

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****218****Date of decision: 14.01.2026****1. RSA-485-2015 (O&M)****Kamlesh Devi****...Appellant(s)****Vs.****Rishi Pal and others****...Respondent(s)****AND****2. RSA-3922-2015 (O&M)****Sakuntla Devi (since deceased)****through her LR's and another****...Appellant(s)****Vs.****Rishi Pal and others****....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. S.S.Salar, Advocate for
the appellants in RSA-485-2015.

Mr. Rajesh Bansal, Advocate for the
appellants in RSA-3922-2015.

Dr. Anjali Bansal, Advocate for
respondents No. 1 to 3 in RSA-485-2015.

NIDHI GUPTA, J.**RSA-485-2015 (O&M)**

The plaintiff No.2 is in second appeal against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the plaintiffs for declaration and possession, has been dismissed by both the Courts below.

**RSA-3922-2015 (O&M)**

The plaintiffs No.1 and 3 are in second appeal against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the plaintiffs for declaration and possession, has been dismissed by both the Courts below.

2. Both the above said appeals are being disposed of by this common judgment as both Second Appeals arise out of common judgment dated 23.12.2011 passed by Id. Civil Judge (Senior Division), Panchkula whereby suit of the appellants/plaintiffs was dismissed; and judgment dated 07.10.2014 passed by Addl. District Judge, Panchkula whereby Civil Appeal No. 2025 of 2012 filed by the plaintiffs was also dismissed. Parties, and facts and issues involved in both the appeals are identical. For the sake of facility, facts are being drawn from RSA-485-2015 titled as *"Kamlesh Devi vs. Rishi Pal and others."*

3. It was the pleaded case of the appellants in the plaint that the plaintiffs and defendant No. 5 are real sisters and are the daughters of defendant No.4-Basant Singh, who is an old man and does not keep good health. Basant Singh was holding his share in the ancestral property, and was therefore, owner in possession of the suit land. However, vide the Consent Decree dated 18.03.1991 passed in **Civil Suit No. 44 of 1991** titled as **Rishi Pal and others vs. Basant Singh**, share of Basant Singh in ancestral property was transferred in the names of defendants No. 1 to 3. Consequentially mutation No. 1753 dated 06.07.1991 came to be sanctioned in favour of defendants No.1 to 3. It



was alleged that the said Decree dated 18.03.1991 was a collusive and illegal decree and was liable to be set aside. Accordingly, present suit for declaration and possession was filed on 23.12.2011.

4. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Panchkula had dismissed the suit of the plaintiffs vide judgment and decree dated 23.12.2011. The Civil Appeal No. 2025 of 2012 filed by the plaintiffs was dismissed by the learned Additional District Judge, Panchkula vide judgment and decree dated 07.10.2014. Hence, the present second appeals by the plaintiffs.

5. It is *inter alia* submitted by learned counsel for the appellants that the defendants No.1 to 3 played a fraud upon the defendant No.4 and the plaintiffs, and obtained the judgment and decree dated 18.3.1991, without disclosing the true facts to the defendant No.4 and without the knowledge of the plaintiffs.

6. Learned counsel for the appellants further submit that the defendants No.1 to 3 got the mutation of the land in question entered and attested in their names without the knowledge of the plaintiffs, thus, the aforesaid judgment and decree and mutation do not confer any title in favour of the defendants No.1 to 3.

7. It is further submitted by the learned counsel for the appellants that the defendants No.1 to 3 in connivance with the Revenue officials got the revenue entries changed arbitrarily and secretly. Accordingly, a declaration was sought by the plaintiffs on the



grounds that: (a) defendant No.4 was stranger to defendants No. 1 to 3 who had no right to inherit the property of defendant No.4; (b) and, therefore, there could not have been any family settlement between defendants No. 1 to 4 *inter se* ignoring the legal rights of the plaintiffs; (c) that the plaintiffs being real daughters of defendant No.4 could not have been ignored in the family settlement; and (d) defendants No. 1 to 3 had played fraud upon defendant No.4.

8. Learned counsel for the appellants further contends that Basant Singh and the contesting defendants No. 1 to 3 had joined hands in order to deprive the plaintiffs of their rights to the suit property which they would have got on coming into effect on 2005 amendment. It is submitted that had there been no fraudulent compromise, on commencement of Hindu Succession Amendment Act, 2005 (hereinafter referred to as “the Act”), plaintiffs would have become owners of land by birth.

9. Learned counsel for the appellants further submits that the Ld. Courts below have not appreciated that a family settlement to be legal should be bona-fide. In this case the family settlement was not there, as per the plaint of decree dated 18.3.91, it was a compromise. In fact, the consent decree is the fraudulent way out to avoid the voluminous registration fees. Thus, the alleged compromise which has been termed by the courts below as family settlement was a fraudulent transaction. Without associating the possible heirs of a person who might be succeeding to his property on his death, it cannot be termed as



family settlement. Moreover, as the plaintiffs were not a party to the compromise therefore it was not binding upon the plaintiffs.

10. It is further submitted by learned counsel for the appellants that it was successfully proved that Basant Singh inherited the property from his father Shadi Singh. Thus, suit property will be ancestral and coparcenary property qua the plaintiffs and Basant Singh. Basant Singh died in 2010. The amended Hindu Succession Act came into effect in 2005. Therefore, on coming into force, the plaintiffs became coparceners with their father. Admittedly the property was not alienated by Basant Singh. It can't be termed as disposition also. Therefore, once the compromise is ignored, they become the coparceners. Therefore by birth, the plaintiffs become owners along with their father Basant Singh. The alienation made through decree is without consideration and legal necessity therefore the plaintiffs were entitled to challenge the decree. It is not a case of alienation for consideration. It is well settled that any contract/compromise without consideration is void. If the judgment dated 18.3.1991 is perused, it will be clear that it is due to compromise that the father of the plaintiff Basant Singh transferred his rights and title in the suit property in favour defendants no.1 to 3. Any compromise alienating the property will require registration.

11. It is accordingly prayed that present Second Appeals be allowed; and the impugned judgments and decrees be set aside.

12. *Per contra*, learned counsel for the respondents submits that as per proviso of Section 6(1) of the Act, all disposition of property made

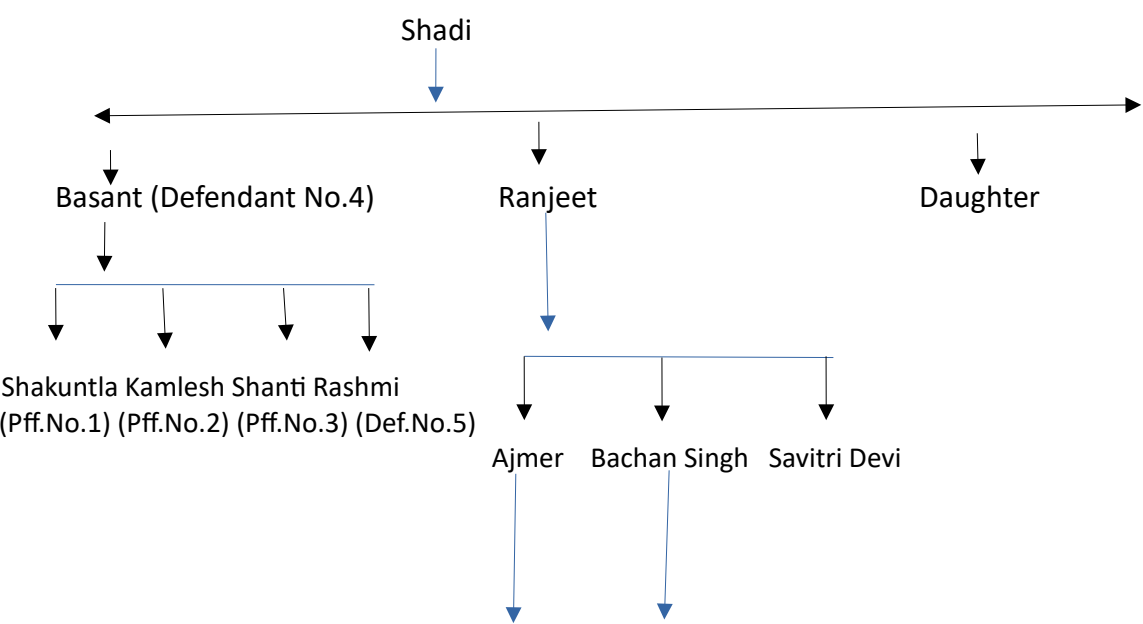
prior to 20.12.2004 shall be valid. It is submitted that it is undisputed that transfer of suit property in favour of defendants No. 1 to 3 had been made by Basant Singh/defendant No.4 vide consent decree dated 18.03.1991; whereas present suit has been instituted on 26.07.2002. Therefore, the present suit is beyond the purview of the amended Act.

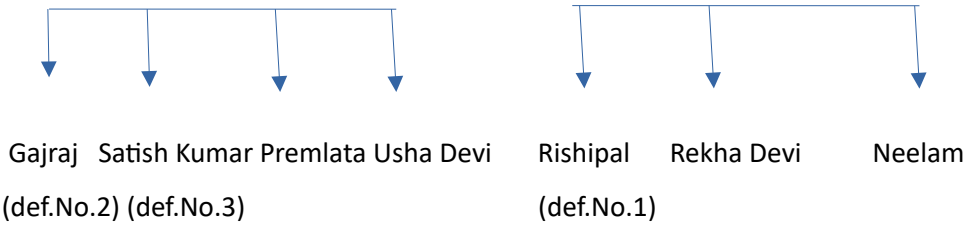
13. It is further submitted that it is also incorrect to state that defendant No.4 is stranger to defendant No. 1 to 3 who are nephews of defendant No.4. It is lastly submitted that in terms of judgment of this Court in **Murti v. Jai Ram (P&H): Law Finder Doc Id # 266774** registration of the settlement between defendants No.1 to 4 was not required.

14. It is accordingly prayed that the present Appeal be dismissed.

15. No other argument is raised on behalf of learned counsel for the parties. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellants.

16. In order to correctly appreciate the dispute at hand, following pedigree table shall be useful: -





17. From the above pedigree table, it is clear that Basant Singh had only four daughters - the same being the present 3 plaintiffs/appellants and defendant No.5. It is settled position in law that in the event of a coparcener having no sons and only daughters, the said property shall revive as coparcenary only upon begetting a son. It has been clearly laid down by Hon’ble Supreme Court in **Rohit Chauhan vs. Surinder Singh and others (2013) 9 SCC 419, decided on 15.07.2013** as follows:-

*“12. The view which we have taken finds support from a judgment of this Court in **M. Yogendra v. Leelamma N.** in which it has been held as follows:*

“29. It is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him. It is one thing to say that the property remains a coparcenary property but it is another thing to say that it revives. The distinction between the two is absolutely clear and unambiguous. In the case of former any sale or alienation which has been done by the sole survivor coparcener shall be valid whereas in the case of a coparcener any alienation made by the karta would be valid.”

XXXXXXXXXXXXXXXXXXXXX



14. A person, who for the time being is the sole surviving coparcener as in the present case Gulab Singh was, before the birth of the plaintiff, was entitled to dispose of the coparcenary property as if it were his separate property. Gulab Singh, till the birth of plaintiff Rohit Chauhan, was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff, Rohit Chauhan, he was not competent to object to the alienation made by his father before he was born or begotten. But, in the present case, it is an admitted position that the property which Defendant 2 got on partition was an ancestral property and till the birth of the plaintiff he was the sole surviving coparcener but the moment plaintiff was born, he got a share in the father's property and became a coparcener. As observed earlier, in view of the settled legal position, the property in the hands of Defendant 2 allotted to him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth Defendant 2 could have alienated the property only as karta for legal necessity. It is nobody's case that Defendant 2 executed the sale deeds and release deed as karta for any legal necessity. Hence, the sale deeds and the release deed executed by Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale deeds and release deed, the parties can work out their remedies in appropriate proceeding."

18. Furthermore, as per Proviso to Section 6 (1), the amended Act will not apply to any and all dispositions made prior to 20.12.2004.

19. Section 6(1) of the Act reads as under: -



“6. Devolution of interest in coparcenary property. - (1)

On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, -

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidated any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.”

20. Thus, as the present transfer was made vide decree dated 18.3.1991, the plaintiffs cannot claim any right in the suit property of Basant Singh.

21. During the course of arguments, the above legal position has been admitted by learned counsel for the appellants. Even otherwise, it cannot be said that defendant No.4 was not absolute owner of the suit property and that the suit property was ancestral in nature as, it has been proven on record that the property was inherited by defendant No.4 from his father and forefathers. However, since Basant Singh was not having a son, therefore, he was to be considered as absolute owner of the suit property; and therefore, competent to dispose it of as he



thought fit. Even otherwise, as per settled law sole surviving coparcener can bequeath his joint family property as if the said property was his separate property. At the time of filing of the suit the plaintiffs as well as defendant No.5 would not be covered under the definition of coparceners. As such, plaintiffs had no right to challenge alienation made by defendant No.4.

22. It has next been contended on behalf of the plaintiffs that the alleged family settlement between defendants No. 1 to 4 was a fraudulent document. Learned Courts below have relied upon numerous case laws to hold that a Consent Decree can be challenged in a subsequent suit only on ground of fraud and misrepresentation et cetera; and not on the ground that the said Decree was erroneous or incorrect. It has been rightly held by learned Courts below that to do so would amount to re-adjudicating upon the correctness of Consent Decree in the subsequent suit; and would therefore, be barred by principle of res judicata. Moreover, ground of fraud can only be taken by a person against whom the fraud is alleged to have been committed. In the present case, admittedly, plaintiffs and defendant No.5 were not a party to the said compromise. As such, the said plea is not available to them. Furthermore, it is very pertinent to note that defendant No.4 has filed written statement in the present suit stating that no fraud was ever committed against him by defendants No. 1 to 3 in the passing of the judgment and decree dated 18.03.1991 Ex.D3 in their favour. Even further, defendant No.4 had filed written statement Ex.D1 in the



previous **Civil Suit No. 44 of 1991** titled as **Rishi Pal and others vs. Basant Singh**, wherein he had admitted the claim of defendants No.1 to 3. It is also admitted fact on record that the defendant No.4 had never challenged Consent Decree dated 18.03.1991 Ex.D3. Land in dispute was mutated in favour of defendants no.1 to 3 on the basis of Decree dated 18.03.1991 Ex.D3. At the time of mutation, Basant Singh was very much alive which shows that he had consented to the said transfer willingly. Even at the time of filing the present suit, defendant No.4 was very much alive and had supported Consent Decree in the written statement filed by him to the present suit. Thus, plaintiffs miserably failed to prove on record that the Decree dated 18.03.1991 Ex.D3 was a result of fraud and misrepresentation.

23. The learned First Appellate Court has further correctly held that it was proven on record that the family settlement had taken place between Basant Singh and defendants No.1 to 3 as per which, ownership rights were given to defendants No. 1 to 3. Meaning thereby, no new right was created or conferred by Basant Singh in favour of contesting defendants No.1 to 3; rather rights were acknowledged by him in favour of the said defendants.

24. It has lastly been submitted by learned counsel for the appellants that the Decree dated 18.03.1991 Ex.D3 was required to be compulsorily registered as it pertained to transfer of suit land with value of more than Rs.100. However, even the said contention of the appellants is liable to be rejected in terms of judgment in case of **Murti**



(**supra**); relied upon by Id. Counsel for the respondents wherein this Court has held that:

“12. As regards plea that family settlement is not proved, the said question cannot be reopened in the instant subsequent suit. Consent decree can be challenged in subsequent suit on the ground of fraud and misrepresentation etc. and not on the ground that facts pleaded in the previous suit culminating in the impugned consent decree were erroneous and incorrect. The said question stands determined and concluded by the consent decree and cannot be readjudicated and would be barred by principle of res judicata in the subsequent suit.

13. As regards necessity of compulsory registration of the consent decree, plaintiffs herein, who suffered the consent decree, were none else, but real sisters and mother of the defendant herein, in whose favour the consent decree was passed. It is not uncommon in our country particularly in this part of the country that sisters transfer their share in paternal property in favour of their brothers, and mother also transfers her share in favour of her sons. Concept of family settlement among such close family members is well recognised by the Courts and consent decree passed on the basis of such family settlement does not require compulsory registration. It may be added that in the instant case, plaintiff NO.1-mother had withdrawn the suit and, therefore, the suit proceeded qua plaintiff Nos.2 to 5 only, who are sisters of the defendant. Since the consent decree was passed on the basis of family settlement pleaded in the previous suit, the same did not require compulsory registration as plaintiff Nos. 2 to 5 are real sisters of the defendant herein.”



Therefore, where a Consent Decree is passed on the basis of family settlement, then the same does not require registration.

25. The above position in law has been upheld by the Hon'ble Supreme Court in most recent judgment dated 20.06.2025 passed in **SLP(C) No. 28340 of 2025 Renavva @ Lakshmi and others vs. Shantilkumarswamy R. Subramanya and others**; wherein it is held as under: -

*“3. Defendant No. 9 (respondent No. 1 herein) had purchased the land in question under a registered sale deed dated 10th March, 2003. The plaintiffs (petitioners herein) claiming to be the legal heirs of the propositus claimed a stake in the said land on the strength of the amendment under Section 6 of the Hindu Succession Act, 1956, introduced vide Amendment Act, 2005 to claim that the sale was void because their rights in the land were adversely affected by the said sale. After considering the entire factual and legal scenario, the High Court held that the prohibition contained in Section 6 of the amended Hindu Succession Act, 1956 did not have any effect on the registered sale deed which was executed prior in point of time to 20th December, 2004, i.e., before the introduction of the amending provision. The High Court in support of these conclusions placed reliance on the judgment of this Court in the case of **Vineet Sharma v. Rakesh Sharma, (2020) 9 SCC 1**. 5. Having heard and considered the submissions advanced by learned counsel for the petitioners and after going through the impugned order, we do not find any error or infirmity in the impugned judgment so as to interfere therein.”*

26. Learned counsel for the appellants is unable to controvert or dispute the above said facts, findings and legal position.
27. In view of the same, no ground to interfere in the concurrent judgments and decrees of the learned Courts below, is made out.
28. Both the appeals, accordingly, stand **dismissed** on merits.
29. Pending application(s) if any also stand(s) disposed of.

14.01.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No