



**224 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-3805-2015 (O&M)

Date of decision : 17.02.2025

Bishamber (Deceased) through legal heirs

...Appellant

Vs.

**Rohtash (deceased) through Legal heirs
and others**

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Sangwan, Advocate
for the appellant.

Mr. Vaneet Soni, Advocate
Mr. Gyan Prakash Saini, Advocate
for respondent No.4.

ANIL KSHETARPAL, J. (Oral)

1. The plaintiff assails the correctness of concurrent findings of fact arrived at by the Courts below while dismissing their suit for grant of decree of declaration to the effect that they are owners in possession of the suit property and Civil Court decree passed on 27.04.1989 in Civil Suit No. 602 of 1988 (*Rohtash verses Bishamber Dayal*) is illegal, null and void.

2. Bishamber Dayal and Rohtash are brothers. Rohtash filed a suit for grant of decree of declaration that he is the owner of 09 kanals 03 marlas land, which is reflected in Bishamber Dayal's name. Bishamber Dayal filed written statement admitting Rohtash's claim. Thus, the decree was passed by the trial Court under Order XII Rule 6 of the Code of Civil Procedure, 1908. After a passage of 15 years, Bishamber Dayal filed a suit for declaration. Both



the Courts dismissed his suit.

3. Learned counsel representing the appellant has made the following submissions:-

1. For a period of 15 years Rohtash did not get the mutation of the property entered in his name.
2. Bishamber Dayal could not have suffered a decree in his brother's favour as he was having his own Children.
3. Rohtash was not having any pre-existing right.
4. The decree does not result in transfer of the property as it has not been registered.

4. This Court has considered the submissions made by the learned counsel representing the parties.

5. Failure to get the entry in the revenue record does not effect ownership. Rohtash was declared owner of the property by virtue of his Civil Court decree dated 27.04.1989. His ownership would not stand diluted merely because he failed to get the mutation sanctioned in his favour. Bishamber Dayal has failed to prove that Rohtash played fraud when the Court decree was passed. The competent Court passed a decree on the admission of Bishamber Dayal. The same could be challenged only on limited grounds on which the contract between the parties could be avoided.

6. Moreover, a decree passed on the basis of acknowledging family settlement cannot be set aside only because a U turn is taken by one of the party to the same. Rohtash is brother of Bishamber Dayal, hence, he will be deemed to have pre-existing right. The Hon'ble Supreme Court in '**Khushi**



Ram and others vs. Nawal Singh, (2021) 16 SCC 279, *‘Ravinder Kaur Grewal and others vs. Manjeet Kaur*, (2020) 9 SCC 706 and *‘Mohammade Yousuf and others vs. Raj Kumar and others*, (2020) 10 SCC 264, have held that a consent decree passed by the Court acknowledging a prior family settlement is not required to be registered if it is concerning the suit property.

- 7. Hence, no ground to interfere is made out.
- 8. The appeal is dismissed.
- 9. All the pending miscellaneous applications, if any, are also disposed of.

17.02.2025
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No