

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****213****RSA-3032-2008 (O&M)****Date of decision: 08.12.2025****Ram Sarup through his LRs****...Appellant(s)****Vs.****Bharpai through her LR****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Akshay Kumar Goel, Advocate for the appellant.

Mr. Mohan Singla, Advocate for the respondent.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendant against the judgment of reversal dated 13.08.2008 passed by the first Appellate Court; whereby Civil Appeal filed by the plaintiff/respondent herein has been allowed, and suit of the plaintiff has been decreed.

2. Brief facts of the case are that the respondent/plaintiff had filed the present suit seeking declaration as owner in possession of the suit property as described in the plaint; **and** a declaration that the judgment and decree dated 05.06.1996 passed by the learned additional Civil Judge (Senior Division), Bhiwani in Civil Suit No. 209 of 1996 titled as **Ram Sarup vs. Bharpai** in respect of the suit land declaring the defendant as owner in possession of the suit land; **and** the mutation No. 1016 dated 29.06.1996 on the basis of the aforesaid judgment and decree, are illegal,



null and void being fraudulent; **and** for permanent injunction (prohibitory) restraining the defendant from alienating the suit land.

3. The facts as pleaded in the plaint were that the plaintiff was owner in possession of the suit land described in the plaint; that the appellant/defendant has no right, title or interest whatsoever in the suit property; that the judgment and decree dated 05.06.1996 was obtained by the defendant by fraudulent means; and the mutation No. 1016 dated 29.06.1996 is against law, facts and fraudulent and not binding on the rights of the plaintiff and is liable to be set aside and the plaintiff is liable to be incorporated as owner in possession of the land in dispute in place of the defendant in the revenue record.

4. It was pleaded by the plaintiff that her mother Lachmi was owner in possession of the land in dispute which was her ancestral property inherited from her forefather. Upon the death of Lachmi, Plaintiff and her 2 sisters inherited the land in equal shares; and Plaintiff was duly incorporated as owner in possession of 1/6th share. Defendant was also co-owner in the land in dispute to the extent of 1/6th share. Defendant and his 2 brothers had been cultivating the share of the plaintiff and her sisters. Defendant had misrepresented to the plaintiff that her thumb impressions are required for executing the Power of Attorney in respect of the suit land. It was pleaded that defendant had thus, fraudulently obtained various thumb impressions of plaintiff on some documents on 05.06.1996. When the plaintiff had applied for copy of the Jamabandi for the year 1994-95 as the plaintiff intended to sell the land, plaintiff had



come to know about the judgment and decree dated 05.06.1996. Accordingly, present suit was filed on 12.03.2001 on the ground defendant had played fraud and undue influence on the plaintiff and obtained her thumb impressions by misrepresenting facts.

5. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Bhiwani had dismissed the suit of the plaintiff vide judgment and decree dated 10.11.2003 holding the same to be time barred; and on the ground that the plaintiff had failed to prove that the defendant had played fraud upon her. However, the Civil Appeal filed by the plaintiff was allowed by the learned Additional District Judge-III, Bhiwani vide judgment and decree dated 13.08.2008 holding that the decree dated 05.06.1996 was obtained by playing fraud and the same is not binding upon the rights of the plaintiff. Learned First Appellate Court has also held that the suit was filed within limitation. Hence, the present second appeal by the defendant.

6. It is *inter alia* submitted by learned counsel for the appellant that first and foremost, the Civil Suit filed by the respondent/plaintiff was not maintainable in terms of Order 23 Rule 3-A CPC (Added w.e.f. 01.02.1977), as per which no independent suit can be filed for setting aside a Compromise Decree on the ground that the compromise was not lawful. It is contended that a Consent Decree operates as an estoppel and is valid and binding unless it is set aside by the Court which passed the Consent Decree, by an order on an application to be filed under the proviso of Rule 3 Order 23. Accordingly, the only remedy available to a



party to a Consent Decree to avoid such Consent Decree, is to approach the Court which recorded the compromise and passed a Decree in terms of it and establish that there was no compromise. In the event the Court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a Consent Decree is nothing but contract between parties superimposed with the seal of approval of the Court. The validity of a Consent Decree depends wholly on the validity of the agreement or compromise on which it is made. In support, learned counsel for the appellant places reliance upon a judgment passed by Hon'ble Supreme Court in **Pushpa Devi Bhagat (dead) through LR. Sadhna Rai (SMT) vs. Rajinder Singh and others (2006) 5 Supreme Court Cases 566**; and in **Manjunath Tirakappa Malagi v. Gurusiddappa Tirakappa Malagi (Dead), (SC): Law Finder Doc Id # 2721628**.

7. It is further submitted that although the plaintiff has alleged fraud however, the First Appellate Court has failed to take note of the fact that the plaintiff has miserably failed to prove the alleged fraud by the appellant. It is contended that the allegations levelled by the plaintiff have not been substantiated by her oral testimony on oath as not a single word was uttered by the plaintiff which could prove her case.

8. Learned counsel for the appellant further submits that the Ld. Appellate Court had erred in not appreciating the fact that the appellant is cousin of the plaintiff/respondent. This fact had been admitted by the plaintiff in Para no. 1 of her plaint. Their fathers were real



brothers and were sons of Sohala (grand father of the parties to the suit). It is also admitted by her that all were co-sharers. So, the land was transferred in the name of the appellant by the respondent because she was not having any issue and the property devolved upon her from her parental side and it was decided between Bhai-Biradari that the suit land should be given and settled in his favour to avoid any possible future dispute. So, six months after the settlement, the suit was filed as the name of the appellant was not incorporated in the revenue record. Thus, the parties to the suit having common ancestry settled the share. It is argued that a semblance of relations, love and affection, is sufficient to sustain a family settlement.

9. It is further submitted by learned counsel for the appellant that the Ld. Appellate Court has wrongly held that the plaintiff has filed the suit within limitation from the date of her knowledge. In fact, she was well aware of the judgment and decree dated 05.06.1996 passed by the Ld. Additional Civil Judge (Sr. Divn.) Bhiwani. Even Advocate Sh. B.S. Boora/DW3, made a statement that on 05.06.1996, he had made a statement on behalf of Ram Sarup (defendant in the instant case) and thereafter the Ld. Court decreed the suit. This witness further stated that he got recorded his statement after the statement of Smt. Bharpai (plaintiff in the instant case) was recorded. The deposition of this witness clearly established the fact that the plaintiff was well aware of the judgment and decree dated 05.06.1996, from the date it was passed. So,



in these circumstances, the suit filed by the plaintiff was beyond limitation.

10. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decree dated 13.08.2008 passed by learned Additional District Judge-III, Bhiwani be set aside; and the judgment and decree dated 10.11.2003 passed by Civil Judge (Junior Division), Bhiwani be restored and the suit of the plaintiff be ordered to be dismissed.

11. *Per contra*, learned counsel for respondent/plaintiff submits that the argument/defence of maintainability is not available to the appellant as he has not raised this plea heretofore. Learned counsel also points out that the issue No.4 was framed by the learned Trial Court in respect of maintainability which was disposed of by the learned Trial Court as “not pressed” by the defendant. It is contended that therefore, appellant cannot, at this stage, raise argument of maintainability.

12. Learned counsel further submits that the learned First Appellate Court has given cogent findings that the appellant had played fraud upon the plaintiff. In this regard, it is submitted that the findings returned by the learned First Appellate Court in paras 13 and 16 of its judgment dated 13.08.2008 amply establish beyond doubt that the appellant had played fraud upon the plaintiff. He accordingly prays that the present Appeal be dismissed and the suit of the plaintiff be decreed.

13. No other argument is made on behalf of Id. counsel for the parties. I have heard Id. counsel and perused the case file alongwith Lower



Court Records in minute detail. I have given my thoughtful consideration to the rival submissions advanced on behalf of both the parties. I find merit in the submissions made on behalf of the appellant.

Order 23 Rule 3A CPC reads as under: –

“3. Compromise of suit. - Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

3A . Bar to suit. - No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.” (Emphasis added)

14. A bare reading of the above shows that in terms of the said provision, the recourse open to the plaintiff was to file an application for recall of Consent Decree. A separate independent fresh civil suit for setting aside the Consent Decree, was clearly not maintainable. In this regard, learned counsel for the appellant has relied upon the judgment of



Hon'ble Supreme Court in **Pushpa Devi Bhagat (supra)**, which has dealt with every aspect of the issue comprehensively and in detail. Relevant paras 14 to 17 of the said judgment are reproduced hereunder:-

"14. The judgment of the High Court is challenged by the appellant (the second defendant's legal representative) in this appeal. Learned counsel for the appellant contended that the High Court having held that the case did not fall under the first part of Rule 3 of Order 23 committed a serious error in holding that the case fell under the second part of the said Rule. It is contended that the second part applies only where the defendant satisfies the plaintiff in regard to the whole or part of the subject-matter of the suit. It is pointed out that the second part refers to completed acts, that is acts which have been already executed or performed, where nothing more remains to be done in future by a defendant. He submitted that in this case when the counsel for the defendants agreed to vacate the suit premises on a future date, that is, on or before 22-1-2002, it was a promise or an agreement to do an act in future to satisfy the suit claim, and not a case where "the defendant satisfies the plaintiff in respect of the subject-matter of the suit". He pointed out that if the defendants had vacated and delivered the premises to the plaintiffs and thereafter the counsel for the defendants had confirmed the same and the suit had been disposed of recording the said submission, then it would fall under the second part. The appellant contends that the High Court having held that the case did not fall under the first part of Rule 3, and the case demonstrably not falling under the second part of Rule 3, it has to be held that there was no lawful agreement or compromise. It is submitted that the first appellate court was justified in setting aside the consent



decree and remanding the matter to the trial court. On the other hand, the learned counsel for the landlords contended that the District Court had no jurisdiction to entertain the appeal against a consent decree. It is also contended that there was a compromise by admitting the claim of the plaintiffs, and, therefore, the consequential decree is valid and binding. On the contentions raised, the following two questions arise for consideration:

(i) Whether the appeal filed by Pushpa Devi under Section 96 of the Code of Civil Procedure against the consent decree was maintainable.

(ii) Whether the compromise on 23-5-2001 resulting in a consent decree dated 18-7-2001 was not a valid compromise under Order 23 Rule 3 CPC.

Re: Point (i)

*15. It is no doubt true that the landlords did not contend either before the first appellate court or before the High Court that the appeal against the consent decree was not maintainable. This contention is urged for the first time in this Court. The contention relates to jurisdiction of the appellate court and is evident from the record. Such a plea does not require any evidence. Further, being a contention relating to the jurisdiction of the appellate court, it does not require any "pleading". Though this Court will not normally permit a new plea to be raised at the hearing of the special leave petition or an appeal under Article 136, where such plea does not involve any question of fact or amendment of pleading and is purely one of law, particularly relating to jurisdiction of the appellate court, it can be entertained by this Court. (See **Shanti Devi v. Bimla Devi and Zahoor v. State of U.P.**) In **Hiralal Vallabhram v. Kastorbhai Lalbhat** this Court observed: (SCR pp. 347 F-G & 348 D)*



"[T]hough the question of jurisdiction had not been urged before the High Court it stares one in the face on the judgment of the appellate court. We are satisfied that the appellate court had no jurisdiction.... Though this point was not raised in the High Court, it is so obvious that we have permitted the [plea to be raised] before us."

In this case, the contention raised being one relating to jurisdiction of the appellate court, we have permitted the said contention and heard both sides thereon.

16. Section 96 provides for appeals from original decrees. Sub-section (3) of Section 96, however, provides that no appeal shall lie from a decree passed by the court with the consent of the parties. We may notice here that Order 43 Rule 1(m) CPC had earlier provided for an appeal against the order under Rule 3 Order 23 recording or refusing to record an agreement, a compromise or satisfaction. But clause (m) of Rule 1 Order 43 was omitted by Act 104 of 1976 with effect from 1-2-1977. Simultaneously, a proviso was added to Rule 3 Order 23 with effect from 1-2-1977. We extract below the relevant portion of the said proviso:

"Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the court shall decide the question;"

Rule 3-A was also added in Order 23 with effect from 1-2-1977 barring any suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

17. The position that emerges from the amended provisions of Order 23 can be summed up thus:



(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second



defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code.” (Emphasis is mine.)

15. From reading of the above pronouncement, it is clear that suit of the respondent, was not maintainable. Therefore, only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the Court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The abovesaid view has been reiterated by the Hon’ble Apex Court in recent case of **Manjunath supra**.

16. Contention of the respondent that the appellant cannot raise plea of maintainability at this stage, is liable to be rejected for also being contradictory; as, admittedly the learned Trial Court had framed Issue no.4 regarding maintainability of the suit. Needless to say, the said Issue would have been framed by the learned trial court only because the appellant had raised such a plea. Therefore, it cannot be said that appellant has raised plea of maintainability of the suit only before this



Court. Even otherwise, in terms of enunciation of law by the Hon'ble Supreme Court in aforesaid reproduced judgment of **Pushpa Devi Bhagat (supra)**, it has been clearly held that when the contention relates to the jurisdiction and evidence from the record, such a plea does not require any evidence and can therefore, be raised at any stage.

17. Learned counsel for the respondent is unable to deny or dispute these facts. However, repeatedly submits that the same has been obtained fraudulently.

18. As regards the plea of fraud, learned counsel for the respondent has relied upon findings of the learned First Appellate Court in paras 13 and 16 of the judgment dated 13.08.2008, which read as under:-

"13. I have given my considerable thoughts to the rival submissions made before me led by the parties and also gone through the evidence and documents produced on file very carefully. From the perusal of documents placed on file and after perusing the evidence of the parties makes the matter manifestly clear that issues no.1 and 2 were taken up by leaned lower court together and have wrongly held the findings of these against the appellant/plaintiff and in favour of defendant, whereas it should be in favour of plaintiff. To prove these issues, appellant/plaintiff Smt. Bharpai himself stepped in to witness box as PW.1 and stated in her examination in chief that the land in dispute had come from her mother. She further deposed that Ram Sarup respondent/defendant has asked her that he will take care of her land and she consented him to take care of her land and regarding the above said decree, she has come to know about one year back and have not get passed any decree in



favour of respondent/defendant and this decree has been passed by fraud. PW.2 Santosh deposed in her examination in chief by way of affidavit to the effect that the land in dispute is 16 bighas and appellant/plaintiff is owner of land in dispute. He further deposed that on the pretext of Power of Attorney that he will take care of her land and get passed a decree by playing fraud and misrepresentation. Further, Amir Singh who appeared in the witness box as PW.3 stated on the same lines as stated by PW.2 and particularly stated that the decree has been got passed by playing fraud. He tendered Ex.P1 jamabandi for the year 1994-95 in which Bharpai, Parvati and Shanti daughters of Smt. Lachmi has been shown as owner in possession of half share and mutation no. 1016 which was get entered on the basis of the judgment and decree in dispute in favour of respondent/defendant and both the copies were got issued to the appellant/plaintiff on 20.02.2001. Ex.P3 and Ex.P4 is the copy of judgment and decree dated 05.06.1996 which was passed on the basis of family settlement. Ex.P5 and Ex. P6 which are the mutation no. 307 which was entered in the name of Lachmi, the mother of the appellant/plaintiff Ex.P6 in which the land got mutated in the name of husband of Lachmi namely, Bijay. However, in the Hindi version, it is mentioned as Beheju son of Sohla which clarifies the stand of the appellant/plaintiff that the land in dispute inherited by appellant/plaintiff from Lachmi and Lachmi from her husband Bijay. It is further clarified from the plaint that it is clearly mentioned by the appellant/plaintiff that there was no pre-existing right of the respondent / defendant in the land in dispute. In the plaint, grounds taken by the appellant/plaintiff in para no. 7(a)(c) and (d) that the respondent/defendant having no pre-existing right and the decree is an act of fraud and misrepresentation



and the respondent/defendant cannot enter into any such family settlement as shown in civil suit no. 209 of 1996. It has also been stated in para 5 of the plaint that on 05.06.1996, the respondent/defendant had obtained right thumb impressions of the appellant/plaintiff on various papers with the representation that these are required for executing power of attorney and also produced some case law, but nothing has been asked from the appellant/plaintiff at that time. Hence, it is held that the decree dated 05.06.1996 passed by respondent/defendant Ram Sarup by way of playing fraud and misrepresentation and the same is not binding upon the rights of appellant/plaintiff Smt. Bharpai.

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16. So-far-as, the respondent/defendant pleading in Ex.D1 which is copy of plaint, in para no.2 of the plaint, a family settlement was entered between the appellant/plaintiff and defendant, have been mentioned, however, if there was any family settlement, why it was entered between the appellant/plaintiff and defendant only, whereas respondent/defendant also having two brothers Ram Singh and Ramphal who are not made party to the family settlement and this creates suspicion that there was no family settlement arrived at between the parties and the same is mentioned as oral. However, when the respondent/defendant is getting a valuable property in his name by way of decree why the family settlement was not reduced into writing and the same was not registered. Even from the perusal of the Lower Court file, it has not come on the file that there was any family settlement arrived at between the parties and even the witnesses produced by the respondent/defendant on the file, Ram Sarup DW.1 in cross examination, it was admitted by him that defendants having



no right in the land of Bijay Ram who is the husband of Lachmi. It is also admitted that he is legal heir of Girdhari and it is correct that as a legal heir, he has received his half share in the land from his father and it is also admitted by him that he has no pre-existing right. Ramphal DW.2 who is brother of plaintiff, the same has been admitted in cross examination that appellant/plaintiff is an illiterate and an old woman and he did not know how to get a court decree passed in favour of whom having pre-existing right in the land in dispute. Even DW.3 Bharat Singh appeared in the witness box. He stated in his cross-examination that Bharpai has not filed written statement in his presence, who was the counsel of Ram Sarup in that civil suit. Even DW.4 Shiv Kumar Clerk of Sh. S.K. Sharma, Advocate examined by the defendant. He is not a handwriting expert and can not prove the thumb impression of the appellant/plaintiff Bharpai on the file and hence, no handwriting expert has been produced by the respondent/defendant to prove the thumb impression of appellant/plaintiff Bharpai. DW.6 Dharambir has deposed in cross examination that Panchayat was held in the year 1993-94. Ramphal and Satbir were present in the Panchayat. It is pertinent to mention here that they have not been proved any document to show that any family settlement was ever arrived at between the parties. The suit was filed on 26.04.1996 and in which family settlement of six months has been mentioned but from perusal of statement of his witness shows that he does not know about any family settlement. No cogent and convincing evidence has been brought on record to show that any family settlement was arrived at between the parties or not. However, I have also gone through the case law cited in Ved. Pal alias Vedu's case (Supra); in Gurdev's case (Supra); in Lal Singh's case (Supra)



and in Smt. Shanti Devi (dead) represented by LR case (Supra), relied upon by learned counsel for the respondent/defendant very carefully and minutely, but the same are not applicable to the facts and circumstances of the present case, because the same are based on different footing.”

19. A bare reading of the above findings/reasoning of the learned First Appellate Court in para 13 show that the same are based on conjectures and surmises. In holding the decree dated 5.6.1996 to be fraudulent, the learned 1st Appellate Court has only relied upon the oral testimony of the plaintiff, and the averments made in the plaint. It is my clear view, that the same is not sufficient to prove the fraud allegedly committed by the appellant. On a Court query, learned counsel for the respondent has admitted that plaintiff had not examined any handwriting expert to prove that the thumb impression borne on the written statement filed by the present plaintiff to the Civil suit no. 209 of 1996, was not hers. On the contrary, the record amply establishes that no fraud was played by the appellant upon the plaintiff. The plaint of the previous civil suit No. 209 of 1996 filed on 24.04.1996 titled as **Ram Sarup vs. Bharpai** in respect of the present suit land is on record as Ex.D1 (at page 177 of the LCR). The present plaintiff had duly filed written statement dated nil Ex.D2 (at page 185 of the LCR) to the said suit; wherein she had admitted the claim of the appellant. Not only this, what clinches the issue is that the present plaintiff had in fact, appeared in the suit no.209 filed by the defendant and engaged Sh. Bir Singh Bumla, Advocate. She appeared



in person before the Additional Civil Judge (Sr. Divn.) Bhiwani and got recorded her statement after hearing and understanding the contents of the suit filed by him. She appended her right-hand thumb impression on her statement. Thereafter, the Judgment and decree dated 05.06.1996 was passed by the Ld. Court. In the statement dated 06.05.1996 Ex.D3 (at page 189 of the LCR) recorded by the plaintiff before the learned Trial Court she had stated as follows:-

“Stated that the suit of plaintiff has been heard and understood and it is correct. Suit of the plaintiff may be decreed. Parties to bear their own costs.”

20. On the basis of the above statement, the civil suit no. 209 of 1996 came to be decreed on 5.6.1996. Thus, Mutation bearing No. 1016 was rightly entered and sanctioned on 29.06.1996 in name of defendant on the basis of Judgment and decree dated 05.06.1996. In holding the decree dated 5.6.1996 to be fraudulent, the First Appellate Court has totally ignored the above said evidence. Further, the findings of the learned first Appellate Court in para 16 of its judgment are entirely beyond pleadings, and therefore unsustainable. Moreover, the ‘suspicion’ of the Appellate Court, that there was no settlement is purely conjectural; especially in view of the statement of the plaintiff herself attesting to the same.

21. Even in her evidence as PW1, plaintiff has only stated that she had not transferred the land to anyone. She had deposed that she was residing in village Madha and as such, Ram Sarup-defendant told her that



he would look-after her land. She told Ram Sarup, who was her cousin (Chachera Bhai) to look after her land. But no written Power of attorney was given by her. She further stated that she challenged the instant decree which she got to know a year ago. She has not suffered any decree about her land in favour of the defendant. He obtained it fraudulently. Plaintiff thus, failed to substantiate the plea of alleged fraud played upon her by the defendant in order to get the land transferred through judgment and decree dated 05.06.1996.

22. On the other hand, the defendant by examining himself (DW-1); his Counsel namely Sh. Bharat Singh Bura (DW-3) who proved the copy of plaint dated 24.04.1996 (Ex. D-1); and DW-4 (Shiv Kumar, clerk of S.K.Sharma, Advocate, Bhiwani) who proved and identified the signatures of Sh. Bir Singh Bumla on the written statement dated nil filed by Smt, Bharpai (Ex. D-2); and on the statement of Smt. Bharpai (Ex. D-3) duly proved that the compromise was genuinely affected inter se the parties to the suit and thereafter the consent Judgment and decree dated 05.06.1996 was passed. It is to be noted that DW-3 (Sh. Bharat Singh Bura, Advocate) proved the Plaint of suit bearing No. 209 titled as "Ram Sarup Vs. Bharpai". He admitted his signatures on the Plaint and stated that he drafted the plaint on the instructions of Ram Sarup, the copy of which is Ex. D-1. He further stated that he made statement after the statement was given by the defendant in that case (Bharpai). DW-4 (Shiv Kumar, clerk to Sh. S.K. Sharma Advocate, Bhiwani) stated that he had worked with Sh. Bir Singh Bumla, Advocate and identified his signatures on the written



statement filed in civil suit no. 209, decided on 05.06.1996. He also identified the signatures of Sh. Bir Singh Bumla, Advocate on the power of Attorney. He stated that he has seen the original statement given by Bharpai who was identified by Sh. Bir Singh Bumla, Advocate whose signatures were identified by this witness. Thus, defendant has proved his case not only by producing sufficient documentary evidence, but also examining necessary witnesses.

23. Even otherwise, case of the plaintiff has to stand on its own legs. The plaintiff has alleged fraud. Thus, it was for the plaintiff to prove the said fraud by leading positive evidence. As noted above, plaintiff has miserably failed to discharge that onus. Relevant findings of the learned Trial Court in the judgment dated 10.11.2003 are as follows: -

"It may be pointed out here that previously the land in dispute was owned by one Lachmi Devi D/o Vijay Ram, thereafter the land in dispute was owned by the plaintiff and her sister. In the present suit plaintiff has challenged the decree dated 05.06.1996 on the grounds that the defendant had obtained the same by mis-representing the facts that the wanted her thumb impressions for power of attorney in respect of the land in dispute. The specific allegation has been raised by the plaintiff in this regard but while appearing as PWI, plaintiff has only stated that defendant had asked her that he would take care of her land and thereafter she had given possession of the disputed land to him but no written power of attorney was given by her to the defendant. Plaintiff has no where stated that defendant had obtained her thumb impressions on some papers rather she has stated that no written power of attorney was given by her to the defendant,



PW2, Santosh and PW3 Amir Singh have also not stated that defendant had obtained the thumb impressions of the plaintiff on some papers. They have simply mentioned in their affidavits that defendant had asked the power of attorney. Plaintiff should have led cogent and convincing evidence to prove that defendant had taken her thumb impressions on some papers but she has failed to prove the same by simply stating that defendant had asked her to take care of her land, the ingredients of fraud and mis-representation are not proved. Whereas defendant has led documentary evidence in the form of copy of plaint Ex.D1, written statement Ex. D2, statement of plaintiff Ex.D3 Vakalatnama Ex. D4. Besides judgment and decree Ex.P3 and Ex.P4 are also on the file. Plaint Ex.D1 and written statement Ex.D2 have duly been proved by the plaintiff by leading oral as well as proved by the plaintiff by leading oral as well as documentary evidence. Defendant has duly rebutted the oral evidence produced by the plaintiff, therefore, plaintiff has failed to prove that defendant had played fraud upon her and obtained the decree in question in his favour by mis-representing the facts. Perusal of Ex.D1 certified copy of plaint in the previous suit filed by Ram Sarup against the plaintiff shows that judgment Ex.P3 was passed on the basis of family settlement which was affected between the parties six months prior to filing of the previous suit. Defendant can be said to have pre-existing right in the land in dispute on the basis of said family settlement at the time of filing of the previous suit by him.....”

24. Ld. Counsel for the respondent is unable to dispute or controvert the above said findings of the learned trial court. In view of the above discussion, the present Regular Second Appeal is **allowed**; and

impugned judgment and decree dated 13.08.2008 passed by learned Additional District Judge-III, Bhiwani is set aside; and the judgment and decree dated 10.11.2003 passed by learned Civil Judge (Junior Division), Bhiwani is restored. Resultantly, the suit of the plaintiff stands dismissed.

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

08.12.2025

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE