



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

242

RSA-1027-2014 (O&M)

Kavita Rani

...Appellant(s)

Vs.

Parveen Kumari and others

...Respondent(s)

The date when the judgment is reserved: 24.03.2026

The date when the judgment is pronounced: 07.04.2026

The date when the judgment is uploaded on the website: 08.04.2026

Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced: Full judgment

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. S.K. Garg, Sr. Advocate assisted by Mr. Vishal Garg Narwana, Advocate, Mr. Mukul Ahuja, Advocate, Ms. Sukriti Jain, Advocate and Ms. Nancy Atwal, Advocate for the appellant.

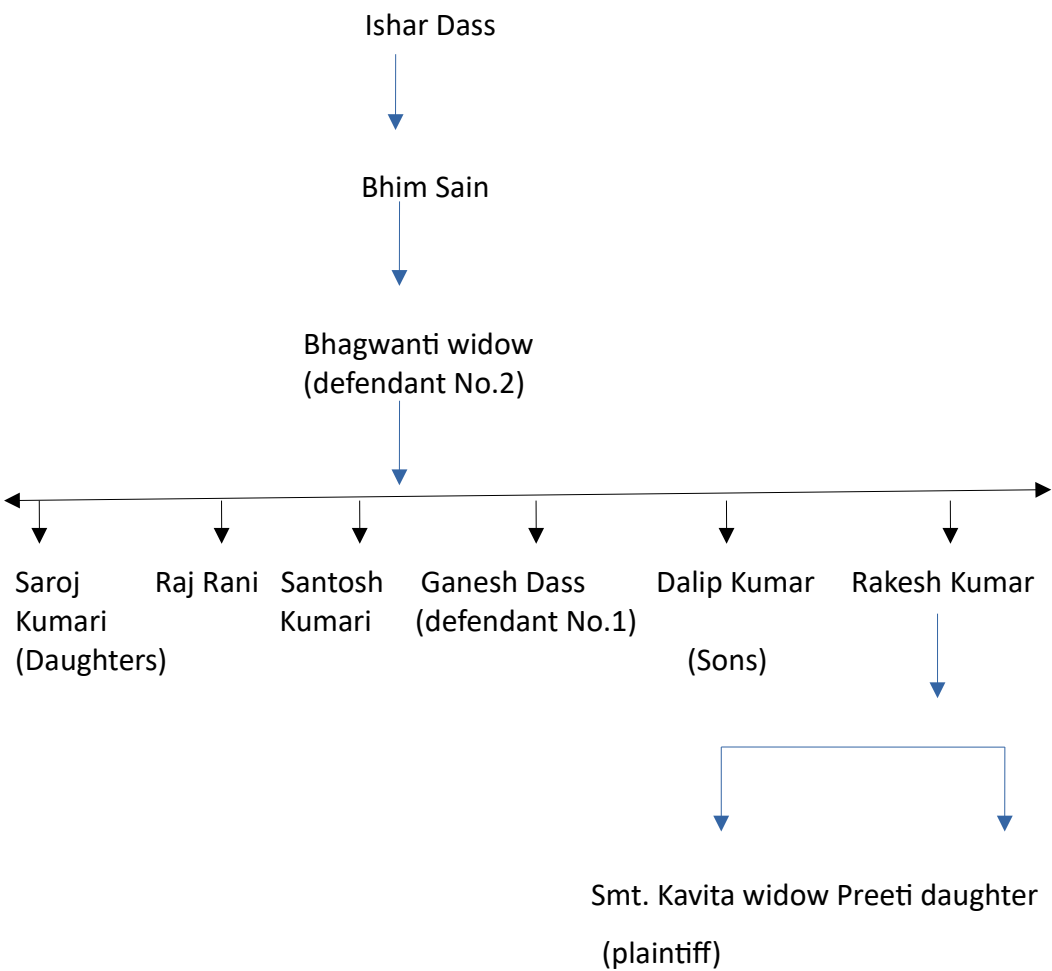
Mr. Rupinder Khosla, Sr. Advocate assisted by Mr. Akshay Jain, Advocate, Mr. Munish Kumar Garg, Advocate and Ms. Abadhya Singh, Advocate for respondents No.1 and 2.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiff against the judgment of reversal; whereby suit filed by the appellant for possession and declaration, although decreed by the learned Trial Court, has been dismissed by the learned First Appellate Court.

2. Brief facts of the case are that the plaintiff had filed the present suit “.....seeking possession and declaration to the effect that release deed bearing vasika no.2274 dated 27.7.2004 and mutation no.1756 dated 24.9.2004 sanctioned on the basis of said release deed are wrong, illegal, null, void, mere paper transaction just to deprive the plaintiff of her birth right in the suit property since the same is ancestral property in the hands of defendant no.2. As a consequential relief it was prayed that defendants be restrained from alienating the suit property in any manner.”

3. To better understand the dispute at hand, it will be helpful to look at the following Pedigree table of the parties: –



4. The pleaded case of the appellant in the plaint was that the suit land, total measuring 26K 9M, is ancestral property in the hands of



Bhagwanti Devi/defendant No.2/paternal grandmother of the plaintiff, who had inherited the same from her husband, namely, Bhim Sain vide Mutation No. 1318 dated 14.10.1995. Defendant No.2 had executed a Release Deed No. 2274 dated 27.07.2004 in favour of her son/ defendant No.1; in pursuance to which Mutation No. 1756 dated 24.09.2004 had been sanctioned in his favour which is illegal, null and void. It was contended that as per Mutation No. 1318 dated 14.10.1995; defendant No.2 had power to transfer only 1/7th share in the suit property; whereas vide the impugned Release Deed, she had transferred the entire suit land in favour of defendant No.1. It was averred that father of the plaintiff, namely, Rakesh Kumar had died on 20.10.2003 and mutation of inheritance was sanctioned in favour of defendant No.2 being mother of Rakesh Kumar. Plaintiff had asked defendant No.2 several times to transfer the share in her favour and to set aside the Release Deed as well as the Mutation, but to no avail. Hence, present suit was filed on 01.06.2009.

5. Upon notice, defendants had resisted the suit by filing joint written statement and submitting that Shri Bhim Sain/husband of defendant no.2 was the owner in possession of agriculture land measuring 26 kanal 9 marla who had died on 22.5.1995; and after his death mutation no.1318 dated 14.10.1995 was sanctioned in the name of the defendants along with other children of Bhim Sain/brothers and sisters of defendant no.1 in equal shares of 1/7 share. Later on, defendant no.1 along with other successors of land had transferred their share of land to defendant no.2 vide civil suit no.1009/1995 decided on 25.11.1995. Hence, entire



property in the hands of defendant no.2 was self acquired property of defendant no.2; and she has rightly executed the release deed in favour of defendant no.1. In the end, dismissal of the suit was prayed for.

6. No replication was filed.

7. On the basis of pleadings of the parties, following issues were framed by learned Trial Court:-

“1. Whether the disputed property is ancestral in the hands of defendant no.2? OPP

2. Whether the release deed no.2274 dated 27.7.2004 is liable to be set aside? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the suit of the plaintiff is not maintainable in the present form? OPD

5. Whether the plaintiff is stopped by his own act and conduct from filing the present suit? OPD

6. Whether the plaintiff has suppressed the true and material facts from the Court? OPD

7. Whether the suit is bad for want of non-joinder and mis-joinder of necessary parties? OPD

8. Whether the Civil Court has got no jurisdiction to try and entertain the present suit? OPD

9. Relief.”

8. Upon appraisal of the pleadings and the evidence led by the parties, issue No. 1 was decided against the plaintiff; issues No. 2 and 3 were decided in favour of the plaintiff; and Issues No. 4 to 8 were answered against the defendants being not pressed. Consequentially,



learned Additional Civil Judge (Senior Division), Tohana vide judgment and decree dated 21.11.2011, had decreed the suit of the plaintiff as follows: -

“17. As a sequel to my above discussion on the various issues discussed above, the present suit succeeds and is hereby decreed with no order as to costs to the effect that release deed bearing vasika no.2274 dated 27.7.2004 as well as mutation no.1756 dated 24.9.2004 sanctioned on the basis of said release deed are wrong, illegal, null, void, mere paper transaction therefore, same are hereby set aside. Defendant no.1 restrained from alienating the suit property in any manner. Decree-sheet be drawn accordingly. File be consigned to the record-room after doing the needful.”

9. Against the above, the defendants had filed Civil Appeal; which was accepted by the learned Additional District Judge, Fatehabad vide judgment and decree dated 03.02.2014 as follows: -

“26. In view of the above discussion, instant appeal is hereby allowed with costs and civil court judgment and decree passed in the case titled 'Smt. Kavita Rani Vs. Ganesh Dass etc', stands set aside and the original suit titled "Smt. Kavita Rani Vs. Ganesh Dass etc", stands dismissed with costs throughout. Decree sheet be drawn accordingly.”

10. Hence, present second appeal by the plaintiff.

11. At the very outset, learned Senior Counsel for the appellant/plaintiff has submitted that in view of the fact that there are concurrent findings of fact that the suit land was not ancestral in nature, appellant does not press her plea that the suit land was ancestral.



12. Ld. Senior Counsel for the appellant submits that in passing the impugned judgment and decree, the learned first Appellate Court lost side of the fact that defendant No.2 Bhagwanti Devi had previously also filed a Civil Suit No. 1009 dated 13.11.1995 seeking possession and declaration as owner of present suit land measuring 26K 9M. This Suit land includes seven equal shares of all the 7 legal representatives of Bhim Sain; being the present two defendants as well as the five other sons and daughters of Bhim Sain. It is contended that the said suit had been filed by defendant No.2 seeking ownership and possession over the suit land only for the purposes of her maintenance. Accordingly, it had been categorically averred in para 2 of the plaint that defendant No.2 was seeking “.....*right of ownership; and possession for maintenance.*” The said averment in para 2 of the plaint CS-1009-13.11.1995, had been ipso facto admitted by the children of Bhagwanti Devi in their written statement Ex.D2 “*That para 2 of the suit is correct and accepted.*” Thus, as the defendants in the said suit viz the 6 children of Bhagwanti Devi and Bhim Sain, had admitted right of Bhagwanti Devi for purpose of maintenance; Consent Decree dated 24.11.1995 was passed and suit of Bhagwanti Devi came to be decreed as prayed for.

13. Learned Senior Counsel submits Bhagwanti Devi herself has mentioned in the previous Civil Suit that transfer of the shares of her children is for the purposes of maintenance. Even defendants therein in their written statement had also admitted that they are transferring their shares in the estate of their favour in favour of Bhagwanti Devi only for



the purpose of maintenance. Thus, as transfer of shares of the respondents had been made in favour of Bhagwanti Devi only for maintenance, no ownership rights would accrue to Bhagwanti Devi. As such, she could not have executed the impugned Release Deed solely in favour of defendant No.1 herein. It is reiterated that vide the Consent Decree dated 24.11.1995, all the 6 children of Bhagwanti Devi and Bhim Sain including Rakesh Kumar, predecessor-in-interest of the plaintiff, and Ganesh Dass/defendant No.1 herein, had transferred their respective shares in the estate of Bhim Sain in favour of Bhagwanti Devi only for her maintenance. Therefore, Bhagwanti Devi had no right to transfer the entire suit land measuring 26K 9M in favour of only one son being defendant No.1. It is argued that vide the impugned Release deed, Bhagwanti Devi could have only transferred her own 1/7th share measuring 4K; whereas she had transferred all the suit land measuring 26K 9M in favour of defendant No.1.

14. Learned Senior Counsel for the appellant argues that the Consent Decree cannot be interpreted in exclusion of the pleadings. The Consent Decree has to be seen in context of the pleadings; and in the previous Civil Suit Ex.D1 filed by Bhagwanti Devi, it has been categorically stated that her children are transferring their shares to Bhagwanti Devi only for purposes of her maintenance. The Consent Decree was executed by all the children in good faith and out of love and affection only for maintenance of Bhagwanti Devi. However, Bhagwanti Devi has misused the said Consent Decree and has transferred shares of her other children



also, only in favour of her one son being defendant No.1. In support of his argument that Consent Decree cannot be seen in exclusion of the pleadings, learned Senior Counsel relies upon judgments of Hon'ble Supreme Court passed in **Topanmal Chhotamal v. Kundomal Gangaram, (SC) : Law Finder Doc Id # 112146**; and of this Court in **Inderjit Singh v. Rajinder Kaur, (P&H) : Law Finder Doc Id # 124087**.

15. Learned Senior Counsel submits that vide the Consent Decree, Rakesh Kumar, who is father and the predecessor-in-interest of the present plaintiff, had also transferred his 1/6th share in the suit land to Bhagwanti Devi; however, only for the purposes of her maintenance. It is contended that, therefore, as per Section 14 (2) of the Hindu Succession Act, Defendant no. 2 was given only limited interest in the property, and she was not absolute owner of the same. However, vide the impugned Release Deed dated 27.07.2004, Bhagwanti Devi had relinquished the entire suit property measuring 26K 9M, including share of Rakesh Kumar, in favour of present defendant No.1. Learned Senior Counsel argues that as the Consent Decree had been affected only for maintenance of defendant No.2, no ownership rights accrued to Bhagwanti Devi upon the suit land; and, therefore, she was not competent to execute the impugned Release Deed.

16. Ld. Senior Counsel for the appellant further argues that even assuming that ownership rights were granted to defendant no.2 vide said Consent Decree, then it is settled law that if there is no pre-existing right in the property, and ownership of the property is transferred by way of a



consent decree, then that consent decree requires registration under the Indian Registration Act. It is pointed out that the total property which came to defendant no. 2, for the first time, by way of consent decree is measuring 22K 9M. Admittedly, the value of the same was more than Rs. 100/-. Therefore, under the provisions of the Indian Registration Act, the Consent Decree was required to be compulsorily registered. However, as the said Decree was not registered, hence, the decree Dated 24.11.1995, conferred no right, title or interest in favour of Bhagwanti Devi. For this reason, as well Bhagwanti Devi could not have executed impugned Release Deed.

17. It is further submitted by learned Senior Counsel for the appellant that even otherwise Consent Judgment and Decree are inadmissible in evidence because the appellant has taken a plea in the Civil Suit that suit property is ancestral. Defendants' case is that the suit property is self acquired property. Admittedly, appellant has failed to prove the ancestral nature of the suit property. Thus, if the suit property is self acquired property of Bhagwanti Devi, then the Consent Decree was required to be compulsorily registered as per Section 17 of the Indian Registration Act. In view of the fact that the said Consent Decree was not registered, no ownership right could devolve upon Bhagwanti Devi; in terms of judgments passed by Hon'ble Supreme Court in **Shivdev Kaur (D) By Lrs. v. R.S. Grewal (SC) : Law Finder Doc Id # 418778**; and **Bhoop Singh v. Ram Singh Major, (SC) : Law Finder Doc Id # 37729** wherein it is held that: -



“16. We have to view the reach of Clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a Court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of value of Rs. 100/- or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embeded in the decree or order.

17. It would, therefore, be the duty of Court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the Court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs. 100/- or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registerable.

18. The legal position qua Clause (vi) of Section 17(2) can, on the basis of the aforesaid discussion, be summarised as below :

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs. 100/- upwards in favour of any party to the suit, the decree or order would require registration.



(3) If the decree were not to attract any of the Clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of compromise in question.

(5) If the property dealt with by the decree be not the "subject matter of the suit or proceeding", Clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated."

18. Ld. Senior Counsel for the appellant also relies upon judgment of this Court in **Surinder Singh v. Ujagar Singh, (Punjab And Haryana) : Law Finder Doc Id # 2825292**; wherein it is held that *"A consent decree that creates ownership rights in self-acquired immovable property for the first time requires compulsory registration to be legally valid."*

19. It is submitted that, therefore, Bhagwanti Devi was not the owner of the suit property for the aforesaid 2 reasons i.e. a) suit property had been transferred in her name only for maintenance; and b) because Consent Decree was not registered as required by law, therefore it could confer no ownership rights upon defendant no.2. As per Section 41 of the Transfer of Property Act, *"Who has not, gives not."* Consequentially, as



Bhagwanti Devi was not the owner of suit property, she was not competent to execute the impugned Release Deed.

20. Ld. Senior counsel for the appellant submits that therefore, all the documents Ex.D1 to Ex.D5 pertaining to CS-1009 dated 13.11.1995 are inadmissible in evidence because if a Consent Decree is passed in respect of self acquired property, then the said Decree is required to be compulsorily registered under Section 17 of the Indian Registration Act. Non-registration thereof would render it inadmissible in evidence. It is submitted that the Ld. Appellate court has failed to appreciate the settled law that pleading and issues pale into insignificance when both the parties lead their evidence i.e. when there is sufficient evidence before the court, the court can decide the point in issue between the parties without their being a specific pleading to this effect or any evidence being led in that respect. So, the observation of the Ld. Appellate court that the plaintiff has not challenged the validity of release deed on the ground that Smt. Bhagwanti had limited right in the suit property and she was not competent to transfer the same, is illegal and perverse because there was no need to plead this because the plaintiff was not challenging the decree as the same was only for life interest. Only challenge made in the present case was mainly with regard to the Release Deed Dated 27.07.2004. What right Bhagwanti had in suit property is incidental to the question whether she had a right to transfer the property. The Id. Appellate court has not read the pleadings i.e. plaint (Ex. D-1) in right perspective. So, this is a clear case of misreading of documentary evidence. In support, learned



Senior Counsel for the appellant relies upon judgment of this Court passed in **Ram Niwas v. Rakesh Kumar, (P&H)(DB) : Law Finder Doc Id # 56990**; wherein it is held as under:-

*“B. Civil Procedure Code 1908, Order Rule 2 - Pleadings
- A certain point did not find place in pleadings and no issue framed - Parties, however, leading evidence for and against - Court can adjudicate the point. (1906) Ind. App. 27 (PC) relied.*

It is well settled that if the parties know that a point arises in a case and they produce evidence on it, though it does not find place in the pleadings and no specific issue has been framed on it, the Court can still adjudicate thereon. None of the parties can be allowed to say that the Court cannot decide the matter because it was not raised on the pleading.”

21. Reliance is also placed upon judgment of Madras High Court in **Meenatchi v. Subramanian, (Madras) : Law Finder Doc Id # 3089**; and of Delhi High Court in **Shrimati Amarjit Kaur v. Mr. Kishan Chand, (Delhi) : Law Finder Doc Id # 57741**; wherein it is held that: -

“15. Mr. G.N. Aggarwal appearing for the landlord has referred me to several rulings in support of his contentions that if a document is admitted into evidence and no objection is raised at that time then no objection can be raised at a subsequent stage. This is not the law Section 298, Cr. P. Code (Act V of 1898) expressly laid down that it is the duty of a judge to exclude inadmissible evidence "whether it is or is not objected to by the parties". The duty of a judge in a civil case has not been expressed in similar language but there it is no manner of doubt that it exactly the same. The combined



effect of Section 5 (which says that evidence may be given of relevant facts and of no others), Section 60, and Section 64 and proviso 1 to Section 165 of Evidence Act is that an omission to object to evidence not admissible under that Act does not make it admissible and that it is the duty of the judge in all cases to exclude inadmissible evidence whether or not objected to by a party. The duty of a judge is to disallow inadmissible evidence even when no objection is taken. He should stop such questions himself without waiting for an objection to be taken to the admissibility (Starland v. D.P.P., 1944 2 All England Reporter 13 13 HL). In R. v. Pitambar, 7 WR, Cr. 25, Mark by J. said : "The moment a witness commences giving evidence which is inadmissible he should be stopped by the court."

(Emphasis added)

22. It is further submitted by learned Senior Counsel for the appellant that once the Ld. Appellate court has held in para no. 21 of the judgment that land in dispute was self acquired property of Bhagwanti. Thus, in view of the above finding she had no right to transfer the property by way of impugned release deed. It is argued that under the law, the concept of release deed with regard to self acquired property has not been recognized till date in any law, Act, or Rules. Hence, release deed dated 27.07.2004 is illegal and inadmissible in evidence and deserves to be set aside on this score alone.

23. Learned Senior Counsel submits that even as per Notification dated 19.04.2000 issued by State of Haryana, only ancestral property can be transferred by way of Consent Decree; and if non-ancestral property is



transferred vide Release Deed, then stamp duty is required to be paid. In the present case, it has already been held by both the District Courts that suit property was not ancestral in nature. Therefore, as per the above said Haryana Government Notification dated 19.04.2000, stamp duty had to be affixed which has not been done. Thus, as the aforesaid requirements of law were not complied with/fulfilled, the said documents could not be held to be admissible in evidence. In para no. 22 of the impugned judgment the Ld. Appellate court has held that the impugned release dated 27.07.2004, is an insufficiently stamped document. However, finding of the Ld. Appellate Court that legality of a document on the ground of insufficiency of stamp duty cannot be raised in civil court, is absolutely wrong, illegal and contrary to the Section 35 of the Indian Stamp Act. Rather in terms of the case law cited above, if a document is not sufficiently stamped, it is inadmissible in evidence; and cannot be read in evidence; and it is the duty of the court to exclude inadmissible evidence; and even such an objection with regard to stamp duty and registration is not required to be raised by any party. So, these objections if not raised cannot be said to be waived.

24. It is further submitted by Id. Senior counsel for the appellant that the finding recorded by the Ld. Appellate court in paras no. 23 and 24 of the impugned judgment are also illegal and perverse. It is established on record that Defendant No. 2 had only interest in the property for her maintenance and she was not owner of the property therefore she had no right to alienate/transfer the property by way of impugned release deed



as the father of plaintiff was owner to the extent of 1/7th share in the land in dispute. So, plaintiff has locus standi to file the present suit.

25. To recapitulate, it is submitted that the Consent Decree is only for maintenance. Even otherwise, Consent Decree, and the consequent Release Deed are not admissible in evidence as they were unstamped and unregistered as required under law. And the objection regarding registration can be taken by the appellant at any stage. It is the duty of Court to remove inadmissible evidence.

26. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decree dated 03.02.2014 passed by learned Additional District Judge, Fatehabad be set aside.

27. *Per contra*, learned Senior Counsel for the respondents/defendants opposes submissions made on behalf of the appellant and submits that vide Consent Decree dated 24.11.1995, all children of Bhagwanti Devi had transferred their shares in the total suit land measuring 26K 9M to the extent of their 6th share i.e. total 22K 9M in favour of Bhagwanti Devi. No doubt, in the said Civil Suit dated 13.11.1995 Ex.D1, it is mentioned that the said transfer is for maintenance. However, the contention of learned Senior Counsel for the appellant that the said transfer is *only* for the purpose of maintenance, is based on a piecemeal reading of Civil Suit Ex.D1 as, a complete reading of para 2 of the plaint shows that Family Settlement had already taken place between the legal representatives of Bhim Sain in pursuance to which each legal representatives of Bhim Sain had received their respective shares. As such,



children of Bhagwanti Devi had transferred their respective shares in the Suit land in favour of Bhagwanti Devi in terms of Family Settlement.

28. It is further argued that even accepting the contention of the appellant that the said transfer was only for the purpose of maintenance even then as per latest judgment of Hon'ble Supreme Court passed in **Kanta v. Soma Devi (Dead) Through LR., (SC) : Law Finder Doc Id # 2850093** it has been held that right to maintenance is a pre-existing right which ripens into absolute ownership. It is argued that as right to maintenance has been held to be pre-existing right and does not create new ownership right in favour of Bhagwanti Devi, therefore Consent Decree dated 24.11.1995 did not require registration. It is submitted that it is also automatically follows that vide the said Consent Decree executed for maintenance to Bhagwanti Devi, absolute ownership rights were conferred upon Bhagwanti Devi. It is contended that therefore, Bhagwanti Devi was fully competent to execute the impugned Release Deed in favour of whomsoever she pleases as she had ownership rights over the suit land.

29. Learned Senior Counsel further submits that even this Court in **Jal Singh v. Chunni Lal (P&H) : Law Finder Doc Id # 1290485** has held that when a Consent Decree/Compromise is executed in pursuance to a Family Settlement, the same cannot be questioned on grounds of want of registration. It is submitted that therefore, in terms of judgment of this Court in **Jal Singh (supra)** also, the Consent Decree is not required to be registered.



30. It is further submitted that Rakesh Kumar, predecessor-in-interest of the plaintiff was a party to the Consent Decree. During his lifetime, Rakesh Kumar had not questioned the said Consent Decree upto his death in the year 2003. Now his wife and daughter have challenged the same. Thus, plaintiff has no locus standi to file the present suit.

31. It is reiterated that as stated in para 2 of the plaint Ex.D1, rights of the parties already stood settled in terms of the Family Settlement between Bhim Sain, Bhagwanti Devi and their 6 children during the lifetime of Bhim Sain himself. Bhim Sain had settled the issue during his lifetime whereby he had given ownership and possession of suit land to Bhagwanti Devi and the children were given other movable and immovable properties. Therefore, Consent Decree is only a formality and was only for the purpose of formalizing the terms of the Family Settlement between the parties. Further, even if the transfer was merely for maintenance of Bhagwanti Devi, in terms of judgment in **Kanta (Supra)**; maintenance has been interpreted to be a pre-existing right; and therefore, suit property became self acquired property of Bhagwanti Devi; and, therefore, did not require compulsory registration. Averments made in para 2 of the previous plaint Ex.D1 would show that Family Settlement had already taken place between the parties; whereby father of the defendants, namely, Bhim Sain had made arrangement for his wife Bhagwanti Devi. He accordingly prays that the present appeal be dismissed being without merit.



32. No other argument is raised on behalf of learned Senior counsel for the parties. I have heard learned counsel and perused the case file and lower court record in a great detail. I find no merit in the submissions advanced on behalf of Id. Senior counsel for the appellant.

33. As noted above, at the very outset, learned Senior Counsel for the appellant has submitted that as concurrent findings of fact have been returned by both the District Courts that suit land was not ancestral in nature, appellant does not press her plea that suit land was ancestral.

34. Bhim Sain died on 22.05.1995. After the death of Bhim Sain, the suit property 26K-9M was inherited by his legal heirs namely Bhagwanti widow/defendant no.2; Three daughters, namely, Saroj Kumari, Raj Rani, Santosh Kumari; and three sons, namely Ganesh Dass/defendant no.1, Dalip Kumar, Rakesh Kumar/husband of plaintiff. And mutation No.1318 dated 14.10.1995 was sanctioned in the name of defendants No.1 & 2 and other brothers & sisters of defendant No.1 in equal share of 1/7th share. Subsequently, Later on defendant No.1 and brothers & sisters of defendant No.1 namely: 1.Saroj; 2. Raj Rani; 3. Santosh Kumari; 4. Ganesh; 5. Dalip; 6. Rakesh being successors of land in question, transferred their share of land to defendant No.2 vide Civil Suit No.1009/1995 decided on 25.11.1995 (consent decree). Thus, whole property in the hand of defendant No.2 is self-acquired property and she has validly executed the Release Deed No.2274 dated 27.07.2004 (Ex. PW1/C) in favour of defendant No.1 and mutation No.1756 dated 24.09.2004 is perfectly legal and valid.



35. It has however, been contended on behalf of learned Senior Counsel for the appellant that Consent Decree had been executed by LRs of Bhim Sain only for the maintenance of their mother Bhagwanti Devi. To impress upon this contention, learned Senior Counsel has made much ado about the averments made in para two of the plaint in Civil Suit No. 1009 dated 13.11.1995 Ex.D1, to the effect that Bhagwanti Devi had file said suit seeking: “.....right of ownership; and possession for maintenance.”

36. However, the said contention of the appellant is misleading. The above said averments cannot be read in isolation. Reference needs also be made to the prayer clause as also the complete averments made in para 2 of the previous Civil Suit No. 1009 dated 13.11.1995 Ex.D1. The headnote/prayer clause of the said previous Civil Suit No. 1009 dated 13.11.1995 Ex.D1, reads as follows: –

“Suit for possession and declaration in respect of land measuring 4 kanal comprising in Khewat No. 30, Khatoni No. 98 Khasra No. 126//2 (4-0) and land measuring 22 kanal 9 marla comprising in Khewat No. 31 Khatoni No. 99 Jamabandi year 1992-93, mutation No. 1318 vide order dated 14.10.95, situated in Village Laloda, Tehsil Tohana, District Hisar of 6/7th share, in equal share of defendant as per family settlement, of which plaintiff is in ownership and possession, in favour of the plaintiff and against the defendant and is legally and lawfully entitle to get her name corrected in the revenue record. On the basis of evidence oral and documentary of every kind.”

(Emphasis is mine)



Again, in para 2 of the aforesaid Civil Suit No. 1009 dated 13.11.1995 Ex.D1, it is stated as follows: -

“2. That the suit land is the joint Hindu Family property of the plaintiff. In which plaintiff has right of ownership and possession for maintenance. And the husband of the plaintiff as after partitioning his moveable and immoveable property during his lifetime, the suit land was settled in the name of plaintiff and possession was handed over the plaintiff on the spot as owner. Since then, the plaintiff is taking the benefit of the suit land.”

(Emphasis is mine)

37. Thus, from the above averments it stands established that Bhim Sain, during his lifetime had partitioned his estate in which all his 7 LR's were given their respective shares as per the Family Settlement arrived at between the parties; and as per said Family Settlement, the suit land fell to the share of the defendant no.2; consequent to which the Consent Decree dated 24.11.1995 Ex.D5 was passed, whereby the remaining 6 legal representatives/children of Bhim Sain transferred their shares in favour of Bhagwanti Devi/mother/defendant No.2 in terms of the Family Settlement. Thus, it is clear that the Consent Decree was not passed merely for maintenance of defendant no.2; rather the same was a result of the division of property amongst the LR's of Bhim Sain in terms of the Family settlement arrived at during his lifetime.

38. Thus, the above said contention of learned Senior Counsel for the appellant is based in a piecemeal reading of para 2; wherein it has also been clearly stated that husband of the plaintiff, namely Rakesh Kumar



had partitioned his movable and immovable property during his lifetime after which suit land i.e. land measuring 26K 9M was settled in the name of the plaintiff and possession was also handed over to the defendant No.2 Bhagwanti Devi as owner. A bare reading of the above averments made in para 2 of the plaint Ex.D1 are self speaking and clearly show that it was in pursuance to and in continuation of a previous Family Settlement that the LRs of Bhim Sain had transferred their respective shares total measuring 22K 9M in favour of Bhagwanti Devi as owner. Thus, by no stretch of imagination can it be said that the said Consent Decree had been for the limited purpose of maintenance and did not confer any ownership rights upon Bhagwanti Devi.

39. It has next been argued on behalf of the appellant that vide the said Consent Decree as ownership rights were conferred upon defendant no.2 for the first time, therefore, said Consent Decree was required to be compulsorily registered. In support, learned Senior counsel for the appellant has relied on various judgements. However, it is not disputed that in most recent judgment of **Kanta (supra)**, decided on 6.2.2026, the Hon'ble Supreme Court has held as follows: -

"A. Hindu Succession Act, 1956, Section 14(1) - Right to maintenance is a pre-existing right under Shastric Hindu Law - Limited interest in property acquired in lieu of maintenance ripens into absolute ownership under Section 14(1) - Section 14(1) has wide amplitude, covering every kind of acquisition of property by a female Hindu, irrespective of whether it was possessed before or after the Act's commencement.

XXX XXX XXX



7.1 The High Court found that the First Appellate Court erred in concluding that the suit land was not given to Soma Devi for maintenance. The High Court concluded that her father-in-law had granted the land in lieu of maintenance following the death of her husband. The High Court held that the right to maintenance is a pre-existing right under Shastric Hindu Law. Relying on Section 14(1) of the Hindu Succession Act, 1956, the High Court held that Soma Devi's limited interest in the property acquired in lieu of maintenance automatically ripened into absolute ownership. The High Court emphasised that Section 14(1) is of wide amplitude and covers every kind of acquisition of property by a female Hindu, regardless of whether it was possessed before or after the commencement of the Hindu Succession Act. The High Court also rejected the plaintiff's claim of succession based on a Will executed by his grandfather, holding that the plea regarding the Will was not taken in the original plaint but was introduced for the first time in the replication."

40. Thus, in terms of the above judgment, even if for the sake of argument, contention of the appellant that Consent Decree was only for purpose of maintenance is accepted, even then it has been held that right to maintenance is a pre-existing right which ripens into absolute ownership.

41. From the above judgment, 2 results/factors flow, to the effect that: (a) that right of maintenance is a pre-existing right and does not create a new right, title or interest in the suit property in favour of Bhagwanti Devi. In view of the fact that no new right, title or interest is created in the present suit property in favour of Bhagwanti Devi,



therefore, Consent Decree dated 24.11.1995 Ex.D5 did not require to be registered in terms of the Indian Registration Act. Therefore, the said documents Ex.D1 to Ex.D5 pertaining to the previous Civil Suit No. 1009 dated 13.11.1995 were very much admissible in evidence.

42. The second result of the judgment in **Kanta (supra)** is that *“Property acquired in lieu of maintenance automatically ripens into absolute ownership.”* Clearly therefore, even if the suit property was transferred in favour of Bhagwanti Devi only for the purpose of maintenance, she acquired ownership rights over the same. Consequentially, Bhagwanti Devi was competent to execute the impugned Release Deed. As a result, all arguments on behalf of the appellant that: (a) suit was only for the purpose of maintenance; and (b) that the Consent Decree was not admissible in evidence as it was not registered under Section 17 of the Indian Registration Act; and (c) that Consent Decree did not confer ownership rights upon Bhagwanti Devi as it was not registered and it has created new right, title and interest in the immovable property in favour of Bhagwanti Devi, are all rendered nugatory. From the above noted factual and legal position, it is also clear that all the judgments relied upon by the appellant do not further the cause of the appellant as all the said judgments are distinguishable on facts and law.

43. I also find merit in the contention on behalf of the respondent that the Consent Decree was never challenged or questioned by Rakesh Kumar, predecessor-in-interest of the plaintiff. It is undisputed fact on record that Rakesh Kumar had died on 20.10.2003 and during all



his lifetime, he had never challenged the Consent Decree dated 24.11.1995. As such, it is not open for his wife and daughter i.e. the present plaintiff to challenge the same on the contention that the suit land being ancestral, Bhagwanti Devi was not competent to execute the impugned Release Deed.

44. Contention of the learned Senior Counsel for the appellant that as per Notification dated 19.04.2000, only ancestral property could be released upon affixation of proper stamp duty, is liable to be rejected in view of the following observations/findings as recorded by learned First Appellate Court in paras 20, 21 and 22 of the impugned judgment dated 03.02.2014, which read as under: -

“20. It has been urged by the learned counsel for the respondents that even though it was self acquired property of Smt. Bhagwanti, she had limited right in the suit property and she had no right to transfer the same as per the contents of copy of plaint Ex. D1. He further pointed out that the suit property was given to Smt. Bhagwanti in lieu of her maintenance, so she had limited right in the suit property. She was not competent to transfer the suit property but has only limited right to use it during her life time. Thus, the release deed executed by her is illegal, null and void but this contention of learned counsel for the respondents does not hold much force for a simple reason that in the plaint of this case, the plaintiff has not challenged the validity of release deed on the ground that Smt. Bhagwanti had limited right in the suit property and she was not competent to transfer the same. Moreover, a perusal of EX. D1 (copy of plaint of previously instituted suit) reveals that Smt. Bhagwanti has



asserted herself to be the owner in possession of the suit property as the same was given to her by Saroj etc. in lieu of her maintenance but she has asserted her absolute owner in the suit property. Saroj Kumari etc. had admitted the claim of the plaintiff Smt. Bhagwanti in toto by filing admitted written statement (Ex. D2) which resulted in the civil court judgment and decree Ex. D5 and Ex. D6. During his lifetime, Rakesh Kumar, the predecessor-in-interest of the plaintiff did not challenge the legality of the civil court judgment and decree nor the plaintiff had challenged the same in this case. In no manner, it can be said that by virtue of civil court judgment and decree Ex. D5 and Ex. D6 Smt. Bhagwanti got limited right in the suit property rather, she got her absolute right in the same as no clog was put by Saroj etc. while filing admitted written statement Ex. D2. The authority Shivdev Kaur (D) Lrs. & Ors. Vs. R.S.Grewal, 2013 (2) Civil court cases 861 ; Jagan Singh (Dead) Through LRs Vs. Dhanwanti & Anr, 2012(1), Civil court cases 790 (SC); Rati Ram & Ors. Vs. Basanti Devi, represented by Legal Representatives and Ors. 2008 (1), RCR (Civil) 463 are of no help to the respondents because in the aforesaid authorities transferee was given life interest in the property and as per clause 14 (2) of Hindu Succession Act, they are not absolute owner of the same, however, it is not the facts of the instant case, so, the aforesaid authorities are quite distinguishable from the facts of this case.

21. In this case the learned trial court has observed that since the suit property was self acquired property of deceased Smt. Bhagwanti, she had no right to suffer release deed in favour of defendant No. 1, as release deed can be executed only in respect of ancestral property, so the same is null and void but the observation of learned trial court is not sound as release



deed is a mode of conveyance to transfer some immoveable property from one person to another, whether the property is ancestral or non ancestral. The Haryana Government by notification dated 19.4.2000 has amended the Indian Stamp Act, 2000 and has reduced the stamp duty in case if the release deed is made regarding ancestral property in favour of brother or sister etc., however, in case of non-ancestral property the stamp duty was the same as in case of other conveyance deeds, so, no bar was put on execution of release deed even in case of self acquired property. Moreover, in the case titled Harjot Singh Vs. Gurjeet Singh, 2011 (2) LJR 1 it has been held by Hon'ble Punjab & Haryana High court that a release deed can be executed in blood relations regarding self acquired property. In the instant case also in view of the above discussion, the impugned release deed dated 27.7.2004 is a legally valid document executed by Smt. Bhagwanti despite the fact that it releases to her self acquired property.

22. So far as the question relating to insufficiency of the stamp duty is concerned, in this case no doubt the release deed dated 27.7.2004 is insufficiently stamped document as it relates to transfer of self acquired property, however, legality of a document cannot be challenged in civil court merely on the ground that the same is insufficiently stamped as it is the prerogative of registrar to recover the deficiency of stamp duty under Section 47-A of the Indian Stamp Act. Moreover, an objection can be taken at the time when the document is received in evidence. If no such objection is raised then it shall be deemed to have been waived. Even otherwise in this case no such objection has been taken by the original plaintiff, when the release deed in question was tendered in evidence or by moving an application. So, this objection cannot be



taken at this stage. Reliance can be placed on the case titled Vinod Kumar Tanwar Vs. Jai Bhagwan, 2012 (2) Law Herald (P & H) 1253 AND Champat Giri Vs. Ramdayal & Anr., 2009 (4) Civil court Cases 692.”

45. Before parting, it may also be pointed out that there are concurrent findings of fact by both the District Courts that suit property is not ancestral and is the self acquired property of defendant no.2. The learned Trial Court had decreed the suit of the plaintiff by holding that suit property being self acquired property of defendant no.2, the same could not have been alienated by way of impugned Release Deed. In fact, a perusal of the judgment dated 21.11.2011 passed by learned Additional Civil Judge (Senior Division), Tohana shows that it is very cryptic order giving no cogent reason for decreeing the suit of the plaintiff. The only reasons given are in para 14 of the said judgment, which read as follows: -

“14. I have heard learned counsel for both the parties at length, perused the record available on the judicial file and the case laws given by the concerned counsel. The admitted fact on the file is that the plaintiff along with brother and sisters had suffered a decree in favour of defendant no.2 Bhagwanti Devi. Now the dispute between the parties is that the alleged release deed executed by defendant no.2 is illegal and liable to be set aside. In this regard, I have considered the arguments raised by both the learned counsel for the parties and this Court after appreciating the evidence is of the view that defendant no.2 become the absolute owner over the suit property once and decree has been suffered in her favour. It is irrelevant to mention here that the property given to defendant no.2 by way of consent decree was for limited purpose i.e. for maintenance.



As per the provisions of Section 14 of the Hindu Succession Act defendant no.2 become the absolute owner as such she has all the rights to deal with the property as per her own wish. The case laws in this regard relied upon by learned counsel for the defendant are fully applicable therefore, this Court has no hesitation to held that the suit property is not the ancestral property in the hands of defendant no.2 rather the same has been converted to self-acquired property therefore, this contention of learned counsel for the defendants is allowed and accepted by this Court. The bone of contention between the parties is regarding the execution of release deed. This Court has already given its findings that the suit property in the hands of defendant no.2 is the self-acquired property as same was received by way of consent decree. However, as per provisions of law defendant no.2 is not entitled to alienate the property by way of release deed can be made only if the property is ancestral property. Admittedly, the suit property is self-acquired property as such defendant no.2 is not empowered and competent to execute the release deed which is now under challenge. This Court in view of above has come to the conclusion that the suit property cannot be alienated by way of release deed as the suit property is self-acquired property as such same is liable to be set aside. With these observations, issue no.1 is decided against the plaintiff and issue no.2 and 3 are decided in favour of the plaintiff."

46. From the above it is clear that the learned trial court has not given any comprehensible reason for decreeing suit of the plaintiff. The Id. First Appellate Court has correctly reversed the judgment and decree dated 21.11.2011.

47. In view of the above discussion, the present Regular Second Appeal is **dismissed**; and the impugned judgment and decree dated 03.02.2014 passed by learned Additional District Judge, Fatehabad are upheld. Resultantly, the suit of the plaintiff stands dismissed.

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

07.04.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

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