

**...Appellant**

Vs.

**...Respondent**

**CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL**

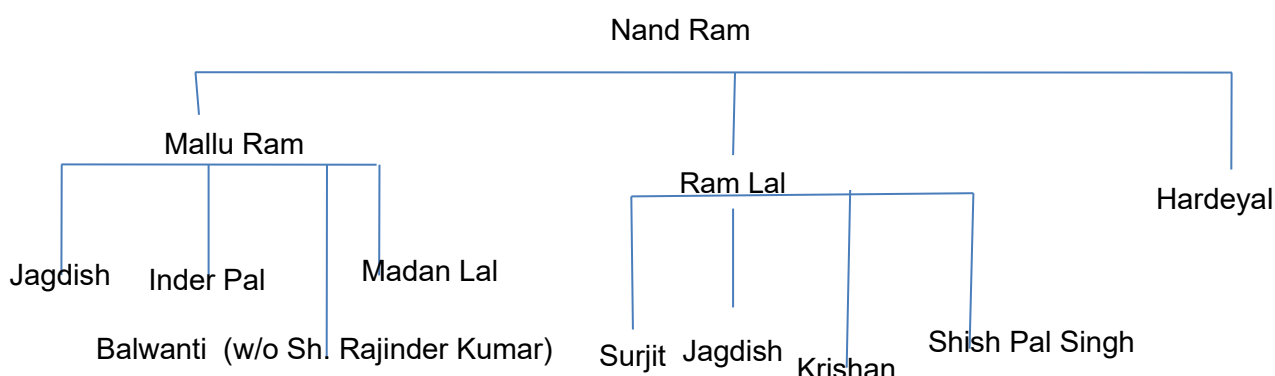
Present: Mr. Ajay Jain, Advocate  
for the appellant.

Mr. Sandeep Punchhi, Advocate  
for the respondent.

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**ANIL KSHETARPAL, J. (Oral)**

1. This is the defendant's regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff's suit for declaration that she is the owner in possession of the land measuring 115 kanals 10 marlas and the judgment and decree passed on 04.10.1999, is a result of fraud and misrepresentation.
2. In order to comprehend the issues involved in the present case, family tree of the parties and brief facts are required to be noticed.
3. The family tree reads as under:-



4. Sh. Nand Ram was a big land owner. In order to save the land from being declared surplus, he transferred the land measuring 115 kanals 10 marlas in favour of Sh. Rajinder Kumar, husband of his grand-daughter. Subsequently, a daily diary entry was entered on 04.10.1997 that Sh. Shish Pal Singh (appellant) is in possession of the property of the land as '*Gair Marusi*' tenant on payment of 1/3rd batai. Subsequently, Smt. Balwanti Devi filed a suit for declaration against her husband. In the written statement, Sh. Rajinder Kumar acknowledged her to be the owner of the suit land. Hence, the decree was passed in favour of Smt. Balwanti Devi on 25.04.1998.

5. Thereafter, two different suits were filed. One was filed on 22.10.1998 by Sh. Jagdish, Sh. Inderpal, Sh. Madan Lal sons of Sh. Mallu Ram against Sh. Surjit, Sh. Jagdish and Sh. Krishan sons of Sh. Ram Lal for declaration that on account of family settlement, the plaintiffs have become the owners in possession in equal share of land measuring 168 kanals 15 marlas. On 01.06.1998, a cross-suit was filed by Sh. Shish Pal Singh against Smt. Balwanti Devi claiming that he is the owner of land measuring 115 kanals 10 marlas land, which was subject matter of the sale deed in favour of her husband Sh. Rajinder Kumar. On 28.11.1998, the respective defendants in both the suits suffered statement admitting the claim of the respective plaintiffs in both the suits. In the beginning, the suit filed by Sh. Shish Pal Singh was dismissed, however, the same was set aside by the First Appellate Court resulting in decree for declaration that Sh. Shish Pal Singh has become the owner of land measuring 115 kanals 10 marlas land. Similarly, the cross-suit filed by the children of Sh. Mallu Ram was decreed on 27.03.1999.

6. On 01.09.2001, Smt. Balwanti Devi filed the present suit, claiming that Sh. Shish Pal Singh has played a fraud and manage to get her admission statement by giving wrong facts. It was claimed that in the civil suit filed by Sh. Shish Pal Singh, Smt. Balwanti Devi has been reflected as daughter of Sh. Ram Lal and not Sh. Mallu Ram. She did not appear in evidence. Both the courts below decreed the suit.

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

8. Learned counsel representing the appellant submits that there was some sort of settlement between the two families, namely, on the one side children of Sh. Mallu Ram and on the other side children of Sh. Ram Lal. He submits that a small error in giving parentage of Smt. Balwanti Devi, in the facts and circumstances of the present case, should not result in setting aside the valid decree passed in favour of the appellant.

9. *Per contra*, learned counsel representing the respondent submits that there cannot be a family settlement between Smt. Balwanti Devi and Sh. Shish Pal Singh as Smt. Balwanti Devi was daughter of Sh. Mallu Ram and not Ram Pal. He further submits that in the plaint Sh. Shish Pal Singh has stated that Smt. Balwanti Devi is her sister, which is factually incorrect.

10. This Court has considered the submissions made by the learned counsel for the parties and perused the judgments passed by the courts below alongwith the requisitioned record of the courts below.

11. It is evident that Sh. Nand Ram was the common ancestor of this suit. At the first stage, Sh. Nand Ram transferred the land measuring 115

kanals 10 marlas in favour of Sh. Rajinder Kumar, husband of Smt. Balwanti Devi. Subsequently, Sh. Rajinder Kumar transferred the property in favour of Smt. Balwanti Devi by virtue of a Civil Court decree dated 25.04.1998. Thereafter, two suits were filed. One filed by Sh. Shish Pal Singh, whereas, second filed by three sons of Mallu Ram and both the suits were decreed. Sh. Surjit, Sh. Jagdish and Sh. Krishan sons of Sh. Ram Lal acknowledged that Sh. Jagdish, Sh. Inderpal and Sh. Madan Lal were owners of certain parcel of land. Similarly, on the statement of Smt. Balwanti Devi, Sh. Shish Pal Singh was declared owner of land measuring 115 kanals 10 marlas. From a careful perusal of the statement of Smt. Balwanti Devi, it is evident that she admitted the claim of Sh. Shish Pal, while appearing in Court on 28.11.1998, the same date when Sh. Surjit, Sh. Jagdish and Sh. Kishan sons of Sh. Ram Lal suffered statement in favour of her real brothers.

12. The statement of Smt. Balwanti Devi was recorded in the presence of the Presiding Officer of the Court. She was identified by her counsel Sh. S.S. Kathuria as well as Sh. Jagdish, Nambardar. She had not appeared in evidence to deny these facts.

13 The plaintiff has neither examined in her evidence, Sh. S.S. Kathuria, her counsel in the previous suit nor produced Sh. Jagdish Nambardar, who had identified her in the Court to prove that the fraud was played upon her by the appellant. In these circumstances, the plaintiff has failed to prove any fraud. She has also failed to testify in the Court without any justifiable cause. Hence, adverse influence was required to be drawn against her. The appellant was deprived an opportunity to cross-examine the plaintiff. She appeared

through her attorney Inderpal. He was not a party to the previous judgment and decree.

14. Undoubtedly, the name of father of Smt. Balwanti Devi was wrongly recorded as Sh. Ram Lal instead of Sh. Mallu Ram. However, there is no evidence that she did not appear in evidence. In the peculiar facts of the case, it is evident that there were multiple settlements between the two families. In such circumstances, the courts below were not correct in declaring the decree passed on 04.10.1999, as void. Furthermore, both the courts below have erred in observing that the decree resulted in transfer of the property worth more than Rs. 100/- and the decree requires registration. It is evident that the decree was passed acknowledging a family settlement. In view of the recent judgment passed by the Hon'ble Supreme Court in "**Khushi Ram and others Vs. Nawal Singh**", (2021) 16 SCC 279, such a decree does not require registration.

15. Both the courts below have also erred in observing that there could not be any family settlement. After all, the parties were members of the same family. Sh. Nand Ram was the common ancestor. Smt. Balwanti Devi and Sh. Shish Pal Singh were first cousins. For the purpose of family settlement, the expression 'family' cannot be construed narrowly to include only the real brother or sister. The cousins are also the members of the larger family. Reliance can be placed on the judgment of the Hon'ble Supreme Court in '**Ramchandra Das vs. Girja Nandini Devi**' AIR 1966 SC 326 and '**Krishna Bihari Lal Vs. Gulabchand**' (1971) 1 SCC 837. Moreover, the courts always lean in favour of upholding the family settlement.

16. It is also evident that Sh. Jagdish, Sh. Inderpal and Sh. Madan Lal sons of Sh. Mallu Ram, who are real brothers of Smt. Balwanti Devi are beneficiaries of decree passed in a cross suit.
17. Hence, the judgments passed by both the courts below are set aside.
18. The appeal stands allowed.

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|-------------------|-----------------------------|-----|----|
| <b>02.05.2024</b> | <b>(ANIL KSHETARPAL)</b>    |     |    |
| neeraj            | <b>JUDGE</b>                |     |    |
|                   | Whether speaking/reasoned : | Yes | No |
|                   | Whether Reportable :        | Yes | No |