

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****119****RSA-876-2019 (O&M)****Date of decision: 12.05.2025****Chameli Devi****...Appellant(s)****Vs.****Ram Chander through LRs and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Sarvjit Singh Khurana, Advocate for the appellant.***********NIDHI GUPTA, J.**

The present second appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below, whereby suit of the plaintiff for declaration that the plaintiff is owner in possession of the suit property as described in the plaint; **and** declaration that the judgment and decree passed in Civil Suit No. 1427 dated 08.01.1994 is illegal, null and void; **and** decree for permanent injunction restraining defendants from alienating the suit property, has been dismissed by both the Courts below.

2. It is *inter alia* submitted by learned counsel for the appellant that judgment and decree dated 08.01.1994 (Ex.D1) passed in Civil Suit No. 1427 titled as "*Ram Chander vs. Chameli etc.*" is illegal, null and void and based on fraud, misrepresentation and impersonation and therefore, not binding on the rights of the plaintiff. It is submitted that the said



judgment and decree dated 08.01.1994 was procured by asserting that there was a Family Settlement between the parties to the suit according to which defendants therein (which included the present plaintiff), have relinquished their share in the land to the plaintiff therein (defendant No.1 herein) namely, Ram Chander. It is submitted that it was the specific plea of the plaintiff in para 6(c) of the present plaint that no Family Settlement whatsoever had been entered into the year 1992-93 between the plaintiff and defendants nor plaintiff had ever given possession of her share to Ram Chander. Thus, the above said judgment and decree dated 08.01.1994 is based on fraud, misrepresentation which is illegal without jurisdiction being null, void and non est, and fraud had also committed on court itself.

3. It is submitted that even Issue No.2 was framed in disregard to the effect, that 'Whether no family settlement has taken place in the year 1992-93? However, no finding was given by the learned trial Court on issue No.2. It is contended that the same amounts to violation of Order 14 Rule 2 CPC as per which all issues have to be adjudicated upon. It is contended that the same also amounts violation of Order 20 Rule 5 CPC, which stipulates that judgments have to be passed on all issues. In support, learned counsel for the appellant relies upon judgment passed by Karnataka High Court in ***"Mallappa Ramappa Naik and others vs. Ittappa Kamappa Banti alias Heggani and others"*** Law Finder Doc ID # **1796805**. It is accordingly argued that the impugned judgments and decrees suffer from material legal error and, therefore, cannot be upheld.



4. It is also submitted that the suit of the plaintiff has been wrongly dismissed on the ground of limitation. It is contended that the plaintiff had proved on record that the present suit was filed immediately after the plaintiff came to know about the earlier judgment and decree in the first week of February 2010. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

5. No other argument is raised on behalf of the appellant.

6. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.

7. I find no merit whatsoever in the arguments raised on behalf of the plaintiff. By way of the present suit filed on 04.05.2010, the plaintiff has laid challenge to the judgment and decree dated 08.01.1994. Clearly, suite of the plaintiff is barred by limitation.

8. It was the contention of the plaintiff before the learned Courts below that the present suit is not barred by limitation as she had come to know of the said judgment and decree dated 08.01.1994 only in February 2010 when she had gone to the Patwari for taking loan against her share in the suit land. However, the said contention of the plaintiff remains unsubstantiated as she has failed to examine the said Patwari.

9. Further, it is the case of the plaintiff that the said judgment and decree dated 08.01.1994 is illegal, null and void, as it was obtained under fraudulent circumstances. However, said contention of the plaintiff is liable to be outrightly rejected as, the decree dated 8.1.1994, is a



consent decree; passed between the present parties in respect of the present suit land; whereby the plaintiff had relinquished her share in the suit property in favour of her brother/defendant No.1 herein. The evidence on record amply establishes that the said decree was passed without fraud and with the consent of the plaintiff; inter-alia, from the evidence of DW3 who was the Advocate representing the plaintiff in said Civil Suit No. 1427. DW3 had categorically deposed that he was the Advocate who had filed Power of Attorney (Ex.DW1/D-Ex.DW2/B) and written statement (Ex.DW1/C-Ex.DW2/C) on behalf of the present plaintiff in the previous Civil Suit No. 1427 (defendant therein). He deposed that plaintiff had put her thumb impression on her Power of Attorney and her son Yogender, and nephew Samir had signed the same. PW3 admitted filing written statement dated 18.11.1993 (Ex.DW1/C-Ex.DW2/C) on behalf of the plaintiff in the Court after he had read over the said written statement to the plaintiff; and after admitting the contents of the same to be correct, plaintiff had thumb marked the same and Yogender and Samir had signed the same. PW3 had clearly deposed that on 18.11.1993, plaintiff along with her son Yogendra, and her nephew Samir were also present in Court, and said persons had been identified by him. PW3 also proved documents Vakalatnama as Ex.DW1/D-Ex.DW2/B, copy of written statement as Ex.DW1/C-Ex.DW2/C. As such, it cannot be stated by the plaintiff that the consent decree dated 08.01.1994 (Ex.D1) was procured by the defendants fraudulently.



10. The evidence of DW3 was supported and corroborated by the deposition of DW1 Samir and DW2 Ram Chander/defendant No.1. DW1 had categorically deposed that plaintiff is his aunt; and that she had voluntarily gone to Rewari to give her share of the suit property in favour of defendant Ram Chander. He also deposed that plaintiff/Chameli and he had appeared on 18.11.1993 and filed their written statement in the previous suit. Pursuant to consent decree dated 08.01.1994 (Ex.D1), mutation No. 356 dated 21.10.1995 was entered in favour of defendant No.1. Thus, in view of this un-rebutted evidence, it is clear that the judgment and decree dated 08.01.1994 (Ex.D1) was rightly passed by the concerned Court and was not procured by the defendants under false pretexts or fraudulent circumstances. In any event, presumption of truth is attached to Court proceedings.

11. Further, it is not disputed that the consent decree dated 08.01.1994 (Ex.D1) flows from the Family Settlement entered into between the parties in the year 1992-1993; as per which the plaintiff/defendants in the previous Civil suit no.1427 had agreed to give their share of the suit property to Ram Chander. Needless to say, in view of the fact that the consent decree dated 8.1.1994 stands proven, therefore the Family Settlement of 1992-1993, on the basis of which consent degree was passed, automatically stands proven. In this situation, I agree with the view taken by the learned Courts below that the plea of Family Settlement cannot be re-opened in the present suit. The reliance placed by learned counsel for the appellants upon ***Mallappa Ramappa***



Naik and others's case (supra) is misconceived as the same is distinguishable on facts and law.

12. In any event, the suit of the plaintiff is misguided as she had failed to prove her possession over the suit property. In fact, in her cross-examination, the plaintiff has admitted that the defendant is in cultivating possession of the suit property.

13. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings on record.

14. Before parting, it may also be pointed out that the present appeal is of the year 2019 having been filed on 11.01.2019. Order sheets show that notice has not yet been issued in the main appeal as since 2019, the matter has been adjourned either at request of, or due to non-appearance of learned counsel for the appellant.

15. In view of the discussion above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

16. Pending applications, if any, stand disposed of.

12.05.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No