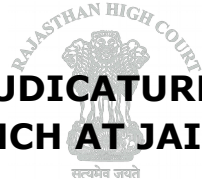




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 18425/2022

1. Ajeet Singh S/o Shri. Sardar Singh,
2. Sube Singh S/o Shri Sardar Singh,
3. Rahul Yadav S/o Shri Sher Singh,
4. Satish Kumar S/o Shri Rameshwar Dayal,
5. Naresh Kumar S/o Shri Rameshwar Dayal,
6. Vinod Kumar S/o Shri Sohan Singh,
7. Bhupendra Singh S/o Shri Dharam Chand,
8. Jagat Singh S/o Shri Chandan Singh,
9. Jogendra Singh S/o Shri Chandan Singh,
10. Banwarilal S/o Shri Kalluram,
All Resident Of Village Nangal Kanhawas, Tehsil
Neemrana, District Alwar (Raj.)

----Petitioners

Versus

1. Smt. Kailash Kanwar W/o Shri Kalyan Singh, Resident Of
Village And Post Palthana, Via Khudi, District Sikar (Raj)
2. Smt. Mangej Kanwar W/o Shri Bhanwar Singh,
3. Bhawani Singh S/o Shri Bhanwar Singh,
4. Kaptan Singh S/o Shri Bhanwar Singh,
5. Prem Kanwar D/o Shri Bhanwar Singh,
6. Magan Singh S/o Late Shri Bhanwar Singh,
No.2 to 6 are all Resident Of 64, Bandhu Nagar, Opposite
Shekhawat Building Building Material Murlipura, Sikar
Road, Jaipur (Raj)
7. State Of Rajasthan, Through Tehsildar, Behror, District
Alwar (Raj.)
8. State Of Rajasthan, Through District Collector Behror,
District Alwar (Raj.)

...Respondents-Defendants

9. Smt. Dhanni @ Dhankori W/o Shri Rameshwar Dayal,
10. Suman D/o Shri Rameshwar Dayal,
11. Santosh @ Sunita D/o Rameshwar Dayal, (Raj.)
12. Smt. Vimla Devi W/o Shri Dharam Chand,



13. Daya Yadav D/o Shri Dharam Chand,
14. Durga Yadav D/o Shri Dharam Chand,
15. Vidhya Devi D/o Late Shri Sohan Singh,
16. Sampatti Devi D/o Late Shri Sohan Singh,
17. Savita D/o Shri Sher Singh,
18. Mukesh D/o Shri Sher Singh,
19. Manju D/o Sher Singh,
20. Sudha D/o Shri Sher Singh,
21. Meena D/o Shri Sher Singh,
All Resident Of Village Nangal Kanhawas,tehsil Neemrana,
District Alwar (Raj.)

-----Proforma-Respondents-Plaintiffs

Connected With

S.B. Civil Writ Petition No. 18426/2022

1. Ajeet Singh S/o Shri. Sardar Singh,
2. Sube Singh S/o Shri Sardar Singh,
3. Rahul Yadav S/o Shri Sher Singh,
4. Satish Kumar S/o Shri Rameshwar Dayal,
5. Naresh Kumar S/o Shri Rameshwar Dayal,
6. Vinod Kumar S/o Shri Sohan Singh,
7. Bhupendra Singh S/o Shri Dharam Chand,
8. Jagat Singh S/o Shri Chandan Singh,
9. Jogendra Singh S/o Shri Chandan Singh,
10. Banwarilal S/o Shri Kalluram,
All Residents Of Village Nangal Kanhawas, Tehsil
Neemrana, District Alwar (Raj.)

-----Petitioners

Versus

1. Magan Singh S/o Late Shri Bhanwar Singh Grandson Of
Shri Fakir Singh @ Fateh Singh, Resident Of Basai Bhopal
Singh, Tehsil Neemrana, District Alwar (Raj) At Present
Residing At 64, Bandhu Nagar, Opposite Shekhawat
Building, Building Material Murlipura, Sikar Road, Jaipur
(Raj.)



2. Smt. Mangej Kanwar W/o Shri Bhanwar Singh,
3. Bhawani Singh S/o Shri Bhanwar Singh,
4. Kaptan Singh S/o Shri Bhanwar Singh,
5. Prem Kanwar D/o Shri Bhanwar Singh,
No. 2 to 5 are all Resident Of 64, Bandhu Nagar, Opposite Shekhawat Building Building Material Murlipura, Sikar Road, Jaipur (Raj)
6. Smt. Kailash Kanwar W/o Shri Kalyan Singh, Resident Of Village And Post Palthana, Via Khudi, District Sikar (Raj)
7. State Of Rajasthan Through Tehsildar, Behror, District Alwar (Raj.)
8. State Of Rajasthan, Through District Collector, Behror, District Alwar (Raj.)
9. Smt. Dhanni @ Dhankori W/o Shri Rameshwar Dayal,
10. Suman D/o Shri Rameshwar Dayal,
11. Santosh @ Sunita D/o Rameshwar Dayal,
12. Smt. Vimla Devi W/o Shri Dharam Chand,
13. Daya Yadav D/o Shri Dharam Chand,
14. Durga Yadav D/o Shri Dharam Chand,
15. Vidhya Devi D/o Late Shri Sohan Singh,
16. Sampatii Devi D/o Late Shri Sohan Singh,
17. Savita D/o Shri Sher Singh,
18. Mukesh D/o Shri Sher Singh,
19. Manju D/o Shri Sher Singh,
20. Sudha D/o Shri Sher Singh,
21. Meena D/o Shri Sher Singh,
All Resident Of Village Nangal Kanhawas,tehsil Neemrana, District Alwar (Raj.)

----Respondents

S.B. Civil Writ Petition No. 18414/2022

1. Ajeet Singh S/o Shri. Sardar Singh,
2. Sube Singh S/o Shri Sardar Singh,
3. Rahul Yadav S/o Shri Sher Singh,
4. Satish Kumar S/o Shri Rameshwar Dayal,



5. Naresh Kumar S/o Shri Rameshwar Dayal, (Raj.)
6. Vinod Kumar S/o Shri Sohan Singh,
7. Bhupendra Singh S/o Shri Dharam Chand,
8. Jagat Singh S/o Shri Chandan Singh,
9. Jogendra Singh S/o Shri Chandan Singh,
10. Banwarilal S/o Shri Kalluram,
All Residents Of Village Nangal Kanhawas, Tehsil
Neemrana, District Alwar (Raj.)

-----Petitioners

Versus

1. Smt Kailash Kanwar W/o Shri Kalyan Singh, Resident Of
Village And Post Palthana, Via Khudi, District Sikar (Raj.)
2. Smt. Mangej Kanwar W/o Shri Bhanwar Singh,
3. Bhawani Singh S/o Shri Bhanwar Singh,
4. Kaptan Singh S/o Shri Bhanwar Singh,
5. Prem Kanwar D/o Shri Bhanwar Singh,
6. Magansinghs/o Late Shri Bhanwarsingh,
No.2 to 6 are all Resident Of 64, Bandhu Nagar, Opposite
Shekhawat Building Building Material Murlipura, Sikar
Road, Jaipur (Raj)
7. State Of Rajasthan, Through Tehsildar, Behror, District
Alwar (Raj.)
8. State Of Rajasthan Through District Collector, Behror,
District Alwar (Raj)
9. Smt. Dhanni @ Dhankori W/o Shri Rameshwar Dayal,
10. Suman D/o Shri Rameshwar Dayal,
11. Santosh @ Sunita D/o Rameshwar Dayal,
12. Smt. Vimla Devi W/o Shri Dharam Chand,
13. Daya Yadav D/o Shri Dharam Chand,
14. Durga Yadav D/o Shri Dharam Chand,
15. Vidhya Devi D/o Late Shri Sohan Singh,
16. Sampatii Devi D/o Late Shri Sohan Singh,
17. Savita D/o Shri Sher Singh,
18. Mukesh D/o Shri Sher Singh,
19. Manju D/o Shri Sher Singh,



20. Sudha D/o Shri Sher Singh,
21. Meena D/o Shri Sher Singh,
All Residents Of Village Nangal Kanhawas,tehsil
Neemrana, District Alwar (Raj.)

----Respondents

S.B. Civil Writ Petition No. 18445/2022

1. Ajeet Singh S/o Shri Sardar Singh,
2. Sube Singh S/o Shri Sardar Singh,
3. Rahul Yadav S/o Shri Sher Singh,
4. Satish Kumar S/o Shri Rameshwar Dayal,
5. Naresh Kumar S/o Shri Rameshwar Dayal,
6. Vinod Kumar S/o Shri Sohan Singh,
7. Bhupendra Singh S/o Shri Dharam Chand,
8. Jagat Singh S/o Shri Chandan Singh,
9. Jogendra Singh S/o Shri Chandan Singh,
10. Banwarilal S/o Shri Kalluram,
All Residents Of Village Nangal Kanhawas, Tehsil
Neemrana, District Alwar (Raj.)

----Petitioners

Versus

1. Magan Singh S/o Late Shri Bhanwar Singh,
2. Smt. Mangej Kanwar W/o Shri Bhanwar Singh,
3. Bhawani Singh S/o Shri Bhanwar Singh,
4. Kaptan Singh S/o Shri Bhanwar Singh,
5. Prem Kanwar D/o Shri Bhanwar Singh,
No.1 to 5 are all Resident Of 64, Bandhu Nagar, Opposite
Shekhawat Building Building Material Murlipura, Sikar
Road, Jaipur (Raj)
6. Smt. Kailash Kanwar W/o Shri Kalyan Singh, Resident Of
Village And Post Palthana, Via Khudi, District Sikar (Raj)
7. State Of Rajasthan Through Tehsildar, Behror, District
Alwar (Raj.)
8. State Of Rajasthan, Through District Collector, Behror,
District Alwar (Raj.)
9. Smt. Dhanni @ Dhankori W/o Shri Rameshwar Dayal,



10. Suman D/o Shri Rameshwar Dayal,
 11. Santosh @ Sunita D/o Rameshwar Dayal,
 12. Smt. Vimla Devi W/o Shri Dharamchand,
 13. Daya Yadav D/o Shri Dharam Chand,
 14. Durga Yadav D/o Shri Dharam Chand,
 15. Vidhya Devi D/o Late Shri Sohan Singh,
 16. Sampatti Devi D/o Late Shri Sohan Singh,
 17. Savita D/o Shri Sher Singh,
 18. Mukesh D/o Shri Sher Singh,
 19. Manju D/o Shri Sher Singh,
 20. Sudha D/o Shri Sher Singh,
 21. Meena D/o Shri Sher Singh,
- All Residents Of Village Nangal Kanhawas,tehsil
Neemrana, District Alwar (Raj.)

-----Respondents

For Petitioner(s) : Mr. Gaurav Gupta
For Respondent(s) : Mr. Jaideep Singh
Mr. Pranav Sharma
Mr. Jai Kishan Yogi
Mr. Sannidhya Doi

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND
Order

22/11/2023

REPORTABLE

1. The issue involved in this petition is "Whether an aggrieved person can challenge the impugned judgment before the higher appellate Court by seeking leave to file appeal wherein he was not a party? If the said judgment and decree is obtained by a person by misrepresentation and on the basis of concealment or incorrect facts." It is in the above background the issue involved in this petition is required to be considered.



2. Since common question of law and facts are involved in these petitions, hence with the consent of counsel for the parties, all these matters are taken up for final disposal and are being decided by this common order.

3. By way of filing these petitions, the petitioners are aggrieved by the impugned order dated 11.10.2021 passed by the Revenue Appellate Authority, Alwar (for short 'RAA') by which the appeal filed by the respondents under Section 96 of the Code of Civil Procedure (for short 'CPC') and under Section 5 of The Limitation Act, 1963 have been allowed and the delay in filing the appeal has been condoned. Feeling aggrieved and dissatisfied by the order dated 11.10.2021, the petitioners submitted revision petitions before the Board of Revenue (for short 'the Board') who vide impugned order dated 28.10.2022 has rejected the same. Feeling aggrieved and dissatisfied by both the orders dated 11.10.2021 passed by the RAA and 28.10.2022 passed by the Board of Revenue, the present petitions have been filed.

4. For convenience, the facts mentioned in SB Civil Writ petition No.18425/2022 has been taken into consideration.

5. Learned counsel for the petitioner submits that the petitioners filed a suit for declaration, injunction and correction of entries before the Court of Assistant Collector, Behror, Alwar which was decreed vide judgment and decree dated 28.11.2005 and the petitioners were declared as Khatedars of the land in question. Thereafter, the judgment and degree passed by the Assistant Collector, Behror, Alwar was executed and the mutation of the land in question was opened in favour of the petitioners. Counsel submits that after passing of the aforesaid decree and judgment



dated 28.11.2005, the respondent No.6 – Magan Singh filed a suit for declaration, injunction and correction of the record with regard to the same property in question before the Court of Assistant Collector, Behror, Alwar wherein the other respondents were impleaded as proforma respondent. Counsel submits that the petitioners were also impleaded as defendant in the said suit. However, the said suit was dismissed for want of prosecution on 07.02.2019 and till date no application under Order 9 Rule 9 CPC was submitted by the petitioner for recalling / setting aside the order dated 07.02.2018. Counsel submits that after a lapse of around eight years, the respondents submitted an appeal under Section 96 CPC against the judgment and decree dated 28.11.2005 before the RAA along with an application under Section 96 CPC and application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the appeal against the judgment and decree dated 28.11.2005. Counsel submits that the learned RAA allowed both the appeal under Section 96 CPC and the application under Section 5 of the Limitation Act vide impugned order dated 11.10.2021, overlooking the material aspect that with regard to the same controversy, the suit filed by the respondent has already been dismissed in default on 07.02.2018. Counsel submits that the decree and judgment dated 28.11.2005 has already been executed and the mutation of the land in question has already been entered into the names of the petitioners. Hence, under these circumstances, the impugned order passed by the RAA was not maintainable in the eye of law. Counsel submits that all these material aspects were overlooked by the Revisional Authority (Board of Revenue), while rejecting the



revision petition filed by the petitioners. Counsel further submits that the petitioners filed the aforesaid suit against the State of Rajasthan and the State of Rajasthan has also challenged the same judgment and decree dated 28.11.2005 before the RAA where the respondents submitted an application under Order 1 Rule 10 CPC for their impleadment and the said application was allowed and the respondents were impleaded as respondents. Counsel submits that when the respondents have already been impleaded as respondents in the appeal submitted by the State, there was no reason or occasion available with the RAA to allow the application filed by the respondents under Section 96 of the CPC. In support of his contentions, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Mayandi vs. Pandarachamy and Another** reported in **2019 SCC OnLine SC 1866**. Counsel submits that under these circumstances, interference of this Court is warranted and the impugned orders passed by the RAA and the Board of Revenue are liable to be quashed and set aside.

6. Per contra, learned counsel for the respondents opposed the arguments, raised by the counsel for the petitioner, and submitted that the respondents are the descendants of one Fakir Singh @ Fateh Singh. They are grand children of Fakir Singh and said Fakir Singh was having a share in the land in question. Counsel submits that concealing the above material aspect, the suit was filed by the petitioners before the Court of Assistant Collector, Behror, Alwar wherein a finding of fact was recorded that said Fakir Singh died issueless without leaving any legal representatives. Counsel submits that on that pretext alone the



suit filed by the petitioner was decreed. Counsel submits that this fact was brought into the notice of the RAA at the time of filing appeal under Section 96 CPC. Counsel submits that after perusing the revenue record by the RAA, it was found that Fakir Singh was having share in the property in question and on the basis of the revenue record available on the record, the application filed by the respondents were allowed and the delay in filing the appeal was condoned. Counsel submits that the same finding was reiterated by the Board while rejecting the revision petition filed by the petitioners, hence concurrent finding of fact has been recorded by both the Courts below which needs no interference of this Court and the instant petition is liable to be rejected.

7. Heard and considered the submissions made at Bar and perused the material available on the record.

8. This fact is not in dispute that for claiming their rights over the property in question, the petitioners have filed a suit for declaration, injunction and correction of entries in the revenue record against the State of Rajasthan alone before the Assistant Collector, Behror, Alwar, wherein a fact was brought into the notice of the Court that though one Fakira S/o Chatru was also one of the Khatedars (co-sharer) of the land in question, who died issueless without leaving any legal representative and relying upon the said contention of the petitioners, the suit filed by them was decreed vide judgment dated 28.11.2005. The respondents were not party to the said suit (who are claiming themselves as legal representatives of the deceased Khatedar - Fakira), hence, the above alleged factual aspect was not brought into the notice of the Assistant Collector, Behror, Alwar at the time of passing of the



decreed dated 28.11.2005. This fact is also not in dispute that the respondents also filed similar suit for declaration, injunction and correction in the revenue record before the Court of Assistant Collector. However, the said suit was dismissed for want of prosecution on 07.02.2018. This fact is also not in dispute that no application under Order 9 Rule 9 CPC was submitted for recalling / setting aside the said order. It is worthy to mention here that the said suit filed by the respondents was not decided on merits but the same was dismissed on technical count i.e. for want of appearance of the plaintiff. However, the respondents assailed the impugned judgment and decree dated 28.11.2005 before the RAA in an appeal under Section 96 CPC alongwith an application under Section 5 of the Limitation Act seeking condonation of delay in filing appeal and all these facts were brought into the notice of the RAA that the said Fakira S/o Chatru did not die issueless and the respondents were descendants / grand children of the said khatedar and were having share in the land in question.

9. After appreciating all these facts, the application filed by the respondents under Section 5 of the Limitation Act was allowed and they were allowed to file appeal against the impugned judgment and decree. Considering these facts, the application filed under Section 5 of the Limitation Act was allowed.

10. The whole case of the respondents before the Appellate Court and this Court is that the decree and judgment dated 28.11.2005 which has been passed by the Assistant Collector, Behror (Alwar) is based on misrepresentation made by the petitioners that one of the khatedar Fakira S/o Chatru died issueless. This material fact has been disputed by the respondents



by saying that they are legal representatives of the deceased khatedar Fakira.

11. The Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. No judgment of a Court, can be allowed to be passed on the basis of incorrect and false facts. Fraud unravels everything.

12. There is a famous Latin Maxim "ACTUS LEGIS NEMENIEST DAMNOSUS" which means that an act of law shall prejudice no man. The basic idea is that no polluted hand shall touch the pure fountain of justice. The misrepresentation of facts or incorrect facts vitiates everything. In other words if an order has been passed by concealment of material facts, then it is the duty of the Court to correct the facts if brought into its notice. If it is the case of the respondents that the deceased khatedar – Fakira did not die issueless, then the trial Court is supposed to decide the material aspects whether he died issueless or not after recording the evidence of both sides.

13. The Apex Court in the case of **Dalip Singh Vs State of Uttar Pradesh & Ors**, reported in **(2010) 2 SCC 114** held that materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the



challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Para 1 and 2 of the SCC in **Dalip Singh's** case (Supra) read as follows:



1. For many centuries, Indian society cherished two basic value of life i.e. "Satya" (truth) and "Ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

14. The Apex Court in the case of **A Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President & Ors**



reported in **(2012) 6 SCC 430** held that every litigants is expected to state the truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts. It is imperative that the Judges must have complete grip of the facts before they start dealing with the case. Para 23, 24, 26, 27, 28 and 29 of the SCC in **A Shanmugam's** case (Supra) read as follows:-



23. We reiterate the immense importance and relevance of purity of pleadings. The pleadings need to be critically examined by the judicial officers or Judges both before issuing the ad interim injunction and/or framing of issues.

24. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system. This Court in **Dalip Singh (supra)** observed that:

"1..... Truth constituted an integral part of the justice delivery system which was in vogue in the pre-Independence era and people used to feel proud to tell the truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system."

26. As stated in the preceding paragraphs, the pleadings are the foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to investigate and satisfy themselves as to the correctness and authenticity of the matter pleaded.

27. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the court must carefully look into it while deciding a case and



insist that those who approach the court must approach it with clean hands.

28. It was imperative that the Judges must have complete grip of the facts before they start dealing with the case. That would avoid unnecessary delay in disposal of the cases.

29. Ensuring discovery and production of documents and a proper admission/denial is imperative for deciding civil cases in a proper perspective. In relevant cases, the courts should encourage interrogatories to be administered.

15. Hon'ble Apex Court in the case of **S.P. Chengavaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. & others** reported in **(1994) 1 S.C.J. 179** has held as under in regard to fraud and its effect :

"Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition or law that a judgment or decree obtained by playing fraud on the Court is a nullity and non-est in the eyes of law. Such a judgment/decree by the first Court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings."

16. It is the settled proposition of law that if a favourable judgment or decree or order is obtained from a Court by concealing important facts it amounts to playing fraud with the Court and the said judgment and decree can be assailed at any stage by the person feeling aggrieved by the same by way of filing application seeking leave to file appeal.

17. It can safely be held that if any decree is passed on the basis of incorrect facts, the same can be challenged by the person



aggrieved before the appellate Court by way of filing appeal under Section 96 CPC if his right, title and interest is involved in the same.

18. Since, the respondents have already been impleaded as party respondents in the appeal, filed by the State against the said judgment and decree and that said order of their impleadment has not been challenged by the petitioners before any forum of law. In view of above, no rights of the petitioner would be prejudiced if the respondents are allowed to contest, against the same decree before the RAA.

19. Considering all these material facts of the matter, the RAA has rightly allowed the leave application to file appeal against the impugned judgment and decree dated 28.11.2005 and the revisional Court has not committed any error in not reversing the order. Since concurrent finding of fact has been recorded by both the Courts below, I find no error in the orders passed by the Courts below. These petitions are found to be devoid of merit and the same are hereby dismissed.

20. Stay applications and all pending applications, if any, also stand dismissed.

21. Before parting with the order, it is made clear that the appellate authority i.e. Revenue Appellate Authority would decide the appeals filed by the respondents and the State on the merits of the case, without being influenced by any of the observations made by this Court.

(ANOOP KUMAR DHAND),J

KuD/47-50