

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.RSA-847-2023 (O&M)

Shakuntla Devi
....Appellants

Versus

Partap Singh and others
..Respondents

2.RSA-1619-2023 (O&M)

Shakuntla Devi
....Appellants

Versus

Jaswant Singh and others
..Respondents

3.RSA-1654-2023 (O&M)

Shakuntla Devi
....Appellants

Versus

Shyam Lal and others
..Respondents

4.RSA-1647-2023 (O&M)

Shakuntla Devi
....Appellants

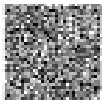
Versus

Mahabir Singh and others
..Respondents

5.RSA-1646-2023 (O&M)

Shakuntla Devi
....Appellants

Versus



Satish and others

..Respondents

6.RSA-1645-2023 (O&M)

Shakuntla Devi

....Appellants

Versus

Meer Singh and others

..Respondents

7.ESA-53-2015 (O&M)

Meer Singh

....Appellants

Versus

Surinder @ Sunder and others

..Respondents

Reserved on: 25.04.2024

Date of decision: 17.05.2024

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pritam Singh Saini, Advocate
for the appellant (in all the Regular Second Appeals)

Mr. Kul Bhushan Sharma, Advocate
for the appellant(in ESA-53 of 2015)

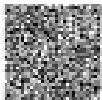
Mr. B.K.Bagri, Advocate
for respondent No.1 and 2(B) (in ESA-53 of 2015)

Mr. Mani Ram Verma, Advocate
Mr. Nipun Verma, Advocate
for respondent no.4, 27 and 28 (in RSA-847-2023)

Mr. Ajay Jain, Advocate
for respondent no.20 (in RSA-847 of 2023)

Mr. Sanjay Mittal, Advocate
for respondent no.5,6,7 (in RSA-847-2023)

Mr. S.K.Yadav, Advocate
for respondent no.2 (in RSA No.847-2023)



for respondent no.3 (in ESA-53-2015)

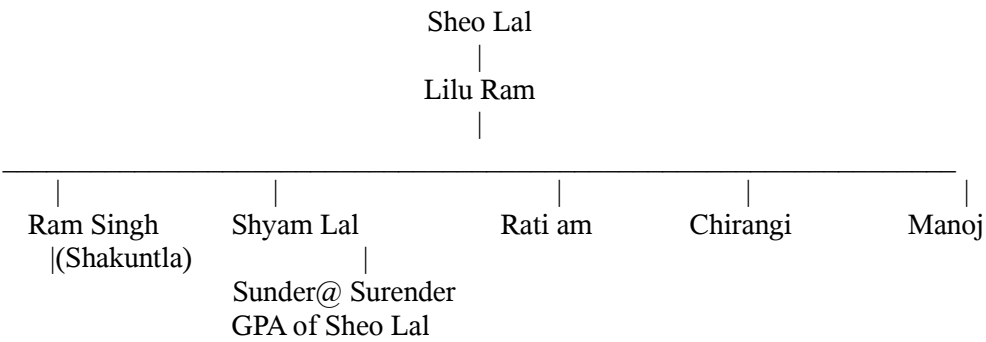
Mr. R.D.Yadav, Advocate
for respondent nos.17, 18, 19 (in RSA-847-2023)

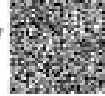
ANIL KSHETARPAL, J

1.Brief facts of the case:-

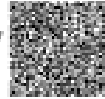
1.1 With the consent of the learned counsel representing the parties, a batch of 7 appeals out of which six are Regular Second Appeals whereas one is Execution Second Appeal shall stand disposed of by a common judgment. Learned counsel representing the parties are also ad idem that the judgment in the Regular Second Appeals would also cover the Execution Second Appeal. All the six Regular Second Appeals have been filed by the plaintiff to challenge the correctness of judgment passed by the First Appellate Court, which in turn has reversed the judgment passed by the trial court. The Execution Second Appeal has been filed by the decree-holder to challenge the correctness of the concurrent judgments of the courts below while allowing the objections filed by Smt. Shakuntla, who is the appellant (plaintiff in suit) in the Regular Second Appeals.

1.2 In order to comprehend the issues involved in the present case, some relevant facts and pedigree table of the family are required to be noticed. The genealogical tree of the family is extracted as under:-

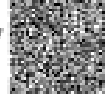




3. As is evident from the family tree, Sh.Sheo Lal was the common ancestor and owner of the property in dispute. In all these appeals, the dispute is confined to land measuring 4 kanals comprised in Rectangle No.121 khasra no.8/1 which shall be referred to as the suit property. Originally, Sh.Sheo Ram was owner of 6 kanals land comprised in khasra no.8 of Rect. no.121. He sold plot measuring 2 kanals to Pehlad and Kartar by executing a sale deed dated 06.10.1977. After the sale deed was executed, Sh.Sheo Lal was left with 4 kanals land in khasra no.8 (the suit land) however, he suffered a consent decree dated 08.03.1979, in favour of his grandson Sh.Ram Singh by including the land measuring 5 kanals out of Rect. No.121, khasra no.8. The vendees namely Pehlad and Kartar filed a declaratory suit challenging the decree dated 08.03.1979, claiming that it will not affect their rights, which was decreed on 30.09.1995. First appeal filed by Sh.Sheo Lal was dismissed on 17.10.1997. He filed RSA no. 3735-97 which was admitted for regular hearing. During the pendency of the Regular Second Appeal, the contesting parties entered into a settlement and got the appeal disposed of on 24.03.1995.. As per the settlement, it was admitted that there was an error in the decree passed on 08.03.1979, and it shall not affect the rights of the vendees namely Pehlad and Kartar. On 22.11.1995, the suit filed by Smt. Shakuntla against her husband Sh.Ram Singh claiming that by virtue of family settlement she is the owner of the property, was decreed. Thus, Smt. Shakuntla became the owner of the land including land measuring 4 kanals comprised in



khasra no. 8/1. Sh.Sheo Ram allegedly appointed Surinder @ Sunder his great grandson as his power of attorney. On the basis of the alleged power of attorney Surinder @ Sunder great grandson of Sh.Sheo Lal executed various sale deeds with respect to property of his great grandfather Sh.Sheo Lal including the suit property which resulted in Sh.Sheo Lal getting FIR no.49 under Section 420 IPC registered against his own great grandson-Surinder. Sh.Sheo Lal also filed three different suits against Surinder @ Sunder as well as the vendees. However, all the three suits were ultimately withdrawn. On 31.05.2005, Surinder, on the basis of the General Power of Attorney alleged to have entered into an agreement to sell the part of the suit land in favour of Meer Singh, appellant in Execution Second Appeal. Meer Singh filed a suit for the specific performance of the agreement to sell, which was decreed on 05.02.2008. Meer Singh filed the execution petition in which Sh.Ram Singh filed objections. The objection petition was dismissed by the Executing Court, which in appeal was upheld by the First Appellate Court. The revision petition filed by Sh.Ram Singh was also dismissed. Subsequently Smt.Shakuntla filed objections which were allowed on 23.01.2002. Two First appeals were filed by Meer Singh and Shakuntla. Smt. Shakuntla filed the appeal only against certain observations made by the Executing Court against her. Both the appeals were dismissed on 27.02.2015 against which ESA-53-2015 is pending. In between, with respect to remaining objections, a registered family settlement was arrived at between the family of Sh.Sheo Lal on 21.10.2005, however, the suit land was never included in the aforesaid settlement.



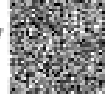
1.4 Smt.Shakuntla filed a suit to claim a decree of declaration that the various sale deeds executed by Sh.Sheo Lal through Surinder including the sale deed executed in favour of Meer Singh pursuant to the decree for specific performance of agreement to sell, would not affect her rights, which was contested by all the vendees including Meer Singh etc. The civil suit was decreed by a detailed judgment and decree dated 15.09.2017. As many as six appeals were filed by the various vendees which were accepted by the First Appellate Court vide judgment and decree dated 06.01.2023. It shall be noted here that Meer Singh also filed the first appeal and it was also allowed.

2. Arguments put forth by the learned counsel representing the respective parties:-

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook, alongwith the requisitioned record of the courts below.

2.2 Learned counsel representing the parties have also filed their respective synopsis alongwith the gist of their arguments. Sh.Ajay Jain, the learned counsel representing respondent no.20 has made the following submissions:-

“>The plaintiff in the case in hand failed to prove her title. Perusal of decree dated 08.03.1979 in Civil Suit No. 106 of 1979 titled "Ram Singh Versus Sheo Lal", would reveal that the same was in respect of land measuring 11 Kanal 14 Marla situated in the revenue estate of village Bawal. Therein, Ram Singh had claimed himself to be owner in possession of land comprised in Khewat No. 123 min, Knatoni No. 1411min. Mustatil No. 105, Kila No. 23 (0-14) and Mustatil No. 121. Kila No.3 (6-0) and 8 min Uttar (5-0) through a family settlement. Same was decreed as per compromise Ex. CX. However, for reasons best



known to the plaintiff, the said compromise Ex. CX has not been placed on the record.

> After decreetal of suit titled "Pehlad and others Versus Sheo Lal and another" and during the pendency of the appeal titled "Sheo Lal Versus Pehlad and others", Ram Singn - suffered decree dated 22.11.1995 Ex.PW5/12 in favour of his wife Shakuntla Devi in respect of land comprised in Khewat No. 140, Khatoni No. 167, Rect. No. 105, Kila No. 23 (0-14) and Rect. No. 121, Kila No. 8/1 (5-0), Kita 2, measuring 5 Kanal 14 Marla and Khewat No. 141, Khatoni No. 168, Rect. No. 121, Kila No. 3 (6-0) of its 11/12 share situated within the revenue estate of Bawal, District Rewari as per family settlement

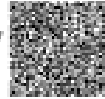
> Surrender @ Sunder son of Sham Lal son of lilu son of Sheo Lal on the basis of GPA dated 22.05.2004 executed by Sheo Lal sold the property by various sale deeds. Said sale deeds were challenged by Sheo Lal by filing 3 separate suits all dated 08.10.2004. All the 3 suits were got dismissed as withdrawn on 06.10.2005.

> GPA dated 22.05.2004 has never been set aside by any competent Surrender @ Sunder - great grandson Sheo Lal had alienated the suit property on the basis of GPA dated 22.05.2004. Sheo. Lal was owner of about 66 Kanals of land including the suit property. Same has till date not been partition. Sale of 4 Kanal of land(suit property) in specific Khasra No. 121/8 would be deemed to be sale of joint land. As stated hereinabove, Sheo Lal was owner of about 66Kanal of land including the suit property, therefore, sale deed on basis of GPA dated 22.05.2004 cannot be held invalid as total land was much more than sold.

>Sheo Lal executed a family settlement dated 21.10.2004 (Ex. DW1/1) amongst his 4 grand sons namely Ram Singh, Rati Ram, Chiranj, Sham Lal, Suman (widow of Manoj son of Lilu son of Sheo Lal) and Shanti Devi widow of Lilu Ram.

>Shakuntla (plaintiff) filed an application (Ex. DW1/2) before the Tehsildar Bawal for sanctioning of mutation in her favour in respect of land comprised in Khewat No. 140, khatoni no. 167, Rect., No. 105, Kila, Khatoni No. 23 (0-14) and Khewat No. 141, Khatoni No. 168, Rect. No. 121, Kila No. 3 (6-0) of its 11/12 share total measuring 6 Kanal 4 Marla as per judgment and decree dated 22.11.1995. Affidavits DW1/3 and DW1/4 were filed by Ram Singh and Shakuntla respectively both dated 29.11.2007 (contents thereof have been reproduced in para No. 34 and 35 of the judgment dated 06.01.2023 passed by Addl. District Judge, Rewari).

>Accordingly, Mutation No. 9501 (Ex. DV1/5) was entered and sanctioned in favour of the plaintiff excluding the land comprised in Rect. No. 121, Kila No. 8/1 (4-0)



> Mutation No. 16954 (Ex. DW10/7) was sanctioned in favour of Sheo Lal.(ExPW5/3) pursuant to judgment and decree dated 30.09.1995

> Name of Sheo Lal also came to be recorded in column of ownership in jamabandi for the year 1999-2000 (Ex. DW10/10) in respect of land comprised in Rect. No. 121, Kila No. 8/1 (4-0). However, the said revenue record was never got corrected by the plaintiff - Shakuntla by initiating any proceedings.

> Even in the 3 civil suits filed by Sheo Lal (Ex. DW1/15, Ex. DW1/18 and Ex. DW1/21), Sheo Lal is claiming himself to be the owner in possession of agricultural land (fully detailed and described in para No.1 of the complaints) including land comprised in Rect. No. 121, Kila No. 8/1(4-0), situated within the revenue estate of Village Bawal, Tehsil Bawal, District Rewari.

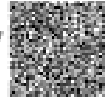
> Defendant No. 3 to 6 and the purchasers through them are bonafide purchasers for valuable consideration. Instant suit is a case of extortion from the bonafide purchasers.”

2.3 Sh. Mani Ram Verma, Advocate, representing the respondent no.4, 27 and 28 in his written note of submissions has submitted as under:-

“It is settled preposition of law that in a suit for declaration of title and possession, the onus is upon the plaintiff to prove his title further not only is the onus of the plaintiff, he must prove his title independently, and a decree in his favour cannot be awarded for the only reason that the defendant has not been able to prove his title The Ruling 2016 SAR (Civil) 1 is worth mentioning here. Relevant head note is given below for proper focus:

C- Specific Relief Act, 1963 Sec. 34 Suit for declaration of title and possession - Burden of Proof- It is a settled position of law that in suit for declaration of title and possession, the onus is upon the plaintiff to prove his title- Further, not only is the onus on the plaintiff, he must prove his title independently, and a decree in his favour cannot be awarded for the only reason that the defendant has not been able to prove his title”.

The plaintiff/ appellant is deriving her title from her husband Ram Singh through collusive decree dated 22-11-1995 Ex. PW5/13 and Ram Singh is deriving



his title from his grandfather Sheo Lal through the judgment and decree dated 08-03-1979 Ex. PW 6/4. The basis of the above said decree is the statement of Sheo Lal and Ram Singh, before the court Ex. DW3/2

The statement of Sheo Lal & Ram Singh referred as under: - "States that we have compromised the matter. Compromise is Ex. CX, which is correct and accept and the same bear our signatures. As per compromise, suit be decreed and the parties be left to bear own expenses".

The decree dated 08-03-79 is based on the above said statement dated 06.03.79 more specifically on the compromise Ex. CX, but the said compromise has not been brought on the record. The finding of the court below in this regard are referred bellow:

No copy of compromise Ex. CX which formed the basis of decree in favour of Ram Singh has been brought on record. Even during the course of argument nothing was addressed from the side of plaintiff in this regard, enabling the court to presume that there no such document available on record of proceedings of the civil suit which led to passing of decree dated 08-03-79 in favour of Ram Singh

The Perusal of the para No. 1 & 2 of the plaint titled as Ram Singh V/s. Sheo Lal. Ex. DW3/1 reveals that both the parties had categorically admitted the suit property as Joint Hindu Family Property. It is further admitted position that Sheo Lal was having four grandsons except Ram Singh plaintiff namely Rati Ram, Chiranji, Shyam Lal & Manoj, who were also members of Joint Hindu Family of Sheo Lal. thus any decree passed in favour of Ram Singh depriving above said four grandsons on the basis of family settlement without their concurrence is void & invalid. The Relevant Rulings are detailed herein:

i. 2011 (3) SRJ 224 (S.C)

ii. AIR 1997 S.C 1333

iii. 2002 (3) CCC 19 (P & H)

iv. 2016 (SUPPL) CCC 349 (P&H)



More so, Sh. Sheo Lal (since deceased) had executed and registered a family settlement registration No. 959, dated 21-10-2004 Ex. DW1/1 in favour of his grandsons which is duly signed by Sheo Lal & Ram Singh. Being signatory of the above said family settlement Ram Singh & other parties are also bound by the same.

*The detail given in para (f) and schedule of the family settlement herein given below
As settler is aged 102 years and he has love and affection with his grandsons and their wives (settlee no. 1 to 6) and they had taken care of him,*

So, keeping in view this fact, settler with the consent of his elder son Ram Singh had entered into family settlement as per which, a civil court decree has been passed in favour of Ram Singh qua 6 kanal 4 marla land, out of total land and the name of Ram Singh has been entered in the revenue record. Ram Singh had suffered a civil decree in favour of his wife Shakuntla qua said 6 kanal 4 marla land".

Schedule

- a(1) Ram Singh*

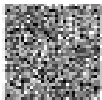
*adjusted 6 Kanal 4 Marla
given through Civil*
- (ii) Shakuntla*

*Court decree stated above.
And 6 Kanal 16 Marla
detailed in Schedule
No. 1 of the Family
Settlement total
measuring 13 Kanal.*
- b Rati Ram:*

*The land detailed in measuring 13
Kanal schedule 2 total*
- c. Chiranji*

*The land detailed in schedule 3
total measuring 13 Kanal.*
- d. Shyam Lal:*

*Adjusted the land total measuring
6 Kanal 14 Marla sold by
Surender @Sunder s/o Sh Shyam
Lal through Power of Attorney of
Sheo Lal to appellants and the
land measuring 6 Kanal 6 Marla
detailed in schedule 4 total
measuring 13 Kanal*



- e. Suman Land detailed in schedule 5 of the family settlement measuring 13 Kanal.
- f. Shanti Devi: Land measuring 1 Kanal 16 marlas detailed in schedule 6

Pertinently the above said family settlement was acted upon and accordingly defendant No. 2 filed an application Ex. DW1/2 before Tehsildar Bawal praying therein to enter and sanction, the mutation of agricultural land comprised in Khewat No. 140, Khatoni No. 167, Rect. No. 105, Killa No. 23 (0-14), 11/12 share of Khewat No. 141, Khatoni No. 168, Rect. No. 121, Killa No. 3(6- 0), measuring 5 Kanal 10 Marla total measuring 6 Kanal marla in terms of decree dated 22.11.1995 passed by Sh.M.L.Gulati, ASSJ, Rewari in her favour

The relevant contents of the application are given below

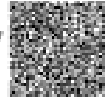
"That I am owner of property comprised in khewat no. 140. khatoni no. 167, rect. no. 105, killa no. 23(0-14) and khewat no. 141, khatoni no. 168, mustatil, no. 121, killa no. 3(6-0) 11/12 share i.e. 5 kanal 10 marla total measuring 6 kanal 4 marla, as per order dated 22.11.1995 passed by Sh. M.L. Gulati, ASSJ, Rewari".

The compliance of above-said decree and order has not been done in the documents, so the mutation may be entered in my favour.

Moreover, along with the application, two duly sworn affidavit one of defendant No. 1 Ram Singh Ex. DW1/3 and second of the plaintiff Ex. DW1/4 before Executive Magistrate, Bawal dated 29-11-2007 were also filed in support of the above said application by Shakuntla.

The contents of the affidavit of Ram Singh DW 1/3 before Executive Magistrate Bawal dated 29.11.2007 is herein referred:

That my wife had moved an application for entering mutation in her favour.



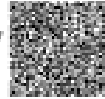
That mutation be entered regarding the land, except Khewat no. 166, Khatoni no. 191, mustatil no. 121, killa no. 8/1, measuring 4 kanla, for which, I have no objection".

The contents of the affidavit of Shakuntla Devi Ex. DW1/4 before Executive Magistrate Bawal dated 29.11.2007 is herein referred:

"That I had moved an application for entering the mutation. That mutation be entered regarding the land, except Khewat no. 166, Khatoni no. 191, mustatil no. 121, killa no. 8/1, measuring 4 kanal, for which, I have no objection."

Accordingly, mutation No. 9501, Ex. DW1/5 was sanctioned in favour of plaintiff Shakuntala Devi excluding the land in dispute comprised in Rect. No. 121, Killa No. 8/1(4-0). From the above said facts and circumstances it can safely be concluded that the plaintiff miserably failed to prove her title and the title of her transferor, so the suit of the plaintiff deserves dismissal by accepting this appeal.

The great grandfather-in-law of the plaintiff, Sh. Sheo Lal also executed and registered Power of Attorney and will dated 22-05-2004 in favour of his grandson Sunder Surrender and in terms of the same, the said Sunder Surrender had sold the land comprised in Rect. No. 121, Killa No. 8/1(4-0) to respondents/defendants through registered sale deeds. The defendant No 1 taking undue advantage of the old age and illiteracy of Sh. Sheo Lal got filed civil suit Ex. DW1/15, Ex. DW1/18 & DW1/ 28 on 08-10-2004 against the Sunder Surrender and vendors of defendant/respondent and respondents. The above said suit filed in the name of Sh. Sheo Lal were withdrawn by Sheo Lal on 06-10-2005 by recording statement on oath before court, the certified copies of the said orders are Ex. DW1/27 Ex. DW1/28 & DW1/29 thus the power of attorney in favour of Sunder Surrender and subsequent sale deed in terms of his power of attorney are genuine and correct. The criminal case was also resulted into acquittal by holding the power of attorney as genuine document. Ex. DW1/30 is the judgment and its relevant portion is referred below: -



When the civil suit has been withdrawn by Sheo Lal against his grandson regarding execution of sale deeds, then it is proved that the intention of Sheo Lal and it is proved that he executed the power of attorney for execution of alleged sale deeds, The accused also produced the attested copy of sale deeds Ex. D-4 and Ex. D-5 which shows that his grandfather also executed the sale deed on 11-08-2003 and 8-9-2003 and the present accused being grandson become a witness. The alleged sale deed was executed in the year 2003. Hence, it is proved that the complainant had faith in his grandson Surender Sunder who went at Delhi for execution of power of attorney and selling his property as per his own consent. Now the complainant had expired. There is no fraud committed by accused with Sheo Lal complainant and the same has not proved by the prosecution against the accused.

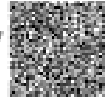
The findings of the trial court to the effect that in terms of compromise Ex. PW5/2. Hon'ble High Court recognized the rights of Ram Singh is totally wrong and perverse for the following reasons:

A) The compromise decree binds the parties only and does not operate as resjudicata. The ruling 2016 SAR (C)-1 is worth mentioned here and the relevant head note A (v) is worth mentioning here.

(a) (v). The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit.

B) That the validity of decree was not under challenge and the crux of the dispute in that suit hinges around that Sheo Lal was not owner of more than 4 Kanal after their purchase, therefore any transfer made by Sheo Lal more than 4 Kanal is not binding on them.

C) That vide order dated 18-10-2007 Ex. PW5/6 mentioned in para No. 24 of the judgment, the liberty was granted to the appellant Mahabir to established his right in appropriate proceedings like this suit. More So separate suit filed by Surender Sunder in the Court of Civil Judge (JD) Bawal is pending.”

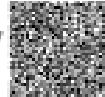


2.4 Sh.Sanjay Mittal, the learned counsel representing respondent no.1, 5 to 7 and 20 in his written note of submissions, has submitted as under:-

*“2. That plaintiff failed to prove his title.
8.3.1979 (Ex.pW6/4) Sheo Lal suffered consent decree of 5 kanal in favour of his grandson Ram Singh 22.11.1995 (Ex.PW5/13)- Ram Singh suffered consent decree in favour of his wife (Plaintiff Shakuntla Devi). The aforesaid decree was passed on the basis of statement by Sheo Lal and Ram Singh which is Ex.DW3/2 and statement was that the suit can be decreed as per compromise Ex.CX which has not been produced in the court below by the plaintiff. Family settlement had been taken place between Sheo Lal and his grandsons etc.
21.11.2004 (Ex.DW1/1)-Registered family settlement had taken place. As per the family settlement it is clear that Ram Singh or his wife Shakuntla Devi was not owner of the land in question. Even there is affidavit of plaintiff before Tehsildar (DW1/4) dated 29.11.2007 that the land be mutation except the suit land in her favour Mutation no.9501 was sanctioned. Ex.DW1/2 application by Shakuntla (plaintiff) before Tehsildar that as per the decree dated 22.11.1995. She is owner of 6 kanal 4 marla land and the same be mutated in her favour. In aforesaid application suit property was not included.
Ex.DW1/3 dated 29.1.2007 affidavit of Ram Singh before Tehsildar that the land as per decree dated 22.11.1995 be mutated on the name of his wife Shakuntla (plaintiff) except the suit land. So, the family settlement has been acted upon and plaintiff has waived her right in the suit property.”*

2.5 Sh.Kulbhushan Sharma, learned counsel representing Meer Singh, appellant in ESA no.53 of 2015 has also submitted his written note of submissions, which reads as under:-

“(i) It is here submitted that in connected RSA no. 847 of 2023 which has arisen out of the suit filed by Shakuntla Devi challenging the sale deeds including under execution in the aforesaid ESA. Since, the suit filed by Shakuntla Devi was for



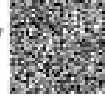
declaration for challenging all the sale deeds done by Shoe Lal including the sale deed in favour of appellant-Meer Singh in the above noted ESA, hence this suit being of title is comprehensive enough to include the sale deed under execution in the above noted ESA and hence the judgment which may be passed in connected RSA would prevail upon the judgment in ESA as well therefore, RSA may be decided first as it's judgment shall direct bearing and impact upon ESA.

(ii)Sh. Sheo Lal had got 9 Kanal being 1/6th share out of 52 Kanal 18 Marla. He transferred 4 Kanal in favour of Ram Singh vide decree dated 08.03.1979 who transferred the same to Shakuntla vide decree dated 23.01.2012. Ram Singh and Shakuntla has submitted the affidavit in the suit out of which RSA No. 847 of 2023 has arisen, to the effect that they don't claim out of Kila no. 8/1 whereas claim of the appellant is from Killa no. 8/1,Shoe Lal sold 2 Kanal to Parhlad and Kartar etc. in this way the claim of the appellant is within share of Sheo Lal and as such the sale deed in favour of the appellant is legal and lawful and executable and thus the dismissal of the execution petition by the Executing Court and dismissal of the appeal by the Ld.ADJ is wholly erroneous and illegal.

The finding of the Ld. ADJ in connected RSA no. 847 of 2023 may kindly be taken as part of the arguments of the appellant.

(iii)That the Ld. District Judge erred in law in not allowing the additional evidence in the shape of Mutation no. 9501 dated 31.12.2007 and affidavits of objector and her husband Ram Singh which states that the objector has no claim with regard to the killa no. 8/1 by way of filing the affidavit which find mentioned in para no. 34, 35 and 36 of the Ld. Additional District Judge, Rewari vide judgment dated 06.01.2023 which is reproduced as under:

"34. Furthermore, alongwith the said application, two duly sworn affidavits, one by Ram Singh (defendant no. 1) Ex.DW 1/3and second by plaintiff Shakuntla Ex.DW1/4 were also filed before the then Executive Magistrate, Bawal on 29.11.2007, in support of the said application by Shakuntla. The relevant portion of said affidavit of Ram Singh is produced here as under for ready reference:



That my wife had moved an application for entering mutation in her favour.

That mutation be entered regarding the land, except Khewat no. 166, Khatoni No. 191, mustatil no. 121, Kila no.8/1, measuring 4 Kanal for which, I have no objection.

35The relevant portion of said affidavit of Shakuntla Devi(plaintiff) is also produced here for ready reference:

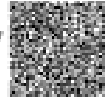
That I had moved an application for entering the mutation.

That mutation be entered regarding the land, except Khewat no. 166, Khatoni no. 191, mustatil no. 121, killa no.8/1, measuring 4 Kanal, for which, I have no objection.

36Thereafter, accordingly mutation 9501 proved as Ex.DW1/5 on lower record had been sanctioned in favour of Shakuntla Devi (plaintiff) by excluding the land in dispute comprised in Rect. No. 121, Killa no. 8/1 (4-0) and hence from the above said facts and circumstances, it can safely be concluded/held that the plaintiff Shakuntla Devi has miserably failed to prove her title and the title of her transferor; therefore. the suit of the plaintiff is liable to be dismissed."

The entire evidence has come in the suit filed by Shakuntla out of which the present RSA no. 847 of 2023 has arisen.

(iv) That suit land is the ancestral property of Sheo Lal and he holds 53 Kanal 18 Marla in total ancestral property in which he has got 1/6th share as coparcener and as such he has got 9 Kanal share in same and he could transfer only 9 Kanal whereas as per the allegations of the objector he transferred 2 Kanal in favour of Parhlad and Kartar and 4 Kanal in favour of Ram Singh who allegedly suffered the decree in favour of his wife Shakuntla/ objector; hence in this way also there remain still 3 Kanal with Sheo Lal and as such the land subject matter of the decree dated 25.02.2008 is within the share of Sheo Lal and he could sale out the same and as such, the decree dated 25.02.2008 is executable. Therefore, the sale deed has been rightly executed in favour of the



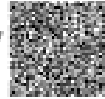
appellant/decreed holder and only symbolic possession is to be taken as the decreed holder had already constructed the shop over the part of the suit property.

(v) That as have been rightly observed by the Courts below that the objections filed by Shakuntla are collusive with the Ram Singh, who is husband of Shakuntla. In fact, Ram Singh the husband of the respondent no. 3 filed the objections which were dismissed vide order dated 20.10.2010 and even the appeal preferred before the Ld. District Judge, Rewari was also dismissed vide order dated 19.05.2011 and revision filed before the Hon'ble High Court was also dismissed vide order dated 20.05.2011. Thereafter, the objector Shakuntla has filed the objections which are devoid of merit, as the decree dated 30.09.1995 does not create any right, title and interest in favour of objector Shakuntla and similarly the decree dated 08.03.1979 also does not create any title in favour of Ram Singh.

(vi) That Ram Singh and Shakuntla were very well aware with regard to the proceedings of suit for specific performance in which decree for specific performance was passed on 25.02.2008 they never filed any application for becoming party therein, therefore, also the objections of Ram Singh and Shakuntla does not lie at this stage.

(vii) That without prejudicing all other submissions, it is submitted that there arrived a family settlement bearing Vasika no. 959 dated 21.10.2004 executed by Sheo Lal and family members with respect to the entire property and the sales which have been made by Sunder @ Surinder as G.P.A. of grandfather Sheo Lal, were to be deducted from the share of Sham Lal and as such Sheo Lal remained owner of the suit property as the land sold by Surinder has been taken from the share of his father Sham Lal, hence the claim of Shakuntla and Ram Singh is falsified from the said family settlement and such the decree dated 25.02.2008 is executable.

The finding on basis of family settlement in para no.32 & 33 of the judgment of Ld. Additional District Judge dated 06.01.2023 which is impugned in connected RSA no. 847 of 2023.



(viii)) That Shakuntla has filed suit on 08.08.2011 bearing case no 153 which is exhibit A-16, therefore, the Ld. Court below ought to have ordered sine die the execution proceedings till the final decision of the said suit which is pending in the Civil Court at Rewari. The true typed copy of the said plaint (Ex.A-16) is enclosed herewith as Annexure A-2.

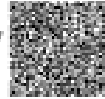
(ix) That mere filing of the objections in the proceedings of earlier litigation and appearing as witness in the earlier litigation does not infer that the appellant has played fraud upon the courts by filing the civil suit for specific performance and the decree dated 25.02.2008 has been obtained fraudulently. The true typed copy of the judgment and decree dated 25.02.2008 is enclosed herewith as Annexure A-3.

(x) That the appellant has got a right to enforce his agreement to sell by filing the suit for specific performance, therefore, protecting his right in this manner by the appellant cannot be said to be the fraudulent act on part of the appellant.”

3. Reasons recorded by the First Appellate Court:-

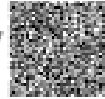
3.1 At this stage, it would be appropriate to take note of the following reasons recorded by the First Appellate Court while setting aside the judgment passed by the trial court:-

- i) The deed of compromise, which resulted in the decree dated 08.03.1979, has not been produced.
- ii) The property was the joint Hindu Family Property of Sh. Sheo Lal and others, who had four grandsons. Hence, the consent decree passed on 08.03.1979 is void and invalid.
- iii) A family settlement was arrived at 21.10.2004 Ex.D1/1, which was also signed by Sh. Ram Singh. Hence, he is bound by the same. The same has also



been acted upon and Smt. Shakuntla and Sh.Ram Singh submitted the affidavits dated 29.11.2007.

- iv) Sh.Sheo Lal appointed his grandson Surinder @ Sunder as his power of attorney and executed Will dated 22.05.2004, in his favour. The suit filed by Sh.Sheo Lal challenging the sale deeds executed by Surinder on the basis of power of attorney was withdrawn. Hence, the general power of attorney was held to be genuine and correct.
- v) In the criminal filed against Surinder, he was acquitted.
- vi) In view of the settlement arrived at in the High Court on 18.10.2007, Sh.Sheo Lal was declared the owner and decree in favour of Sh.Ram Singh was held binding upon Sh.Sheo Lal. In the aforesaid appeal, various vendees filed the applications which were disposed of with direction to establish their rights in independent proceedings. Hence, the decree is not binding upon the vendees.
- vii) The judgment passed by the High Court on the basis of settlement on 18.10.2007, is a judgment in personam and not in rem.
- viii) The trial court has wrongly held that the High Court has recognized the rights of Sh.Ram Singh in terms of compromise 'Ex.PW5/2' and the vendees are



bonafide purchasers of the property, who have constructed their houses on the disputed land.

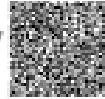
4. Analysis of the reasons recorded by the First Appellate Court

4.1 Reason no.(1) cited by the First Appellate Court is a result of non-reading of the record. The plaintiff has produced a copy of the plaint filed by Sh.Ram Singh against Sh.Sheo Lal dated 26.02.1979, as 'Ex.PW5/11'. On the statement of the parties, the trial court passed a short order on 08.03.1979, 'Ex.PW6/3', which is extracted as under:-

“As per statement of the defendant the suit of the plaintiff is decreed as prayed for without any order as to costs. Decree sheet be drawn and the file be consigned to the record room.”

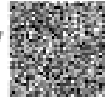
4.2 'Ex.PW6/4' is the decree passed by the court on 08.03.1979. Compromise deed referred to as 'Ex.CX' by the First Appellate Court never existed. It's existence has been erroneously presumed by the First Appellate Court. The court on 08.03.1979 held that the defendant Sh.Sheo Lal has admitted Sh.Ram Singh's claim in the suit, which was with respect to land measuring 11 kanals 14 marlas comprised in Rect. No.105 khasra no.23(0-14), Rect. 121 khasra no.8/1 (5-0), 3(6-0). Accordingly, at page 919 of the trial court record, the decree has been passed with respect to 11 kanals 14 marlas. There is no ambiguity on this score. Hence, it is incorrect to hold that the plaintiff withheld the 'best evidence' because Ex.CX never existed.

4.3 The second reason attributed by the First Appellate Court is similarly bizzare. It is evident from the facts of the case that Sh.Sheo



Lal was owner of sufficient land. Sh.Ram Singh was his grandson. Sh.Sheo Lal suffered a decree in favour of Sh.Ram Singh qua his own share in the joint property. It has come on record that subsequently by way of a family settlement more than 53 kanals land was distributed amongst the family members. It is not the case of the defendants that Sh.Sheo Lal suffered the decree in favour of his grandson Sh.Ram Singh in excess of his share. Hence, the observations made by the First Appellate Court in this regard are wrong.

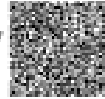
4.4 Similarly, the First Appellate Court has erred in relying upon the judgment passed in **Man Singh (dead) by LRs vs. Ram Kala (dead) by LRs and others (2010) 14 SCC 350**. In the aforesaid case Smt.Shingari was previously married with Sh.Lachhman. Man Singh was born from the loins of Sh.Lachhman. Subsequently, Smt.Shingari married Sh.Soran. Man Singh filed a suit against Smt. Shingari claiming property which was received by her from Sh.Soran. In that context, Supreme Court upheld the judgments of the courts below while holding that Sh.Man Singh had no right, title or interest in the property of Sh. Soran. Similarly, the First Appellate Court has also erred in relying upon the judgment passed in **Sher Singh and others vs. Gamdoor Singh (1997)2 SCC 485**. In the aforesaid case, it was proved that the property was ancestral joint Hindu Family property and the parties had a share in the said property by birth. Consequently, the Supreme Court held that that decree tainted due to fraud shall not be binding. Likewise, the First Appellate Court has also erred in relying upon the judgment



passed in **Sher Singh vs. Mahavir Singh 2002 (3) CCC 19 (P&H)**. The aforesaid judgment does not apply to the facts of the matter at hand.

4.5 The First Appellate Court's reason no.(iii) is also a result of the misreading of the memorandum of family settlement dated 21.10.2004, 'Ex.DW1/1', affidavit 'Ex.DW1/3' and 'Ex.DW1/4'. From a careful perusal of the memorandum of family settlement, it is evident that the suit land comprised in Rect. No.121, khasra no.8/1 (4 kanals) was never made a part of the aforesaid family settlement. This Court has examined the trial court record. The memorandum of family settlement is 'Ex.DW1/1' at page 1321. The land comprised in Rect.No. 121 khasra no.8/1 is not a part of the aforesaid memorandum of family settlement. Similarly, in the affidavits submitted by Sh.Ram Singh as well as Smt. Shakuntla it have been specifically stated that they have no objection to the sanction of mutation on the basis of the family settlement except land measuring 4 kanals comprised in Rect. 121 khasra no.8/1. Hence, the aforesaid affidavits cannot defeat the right of Smt. Shakuntla with respect to the suit property. The First Appellate Court has clearly overlooked this important aspect and has given an erroneous reasoning.

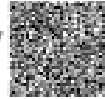
4.6. Reason no.4 cited by the First Appellate Court is again unusual. Sh.Sheo Lal was left with no right, title or interest in the suit property pursuant to the decree dated 08.03.1979. Hence, any power of attorney executed by Sh.Sheo Lal in favour of his grandson Surinder @ Sunder would not affect the rights of the plaintiff. Sh.Ram Singh also suffered a decree in favour of his wife Smt. Shakuntla on 22.11.1995.



Hence, the alleged power of attorney executed on 22.05.2004, would not have an adverse impact on the rights of Smt. Shakuntla. Similarly, the withdrawal of three suits by Sh.Sheo Lal would not make any difference to the rights vested in Smt. Shakuntla who became an owner of the property by virtue of the family settlement, which was acknowledged in the judgment and decree dated 22.11.1995. Hence, any step taken by Sh.Sheo Lal, after a passage of 9/10 years would not affect her rights in the disputed property.

4.7 The First Appellate Court has also erred in relying upon the judgment passed in a criminal case. First and foremost, Smt. Shakuntla was not a party to the aforesaid criminal case. Secondly, the judgment passed by a criminal court is not binding on the judgment of the civil court. Furthermore, the criminal court's judgment is not comprehensive and it has not made observations with respect to the judgment and decree dated 08.03.1979 or 22.11.1995. The judgment passed in the criminal case has only stated that Sh.Surinder @ Sunder has been acquitted as the prosecution has failed to prove its case beyond a reasonable doubt. Hence, reason no.(v) assigned by the First Appellate Court is inaccurate and erroneous.

4.8 The First Appellate Court's reason no.(vi) is also erroneous. In the compromise decree passed by the High Court on 24.03.2006, Smt. Shakuntla was not a party. In the compromise decree, the impact of the decree declaring Smt. Shakuntla to be owner of the property was not altered. The compromise decree also did not confer any fresh rights upon Sh.Sheo Lal as it only recognized the subsisting rights which were



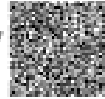
not vested in Sh.Sheo Lal anymore. Subsequent purchasers of the property from Sh.Sheo Lal through his power of attorney Surinder, shall not bind Smt. Shakuntla or Sh.Ram Singh. As the case involved various rights, the High Court in the various applications filed by the subsequent purchasers passed order that the applicants shall be entitled to seek their remedy, in alternative proceedings, however, the decree passed on 22.11.1995, was never set aside by the Court.

4.9 The reason no. (viii) assigned by the First Appellate Court is imprecise because the settlement deed resolved the controversy between Pehlad and Kartar one the one hand and Sheo Lal on the other hand with respect to the 2 kanals land comprised in Rect. 121 khasra no.8/1.

4.10 The First Appellate Court has also erred in relying upon the judgment passed by the Supreme Court in the **City Municipal Council, Bhalki by its Chief Officer vs. Gurappa (dead) by Lrs and another** 2015 AIR SC 3826. In the aforesaid judgment, while dismissing the appeal, filed by the Municipal Council, the Supreme Court held that the plaintiff has proved his ownership on the basis of the evidence produced during the course of the trial. The court examined the concept of shifting of onus upon the defendants once the plaintiffs primarily discharged their onus diligently. Hence, the aforesaid judgment is not applicable to the facts of the matter at hand.

5. Discussion by this Court:-

5.1 Now, the Bench proceeds to analyse the arguments of the learned counsel representing the parties. The first argument put forth by learned counsel representing respondent no.20, Sh.Ajay Jain is based on

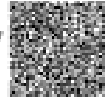


the first reason assigned by the First Appellate Court. This Court has already discussed as to how reason no.1 assigned by the First Appellate Court is erroneous.

5.2 The second argument of the learned counsel is incomprehensible. Pursuant to the decree dated 08.03.1979, Sh.Ram Singh was acknowledged to be the owner of the suit land. Pehlad and Kartar filed the suit only claiming that the sale deed in their favour with respect to 2 kanals land comprised in Rect. 121 khasra no.8/1 shall not be affected by the decree passed in favour of Sh.Ram Singh. Hence, the decree suffered by Sh.Ram Singh in favour of his wife Smt. Shakuntla upon 22.11.1995, has no relation whatsoever with the suit filed by Pehlad and Kartar.

5.3 The argument no.(iii) put forth by the learned counsel is also a reiteration of the reason recorded by the First Appellate Court. Hence, it needs no further deliberation, as the court has already analysed the aforesaid reason.

5.4 Similarly, the next submission of the learned counsel has no substance because 4 kanals land was not sold. It has not been proved that Sh.Sheo Lal was not recorded as the exclusive owner of the property. At the first instance, he sold 2 kanals land to Pehlad and Kartar vide registered sale deed dated 06.10.1977. Subsequently, he acknowledged his grandson Sh.Ram Singh as owner of the remaining part of the land comprised in Rect. 121 khasra no.8/1. Hence, the argument deeming it to be a sale of joint land is fallacious.



5.5. The next submission of the learned counsel is again reiteration of the reason recorded by the First Appellate Court and hence, needs no further deliberation.

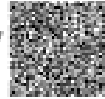
5.6 The next argument of the learned counsel is also reiteration of the reasons recorded by the First Appellate Court, which has already been analysed and hence, needs no further deliberation.

5.7 The next argument of Sh.Ajay Jain is insubstantial because mutation entries made on the basis of sale deed allegedly executed by Sh.Sheo Lal through Surinder @ Sunder would not affect Smt. Shakuntla's right in the property.

5.8 Similarly, the next argument of the learned counsel that Sh.Sheo Lal was recorded as the owner in the Jamabandi for the year 1999-2000 would not make any difference because Smt. Shakuntla was acknowledged as the owner of property pursuant to the decree dated 22.11.1995. Hence, any entry in favour of Sh.Sheo Lal in the revenue record would not adversely affect her rights.

5.9 The next argument of the learned counsel is again based on the reasons recorded by the First Appellate Court, which have already been analysed. Hence, needs no further explanation.

5.10 With respect to the last submission put forth by Mr. Jain, it shall be noticed that the concept of bonafide purchaser, in the facts of the case, would be governed by Section 41 of the Transfer of Property Act, 1882 (hereinafter referred to as '1882 Act'). The Supreme Court, in **Hardev Singh vs. Gurmail Singh (dead) by Lrs (2007) 2 SCC 404**, while dissecting Section 41 of the '1882 Act' has held that the following



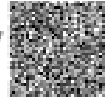
necessary ingredients are required to be fulfilled before someone can be declared a bonafide purchaser:-

- (a) the vendor should be an ostensible owner
- (b) the sale shall be for valuable consideration.
- (c) he is projected as owner by express or implied consent of the actual owner.
- (d) The transferee has taken reasonable care to ascertain the title of his vendor.

5.11 It is evident that the defendants have nowhere alleged that Smt. Shakuntla or Sh.Ram Singh ever represented that Sh.Sheo Lal was the owner of the property or Surinder has any right to transfer the property. Hence, the argument put forth by the learned counsel has no substance.

5.12 With reference to the argument of Sh.Mani Ram Verma, Advocate, learned counsel representing respondent no.4, 27 and 28 it may be noticed that a judgment and decree passed by the court, acknowledging the family settlement, is binding upon the parties and it reinforces the fact that the property has come to the share of Smt. Shakuntla in family settlement. The learned counsel has placed reliance on the judgment passed by the Supreme Court in **City Municipal Council's case (supra)**. The aforesaid judgment has already been examined and analysed by this Court in para 4.10 of the judgment.

5.13 The Ex.PW6/4 has already been reproduced. The same is not based upon any deed of settlement. ExPW6/4 is a civil court's decree, which was passed on the basis of the statement of the parties in



the Court. There was no settlement. In any case, the decree passed by the court clearly specifies the property, which was the subject matter of the suit. The operative part of the decree dated 08.03.1979, is extracted as under:-

“Suit for declaration to this effect that the plaintiff is the owner in possession of agricultural land comprised in khewat No.123 Kin Khatoni no.141 Min Mustail No.105, Killa no.23(0-14) and Mustail no.121 Killa No.3(6-0) and 8 Min Uttar (5-0) measuring 11 kanals 14 marlas which is situated in the revenue estate of village Bawal Tehsil Bawal through family settlement and the defendant has no right in the said land.

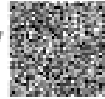
Plaint presented on the 23rd day of February, 1979. Value for the purpose of court fees: Fixed Rs.25/-

Value for the purpose of Jurisdiction: Fixed Rs.200/-

This suit coming on this day for final disposal before me in the presence of Shri Yudhvair Singh counsel for the plaintiff and Shri Tej Singh Advocate for the defendant. It is ordered that the suit of the plaintiff is decreed as prayed for without any order as to costs.”

5.14 The learned counsel representing the respondent no.4, 27 and 28 has made the same mistake, while making the submissions, as committed by the First Appellate Court. Moreover, the plaintiff has also produced a copy of the plaint Ex.PW5/11 at page 899, which proves that the suit land was the subject matter of the decree dated 08.03.1979. The counsel has also relied upon the same judgments, which have already been discussed by this Court. Hence, further reiteration is not required.

5.15 The next argument of Sh.Verma is reiteration of the argument of Sh.Jain, which has already been dealt with by this Court.



5.16 In fact, all the submissions put forth by Mr. Verma are reiteration of Sh.Jain's arguments, which have already been dealt with.

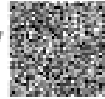
5.17 Sh.Sanjay Mittal, the learned counsel representing respondent no.5, 6 & 7 has submitted that the plaintiff has failed to prove her title. He has referred to compromise Ex.CX, which is not a part of the decree dated 08.03.1979.

5.18 The learned counsel has again contended that 'Ex.CX' has not been produced by the plaintiff. The counsel referred to the decree dated 22.11.1995. The plaintiff has produced a copy of the plaint in the suit titled as 'Shakuntla Devi vs.Ram Singh' as Ex.PW6/1 whereas the written statement filed by Sh.Ram Singh in the aforesaid suit is Ex.DW1/16. The copy of the order passed by the civil court is Ex.PW5/12, which reads as under:-

"The plaintiff has filed this suit for declaration to the effect that he has become owner in possession over the suit property as detailed in para No.1 of the plaint by way of family settlement.

2. On notice, the defendant while coming present in the court filed admitted written statement admitting thereby the claim of the plaintiff over the suit property in toto. The statements of the parties have been recorded in the court separately.

3. In view of the above circumstances, the parties are not at issue. Hence the suit of the plaintiff is hereby decreed subject to charge remaining intact. Both the parties are left to bear their own costs. Decree-sheet be prepared. File be consigned to record room."



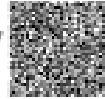
On the basis of the aforesaid order, the decree was passed. No reference has been made to Ex.CX as is sought to be made out by Sh.Sanjay Mittal.

5.19 The next submission of Sh.Mittal is also incorrect because the registered family settlement is dated 21.10.2004 and 21.11.2004. In the aforesaid family settlement, the land comprised in Rect. 121, khasra no.8/1 was never included. Similarly, the application submitted by Smt. Shakuntla before the Tehsildar that mutation be sanctioned in her favour with respect to 6 kanals 4 marlas would not estop her from claiming the property, particularly when she has only made a request for sanctioning mutation in her favour. In the aforesaid application, Smt. Shakuntla has not abandoned/surrendered the suit land.

5.20 The affidavit Ex.DW1/3 submitted by Sh.Ram Singh clearly states that he has no objection to the sanction of mutation except the suit land, which is comprised in Rect no.121 khasra no.8/1 measuring 4 kanals 0 marla. Hence, there is no merit in the submission of Mr. Mittal.

5.21 Now the Court proceeds to analyse the arguments of Sh.Kulbhushan Sharma, Advocate who represents the appellant in ESA-53-2015 as well as the respondent in the appeals. In the first submission, the learned counsel admits that the judgment passed in the Regular Second Appeals would also govern the fate of Execution Second Appeal.

5.22 With regard to second submission, the learned counsel has factually made an error. Smt. Shakuntla was acknowledged as the owner of property by virtue of a civil court decree dated 22.11.1995 and not 23.01.2012. Similarly, Smt. Shakuntla and Sh.Ram Singh have never



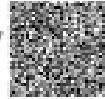
filed the affidavit surrendering their rights over the land comprised in Rect no.121 khasra no.8/1.

5.23 With regard to submission no.(iii), it may be noticed that mutation no.9501 as well as the affidavits have already been considered and discussed by this Court. Hence, the dismissal of application for additional evidence has no impact on the result of the case.

5.24 With respect to argument no.(iv) it shall be noticed that the learned counsel admits that Sh.Sheo Lal was the owner of large chunk of land including 53 kanals 18 marlas plus 11 kanals 14 marlas. He has also sold some part of the property. It is not the case of Meer Singh that Sh.Sheo Lal transferred more than his share in favour of his grandson Sh.Ram Singh.

5.25 As regards, submission no.(v), it may be noticed that the civil court decree acknowledging the family settlement is a consent decree. The term “collusive”; which typically has a negative connotation, cannot be applied in this case. A consent decree is as valid as a compromise or contest decree. Moreover, the Execution Second Appeal filed by Sh.Ram Singh against the dismissal of objection petition was dismissed on the ground that he has already transferred the property in favour of his wife Smt. Shakuntla. Thus, his rights were never adjudicated on merits.

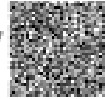
5.26 As regards argument no.(vi), it may be noticed that there is no material on the record to prove that Sh.Ram Singh and Smt. Shakuntla had knowledge of the suit. In any case, their awareness about the suit will not make any difference because in a suit for specific



performance, the court would have merely ordered specific performance of the agreement to sell. The court while deciding a suit of specific performance, does not adjudicate upon the rights and titles of the parties unless it specifically comes up for adjudication.

5.27 The last submission put forth by the learned counsel also does not have substance because the suit land was not a part of the family settlement.

5.28 This Court has carefully read 'Ex.DW1/1' dated 21.10.2004, the registered family settlement. In the clause (e) of the aforesaid family settlement, it has been recorded that Surinder @ sunder son of Sham Lal fraudulently prepared a power of attorney on behalf of Sh.Sheo Lal for which a criminal case had been registered and the cases are still pending in the court. Moreover, it has been recorded that the entire property is the self acquired property of Sh.Sheo Lal. In para (f) of the family settlement, the previous family settlement and decree passed by the civil court is acknowledged though it is stated to be with respect to 6 kanals 4 marlas. However, the decree is with respect to 11 kanals 14 marlas which becomes evident from the reading of the decree dated 08.03.1979 as well as 22.11.1995. In the aforesaid settlement, it is not recorded that Sh.Ram Singh and Smt. Shakuntla gave up their rights which they acquired pursuant to the family settlement, which was acknowledged in a civil court decree. Smt. Shakuntla is not a party to the aforesaid settlement. Moreover, the suit land was not a part of the family settlement. Hence, the submission of learned counsel that the share of his father was reduced is inaccurate.



5.29 Submission no.(viii) is also factually incorrect because the civil suit (Annexure A-2) has been decided on 15.09.2017, by the trial court. The aforesaid decree was reversed by the First Appellate Court vide judgment dated 06.01.2023, against which these six Regular Second Appeals have been filed and are being decided by this common judgment.

5.30 The submission no. (ix) put forth by Sh.Sharma has lacks substance because in a decree for specific performance of the agreement to sell the court does not decide the issue with respect to the title of the vendor. A copy of the judgment has been annexed as Annexure A-3. The aforesaid judgment was passed because Surinder @ Sunder while appearing filed the written statement and admitted the plaintiff's claim. Hence, neither any issue with respect to the title was framed nor the defendant contested the suit.

5.31 With regard to submission no.(x) it may be noticed that Meer Singh the appellant in ESA-53-2015 shall become entitled to enforce his agreement to sell only if Surinder or Sheo Ram had any right existing in the suit property. This Court has found that neither Sheo Ram nor Surinder has any right in the property. In fact, after the decree was passed on 08.03.1975, acknowledging and declaring that Sh.Ram Singh is the owner in possession of the property Sh.Sheo Ram or Surinder had no right to enter into an agreement to sell with respect to the suit land.

6. Decision:-

6.1 Keeping in view the aforesaid facts and discussion, the result is inevitable. The judgment passed by the First Appellate Court suffers from perversity. Hence, the same is set aside and that of the trial court is restored.

6.2 The six Regular Second Appeals filed by Smt. Shakuntla Devi stand allowed and the Execution Second Appeal filed by Sh.Meer Singh stands dismissed.

6.3 All the pending miscellaneous applications, if any, are also disposed of.

17.05.2024	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No