defendant therein admitting the claim of the plaintiffs to be correct and such a decree was stated to be governed by Order 12 Rule 6, and not by Order 23 Rule 3, which deals with compromise of suit. In the said case, the arguments on behalf of petitioner therein to the effect that the decree was not required to be registered in view of what had been provided in clause (vi) of sub-section (2) of Section 17 of the Registration Act, 1908 was also considered. It was observed that the factor which is required to be considered in order to find out the real purport of clause (vi) is to determine as to whether the document extinguishes the rights of one and seeks to confer right, title or interest in praesenti in favour of the other, relating to immovable property of the value of Rs.100/- and upwards, and if that be so, the document or record or compromise memo shall be compulsorily registered. With respect to family settlements, a distinction was drawn between an oral family settlement and a settlement which was reduced into writing and it was further observed that in case the



family settlement was reduced into writing and created an interest in favour of one party by virtue of the document, then, the same would also be required to be registered. The judgment in the above-said case applies on all fours in the present case and since the judgment and decree dated 13.11.1981 created a right for the first time in favour of defendant No.2 with respect to the immovable property of the value of more than Rs.100/-, the same mandatorily required registration.

26. Initially as noticed in the case of ***Phool Patti and another (supra)*** on 31.03.2009, a Bench of two Judges of the Hon'ble Supreme Court had by observing that there was inconsistency in the judgments in ***Bhoop Singh (supra) and Raghunandan & Ors. Vs. Ali Hussain Sabir and others***, reported as ***(2008) 13 SCC 102***, referred the matter to a Larger Bench. It was also noticed that subsequently, three Judges of the Hon'ble Supreme Court vide order dated 24.07.2014 had observed that there was no inconsistency between the aforesaid two decisions.

27. A perusal of the judgment in the case of ***Phool Patti and another (supra)*** would show that with respect to self acquired property, by relying upon ***Bhoop Singh (supra)***, it was observed that the transfer of the same required registration, as the same created rights for the first time in the property. In the said case, the Hon'ble Supreme Court on the basis of the statement made by Bhagwana and other facts and circumstances of the case had come to the conclusion that the family settlement was not with respect to the self acquired property and thus, the said part of the property was required to be transferred through a registered document. The law laid down



by the Hon'ble Supreme Court in the case of ***Bhoop Singh (supra)*** was also considered and relied upon in the said judgment of ***Phool Patti and another (supra)***.

28. In addition to the above, it would be relevant to note that by virtue of the impugned judgments the entire property of Sher Singh measuring 133 kanals and 2 marlas had been equally divided among all the legal heirs i.e. plaintiff (son) and defendants No.2 to 5 (four daughters) to the extent of 1/5<sup>th</sup> share each. It is the defendant No.2 (one of the daughters), who has pursued the litigation for all these years in order to have a higher share than the others on the basis of the said decree. Even the mother of defendant No.2 had in her written statement pleaded the said decree to be a waste paper. Thus, the impugned judgments deserve to be upheld both on law as well as on equity.

29. Moreover, on 07.05.2024, a statement was made on behalf of the appellants that the appellants had no claim qua respondents No.2 and 3 and had given up respondents No.2 and 3. The relevant portion of the order dated 07.05.2024 passed by the Coordinate Bench of this Court is reproduced hereinbelow:-

*“As per the office report, notice issued to the respondents no.2 and 3 have been received back unserved with the report that both of them had died.*

*Learned senior counsel for the appellants submits that he has no intention to implead the legal representatives of respondents no.2 and 3, as the present appellants have no claim qua them.*

***In view of the above, respondents no.2 and 3 are given***



*up.*

*List on 04.07.2024, for arguments.*

*May 07, 2024”*

30. Respondents No.2 and 3 in the present case are Shiv Kaur and Kirpal Kaur, who are defendants No.3 and 4 before the trial Court and are also daughters of Sher Singh. Since the decree, which was being relied upon by the defendant No.2, had been held to be null and void and the land comprised in the said decree measuring 33 kanals 6 marlas was also ordered to be equally divided among all the legal heirs of Sher Singh, thus, in case, the present appeal is to be allowed, the share of respondents No.2 and 3 (defendants No.3 and 4) would be decreased and thus, giving up claim against them has been done by the appellants at their own peril and the said fact also goes against the present appellants.

31. The Coordinate Bench of this Court in the case of **Sh. Siri Bhagwan** (Supra) had held as under:-

*“.....13. Following substantial question of law arises in the case: -*

***“Whether a consent decree is liable to be set aside on the ground that there was no family settlement and that the consent decree in fact amounted to oral gift, which was impermissible under law in the absence of registration?”***

xxx xxx

*20. The contention of learned counsel for the appellant to the effect that there being no pleading regarding any oral gift and so, the First Appellate Court could not make out a new case, has no merit. As has been noticed above that it was specifically pleaded by plaintiff – Smt. Murti Devi that no family settlement had taken place between her and Siri Bhagwan, as had been*



*claimed in Civil Suit No.638 of 1980. Her said contention has been found to be correct to the effect that in fact there was no family settlement. **Once it is found by the Court that no family settlement in fact took place nor could have taken place and consent decree was suffered by Murti Devi voluntarily, the Court is bound to see the legal effect of such a decree and it cannot be stated that if the decree amounted to oral gift, the Court is making out a fresh case without pleading.***

xxx xxx

*23. In the present case, as it has been found that no family settlement had taken place and rather giving of the property by Smt. Murti Devi to the defendant Siri Bhagwan amounted to an oral gift, which could not be effected without registration, therefore, the decree dated 11.11.1980 has been rightly held by the First Appellate Court to be null and void and not binding on the rights of the plaintiff - Smt. Murti Devi.*

*24. Consequent to the aforesaid discussion, the substantial question of law is answered accordingly. The present appeal fails and the same is dismissed. The judgment and decree passed by the First Appellate Court is upheld. In the peculiar circumstances of the case, parties are left to bear their own costs.”*

32. SLP No.25730 of 2023 against the said judgment has also been dismissed vide order dated 01.12.2023. The law laid down in the abovesaid judgment would also further the case of the plaintiff. Moreover in case, decrees like the present one are held to be not requiring registration, then the same would legitimize the illegal act of suffering such decrees in order to avoid stamp duty / registration charges. It could lead to a situation where one person who wishes to sell the property to another person, would instead



of getting the sale deed registered, choose to file a suit for declaration in which a consented written statement would be filed and the person who wishes to purchase the property, without having any pre-existing right in the same, would be beneficiary of such a decree declaring him to be the owner in the property and the same would be materialise without either of the parties having to pay registration charges / stamp duty and same would result in loss to the State exchequer.

33. The argument raised on behalf of the appellants to the effect that since the issue with respect to the ancestral property has been held against the plaintiff, thus, even the issue with respect to challenge to the decree should also be held against them and that the suit of the plaintiff is liable to be dismissed in toto, is also misconceived. It is a matter of settled law that merely because one issue has been decided against a party or one of the plea raised by the party has not been found to be proved, the same would not be binding with respect to the adjudication on the other issues. In the present case, the issue with respect to ancestral property and on the aspect of challenge to the decree dated 13.11.1981, are two separate issues i.e., issue No.1 and 2 and the Courts below have correctly decided both the said issues on the basis of the evidence as well as the law on the point. It would be relevant to mention that the plaintiff has challenged the said decree dated 13.11.1981 in the instant suit on the ground that the said decree is null and void and not binding on his rights and even defendant No.1 (who is the mother of the plaintiff and defendants No.2 to 5) had specifically stated in her reply that the said decree was a waste paper and



not binding on her. Moreover, once a decree has been challenged, it is the duty of the Court to consider all arguments in law raised by both the parties and also to see whether the said decree is valid and is legally enforceable and as to whether any rights are created by virtue of the said decree for the first time or not.

34. To be fair to the learned senior counsel/ counsel for the appellants, this Court would now deal with the judgments referred to by them. The first judgment which has been relied upon on behalf of the appellants is the judgment in the case of **Gurcharan Singh and others** (Supra). The facts of the said case were completely different from the facts of the present case inasmuch as in the pleadings with respect to the consent decree, which was in question in the said case, there was a specific plea taken with respect to there being a family settlement on 15.06.1994 and it was on the basis of the said pleadings with respect to the family settlement, which factum was also admitted in the written statement, that it was observed that there was a pre-existing right in favour of the plaintiff therein and the arguments raised to the contrary to the effect that there was no pre-existing right was thus, rejected. The Hon'ble Supreme Court in the said case had also considered the applicability of the judgment in the case of **Bhoop Singh** (Supra) and it is on the basis of the said distinguishable facts it was observed in the case of **Gurcharan Singh and others (supra)** that the same was not applicable. Relevant portion of the said judgment is reproduced hereinbelow:-

***“16. xxx xxx. Suit No. 556 was filed with the pleading that Will dated 02.09.1986 as well as Family Settlement dated***



***15.06.1994, which are specifically pleaded in 20 paragraphs 2 and 3 of the plaint are to the following effect:-***

*“2. That the defendant has executed a valid and legal Will dated 02.09.1986 in favour of the plaintiffs with his free will and consent while he was in a fit disposing mind, which was attested and registered by the Sub-Registrar.*

***3. That the defendant considering it proper has effected a family settlement on 15.06.1994 vide which the property in suit was allotted to the plaintiffs in equal shares and the defendant has relinquished all his right, title and interest whatsoever in the said property in favour of the plaintiff in the said family settlement.”***

*17. In the suit, Bhajan Singh was only defendant, who filed his written statement on 03.12.1994, allegations in paragraphs 2 and 3 of the plaint were admitted by the defendant in his statement in paragraphs 2 and 3, which is to the following effect:-*

*“2. Para No. 2 of the plaint is admitted to be correct.*

***3. Para No. 3 of the plaint is admitted to be correct.”***

*18. In the written statement, the defendant Bhajan Singh prayed that suit of the plaintiffs be decreed as prayed. The pleading in the suit and in the written statement clearly leads to the conclusion that suit was filed on the basis of pre-existing right in favour of plaintiffs, which was basis of the suit. Pre-existing right of the plaintiffs was admitted by the defendant and decree was passed therein.*

*19. Thus, the submission of the plaintiffs-respondents that suit was not based on pre-existing right of the plaintiffs cannot be accepted, which is belied by the categorical pleading in the plaint. In view of the above pleadings, we are of the view that very basis of the applicability of the judgment of Bhoop Singh (supra) is knocked out and is not attracted in*



*the present case. xxx xxx”*

35. In the present case, on the other hand, it would be relevant to mention that neither was there any family settlement proved nor the same was the basis of passing of the earlier decree dated 13.11.1981 and rather, in the cross-examination of defendant No.2 (DW-1), it had categorically been admitted by her that there was no family settlement and thus, the judgment in the abovesaid case would not further the case of the appellants.

36. The second judgment which has been relied upon on behalf of the appellants is in the case of ***Mohammade Yusuf and others*** (Supra). In the said case also, the law laid down by the Hon’ble Supreme Court in the case of ***Bhoop Singh*** (Supra) was considered and it was observed that since the decree in question was not a decree based on an admitted written statement, thus, the law laid down in the judgment in the case of ***Bhoop Singh*** (Supra) would not apply. Moreover, the facts of the said case were completely different from the facts of the present case. In the said case, the parties which were claiming the decree in their favour, had based the suit in which the compromise decree was passed on the plea of adverse possession. The High Court in the said case had relied upon the judgment of ***Gurdwara Sahib Vs. Gram Panchayat, Village Sirthala and another*** reported as ***2014 (1) SCC 669*** to come to the conclusion that the said party had no pre-existing rights in the suit property as no suit for declaration of title was maintainable on the plea of adverse possession. It was observed by the Hon’ble Supreme Court that the judgment in the case of ***Gurudwara Sahib*** (Supra), had been overruled by a three Judge Bench Judgment of the



Hon'ble Supreme Court in the case of **Ravinder Kaur Grewal and others Vs. Manjit Kaur and others** reported as **2019(8) SCC 729** and even a suit for declaration of title on the plea of adverse possession for a period of 12 years or more was maintainable and the possessory owner acquires the right, title and interest which was possessed by the outgoing person/owner and it was further observed that the very basis of the High Court for holding that the compromise decree dated 04.10.1985 required registration was knocked out. Relevant portion of the said judgment is reproduced hereinbelow:-

“xxx xxx

**8. In the facts of that case, this Court held that the first suit cannot really be said to have been decreed on the basis of compromise, as the suit was decreed “in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct”. Further, the earlier decree was held to be collusive. Two reasons for holding that the earlier decree in the above said case required registration have been mentioned in **paragraph 19 of the judgment**, which is to the following effect:-**

**“19. Now, let us see whether on the strength of the decree passed in Suit No. 215 of 1973, the petitioner could sustain his case as put up in his written statement in the present suit, despite the decree not having been registered. According to us, it cannot for two reasons:**

**(1) The decree having purported to create right or title in the plaintiff for the first time that is not being a declaration of pre-existing right, did require registration. It may also be pointed out that the first suit cannot really be said to have been decreed on the basis of compromise, as the suit was decreed “in view of the written statement filed by the defendant admitting the claim of the**



***plaintiff to be correct”. Decreeing of suit in such a situation is covered by Order 12 Rule 6, and not by Order 23 Rule 3, which deals with compromise of suit, whereas the former is on the subject of judgment on admissions.***

*(2) A perusal of the impugned judgment shows that the first appellate court held the decree in question as ‘collusive’ as it was with a view to defeat the right of others who had bona fide claim over the property of Ganpat. Learned Judge of the High Court also took the same view.”*

***9. Following the above judgment of [Bhoop Singh](#) , the High Court held that since the compromise decree dated 04.10.1985 did not declare any pre-existing right of the plaintiff, hence it requires registration. The High Court relied on the judgment of [Gurdwara Sahib Vs. Gram Panchayat Village Sirthala](#) and made following observations in paragraphs 10, 11 and 12: -***

***“10. In the present case, in the earlier suit CS No.250-A/1984 the petitioner had claimed declaration of title on the plea of adverse possession and the compromise decree was passed in the suit. The very fact that the suit was based upon the plea of adverse possession reflects that the petitioner had no pre- existing title in the suit property. Till the suit was decreed, the petitioner was a mere encroacher, at the most denying the title of lawful owner.***

***11. The Supreme Court in the matter of [Gurudwara Sahib Vs. Gram Panchayat Village Sirthala](#) has settled that declaratory decree based on plea of adverse possession cannot be claimed and adverse possession can be used only as shield in defence by the defendant. It has been held that:-***

***“7. In the Second Appeal, the relief of ownership***



*by adverse possession is again denied holding that such a suit is not maintainable.*

*8. There cannot be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”*

*12. The plea of the petitioner based upon Section 27 of the Limitation Act is found to be devoid of any merit since it relates to the extinction of the right of the lawful owner after expiry of the [Limitation Act](#), but in view of the judgment of the supreme court in the matter of [Gurudwara Sahib](#), the petitioner cannot claim himself to be the owner automatically after the expiry of the said limitation.”*

*10. The judgment of [Gurdwara Sahib Vs. Gram Panchayat Village Sirthala](#) has now been expressly overruled by a Three Judge Bench judgment in [Ravinder Kaur Grewal and Others Vs. Manjit Kaur](#). This Court held in the above case in paragraph 62 that once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner.*

xxx xxx

*13. In view of the pronouncement of this Court by Three Judge Bench judgment in [Ravinder Kaur Grewal and Others Vs. Manjit Kaur and Others](#), the very basis of the High Court for holding that compromise deed dated 04.10.1985 requires registration is knocked out. The present is not a case where there is any allegation that the decree dated 04.10.1985 is a collusive decree. The decree dated*



*04.10.1985 was in favour of the plaintiff of 7 biswa land, survey No.203 and for remaining land of survey No.203, it was held that it belonged to defendants.*

***14. In [Bhoop Singh](#), this Court held that the earlier decree required registration for the reasons as mentioned in paragraph 19. The reasons given in paragraph 19 of [the above case](#) has no application in the facts of the present case.”***

37. In the present case, as has been stated hereinabove, no plea has been shown to have been taken in the earlier suit to even remotely show that there was any pre-existing right in favour of defendant No.2. Moreover, in the present case, it is not even the case of the appellants that there was any bona fide compromise and the compromise was a part of the decree and thus, the facts of the present case are completely different from the facts of the judgment in the case of ***Mohammade Yusuf and others*** (Supra) and the said judgment would also not further the case of the appellants.

38. The third judgment which has been relied upon on behalf of the appellants is ***Khushi Ram and others*** (Supra). The facts of the said case were also completely different from the facts of the present case. In the case of ***Khushi Ram and others*** (Supra), the pleadings on the basis of which the consent decree was passed, were reproduced in para 18 of the judgment and it was observed that it had been specifically averred in the earlier suit that the parties constituted a joint Hindu family and that a family settlement had taken place about two years before filing of the said suit and since then the plaintiffs therein were owners in possession of the suit land. It was after taking into consideration the said pleadings and the fact that the factum of family settlement had been admitted in the written statement that the



Hon'ble Supreme Court came to the conclusion that there were pre-existing rights in favour of the plaintiff therein. The law laid down in the case of **Bhoop Singh** (Supra) was also considered and it was found that the same was distinguishable in view of the said facts. Relevant portion of the said judgment is reproduced hereinbelow:-

*“18. In Civil Suit No.317 of 1991, following was pleaded in paragraphs 2 and 3:-*

*“2. That the parties are closely related to each other, the plaintiffs are nephews of the deft and constituted a Joint Hindu Family. The deft Smt. Jagno Devi is the daughter of Sh. Shib Lal, the grand father of the plaintiffs.*

*3. That the defendant is living with the plaintiffs at Village Chakerpur and the plaintiffs are looking after her in her old age and the defendant has no issue. The defendant is very happy with the services of the plaintiff rendered to her and out of love and affection, the deft had allotted the above mentioned land to the plaintiffs in equal share in a family settlement /arrangement, which took place about 2 years back and since then the plaintiffs are owners in possession of the said land and the deft had relinquished all rights therein.”*

xxx xxx

*21. There is no dispute that in the earlier Civil Suit No.317 of 1991 in which consent decree was passed on 19.08.1991, the subject matter of suit was the agricultural land situated in Village Garhi, Bajidpur. Further the suit was decreed on the written statement filed by Smt. Jagno accepting the claim of plaintiffs that there was family settlement between the parties in which the half share in the land was given to the plaintiffs of Civil Suit No.317 of 1991. The question is as to whether*



*the decree passed on 19.08.1991 required registration under **Section 17** of the Indian Registration Act, 1908.*

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24. *The decree passed in Bhoop Singh's case has been quoted in para 2 of the judgment, which clearly proved that declaration was granted that plaintiff will be the owner in possession from today. In the above case, the suit was decreed on the basis of compromise though the decree is on the ground that defendant admitted the claim of the plaintiff in written statement.*

xxx xxx”

39. Thus, the said judgment would also not further the case of the appellants.

40. Even the judgment of the learned Single Judge of this Court in **Gurmail Singh and others** (Supra) relied upon on behalf of the appellants is also on completely different facts inasmuch as in the said case also, decree had been passed acknowledging the family settlement whereas in the present case, neither any family settlement has been proved nor it is shown that the consent / collusive decree dated 13.11.1981 was passed after any such family settlement had taken place. Thus, the said judgment is also distinguishable on facts and would not further the case of defendant No.2.

41. From the aforesaid judgments, it is clear that the case of **Bhoop Singh** (Supra) still holds the ground. Since in the facts and circumstances of the present case, the property in question, even as per the case of appellant-defendant No.2 was self-acquired property and there was no plea in the original suit to show that there was any family settlement or that defendant No.2 had any pre-existing rights thus, by virtue of the judgment and decree



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dated 13.11.1981, new rights were created in praesenti in favour of defendant No.2 and hence, both the Courts have rightly come to the conclusion that the said judgment and decree dated 13.11.1981 required registration. The substantial question of law, which has been formulated in paragraph 16 of the present judgment is thus answered in favour of the respondent No.1(plaintiff) and against the appellants. Moreover, as has been stated hereinabove, the passing of the impugned judgments has led to an equitable distribution of the property in question and thus, neither in law nor on equity, is there any scope for interference in the impugned judgment and decree of the learned Ist Appellate Court as well as the trial Court.

42. As far as appellant No.2 is concerned, he being the lis pendens purchaser has to sink and swim with the appellant No.1 and since, the appeal has been found to be meritless thus, the appeal filed by both the appellants deserves to be dismissed.

43. Keeping in view the abovesaid facts and circumstances, finding no merits in the present appeal, the same is accordingly dismissed.

44. All the pending applications, if any, shall stand disposed of in view of the abovesaid judgment.

(VIKAS BAHL)  
JUDGE

July 31, 2024  
naresh/pawan/davinder

|                             |        |
|-----------------------------|--------|
| Whether speaking / reasoned | Yes/No |
| Whether reportable          | Yes/No |