

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

(1)

**Regular Second Appeal No.2115 of 1987 (O&M)
Date of Decision: April 08, 2015.**

Daya Kishan Vasisth and another

.....APPELLANT(s).

VERSUS

Kanwar Lal @ Kamal and others

.....RESPONDENT(s).

(2)

Regular Second Appeal No.4881 of 1999 (O&M)

Lachhi Ram

.....APPELLANT(s).

VERSUS

Rajesh Kumar Chaudhary and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amit Jain, Advocate
for the appellant (s) in both the appeals.

Mr. A.P. Bhandari, Advocate
for respondent No.1 in RSA-2115-1987.

Mr. Keshav Partap Singh, Advocate
for respondent No.5 in RSA-4881-1999.

SURINDER GUPTA, J.

This judgment will dispose of two appeals i.e. Regular Second Appeal no.2115 of 1987 and Regular Second Appeal no.4881 of 1999 as both relate to the similar matter i.e. inheritance of estate of Daya Kishan.

RSA-2115-1987

Respondent no.1-plaintiff Kanwar Lal filed suit (Civil Suit

no.1166 of 1985) claiming relief of declaration as follows:-

“It is prayed that a decree for declaration to the effect that the plaintiff is the owner in possession of the properties detailed in para no.2(c) of this plaint and that the decree in suit no.1107 decided on 06.12.1985 by the court of Shri Rajinder Parshad, Sub Judge 1st Class, Palwal does not effect the ownership rights of the plaintiff in the properties detailed in para no.2(c) of this plaint and the same is liable to be set aside, may kindly be passed in favour of the plaintiff against the defendants.”

The case of respondent no.1-plaintiff, in brief, was that Daya Kishan, appellant-defendant no.1 father of respondent no.1-plaintiff and defendants no.2 and 3 Bhim Singh and Lachhi Ram owned the following properties situated in village Baghola, Tehsil Palwal, District Faridabad which was joint Hindu family coparcenary property:-

- (A) Khewat Thatoni 126/204 Killa nos. 13//6/1, 16(14)//7/2, 8, 9, 10, 11, 12, 13, 20/3, 27//8, 9/1, 12, 13, 53//1/2, 81//17/2, 18/2, 24/1, 87//6/1, 7, 13/2, 14, 88//2/2, 3/3, 8/2, 9, 12, 13/1 measuring 141 kanals 16 marlas;
- (B) Two Gaits bearing Khewat Khatoni 126/204 of Khasra nos. 296(1K-5M), 300(1K-9M), measuring 2 kanals 14 marlas; and a gait situated within the abadi adjacent to the house of Teji son of Devi Sahai with an area of 244 sq. yards;
- (C) A house double storied shown with the letters A B C D in the map attached with the plaint qua its ground floor and with the letters E F G H qua its first floor and bounded as below situated within the abadi of village Baghola, Tehsil Palwal, District Faridabad.

East :	Plot/Nohra of Jhangiri Pandit;
West :	Thoroughfare;
North:	House of Dhanmat;
South:	House of Jhangiri Pandit.

Under the family settlement dated 24.05.1984, the properties were partitioned as follows:-

“a) Properties allotted to Bhim Singh, defendant no.2 are as follows:-

- (i) Agricultural land out of the lands detailed in para no.1(A) of this plaint bearing Khewat Khatoni 126/204 Killa nos. 13//6/1, 16(14)//7/2, 8, 9, 10, 53//1/2, 87//6/1, 7, 13/2, 88//12 to the extent of 1/2 share. These lands are known as Kodhrawal near the Revenue estate of village Pirthla on G.T. Road and a part of it is known as Khait Hassanpur, and a part of it known as Chhonkarwal, Lodhawale par and a part of it known as Daher-wali, total measuring 47 kanals 9 marlas.
- (ii) Gair Mumkin Gait bearing its khasra no.300 measuring 1 kanal 9 marlas of Khewat Khatoni 126/204 known as Gait detailed in para no.1(B) of this plaint.
- (iii) A room and the half portion of Dukaria shown with the letters P D J K on the ground floor and the portion including the Kitchen on the first floor shown with letters L H N O which includes a Duchhatti as well out of the house detailed in para no.1(C) of this plaint.

b) Properties allotted to defendant no.3 Shri Lachhi Ram are as follows:-

- (i) Agricultural land Khewat Khatoni 126/204 Killa nos. 27//8, 9/1, 12, 13, 88//9, 3/3, 2/2, 8/2 and 88//13/1, 12 to the extent of 1/2, measuring 46 kanals 6 marlas and these lands are known in the village as a part of it Sattiwale and a part of its as Lodhawale.
- (ii) A Gait alias plot bearing its Khasra no.296 measuring 1 kanals 5 marlas retaining its Khewat Khatoni 126/204 fully detailed in para no.1(B) of this plaint.
- (iii) A room shown with the letters Q R S T on the ground floor and a Chaubara on the first floor shown with the letters Q-

1, R-1, S-1, T-1 on the first floor out of the house detailed in para no.1(C) of this plaint.

- c) Properties allotted to the plaintiff are as follows:-
- (i) Agricultural land Khewat Khatoni 126/204 Killa nos. 14(16)//11, 12, 13, 20/3(20/1), 87//14, 81//17/2, 18/2, 24/1 measuring 48 kanals 3 marlas out of the land detailed in para no.1(A) of this plaint which are known as a part of it Kodhrawale near the land of defendant no.2 detailed in para no.2(a)(i) in the same line and a part of it is known as Dahariyawala and a part of it is known as Hassanpurwala near the passage.
 - (ii) A Gait situated within the Abadi of village Baghola near the house of Teji son of Devi Sahai in which there is boundary wall on two sides measuring 244 square yards and bounded as below:-

East :	Thoroughfare;
West :	House of Itbari and Dauji Harijans;
North:	Property of Teji son of Devi Sahai;
South:	House of Siri Chand, Prooran and Itbari Harijans.
 - (iii) The portion shown with the letters J K V U on the ground floor along with a Kothi of Anaj beneath the stair case and the portion shown with the letters E F Y X on the first floor known as Chaubara alongwith Duchhatti out of the house detailed in para no.1(C) of this plaint.
3. The Pauli, Projections, Chowk, stair case, Varandah (2 nos.) were kept joint of the parties.
 4. That out of the agricultural lands each of the three brothers namely plaintiff and defendants no.2 and 3 gave 1½ killa each out of the(sic. their) respective shares to defendant no.1 till his death and the portion of the house stated above shown with the letters C S T Z on the ground floor for the residence of defendant no.1 till his death.
 5. That on the same day i.e. 24.5.1984 after the family settlement stated above was completely effected, defendant no.2

Bhim Singh exchanged his allotted share on the ground floor with the allotted share of the plaintiff on the first floor and in this way the plaintiff is in possession of the portions P T U V on the ground floor and the portion shown with letters L H E F is in possession of defendant no.2 as owners.”

Defendants no.2 and 3 i.e. Bhim Singh and Lachhi Ram, brothers of respondent no.1-plaintiff prevailed upon Daya Kishan, father of the parties and got filed a suit on 06.12.1985 to deprive the plaintiff of the properties given to him under the family settlement, which had been in his possession since 24.05.1984. The suit was decreed on the day it was filed, wherein respondent no.1-plaintiff was not even arrayed as party. The plaintiff sought setting aside of the decree dated 06.12.1985 with the plea that it was obtained at his back and defendant no.1, his father, was not authorized to transfer above properties, being joint Hindu family coparcenary properties, in the name of defendants no.2 and 3. The decree passed in civil suit no.1107 was bad and illegal as it was against the family settlement dated 24.05.1984; was collusive as it was passed on the day, the suit was filed and properties owned by Daya Kishan could not be transferred except through a registered document. Respondent no.1-plaintiff asked the appellants-defendants and defendant no.2 (since deceased) to admit his claim qua the properties mentioned in para 2 (c) of the plaint but of no avail, resulting in filing the instant suit.

In the joint written statement filed by Daya Kishan, Bhim Singh and Lachhi Ram, it was denied that suit property was joint Hindu family coparcenary property of the parties, rather, these were self-acquired properties of Daya Kishan. The plaintiff, his wife and children along with other sons of Daya Kishan were living in the same house with him. It was also denied that any family settlement dated 24.05.1984 between the parties had ever took

place. However, there was proposal for the same but plaintiff was unreasonable and did not agree for anything. As there was no actual partition or family settlement, there was no question of exchange of possession between plaintiff and Bhim Singh, respondent no.2. All the sons of Daya Kishan appellant were married and living in the same house with their families. The decree dated 06.12.1985 passed in civil suit no.1107 of 06.12.1985 was defended as legal and valid. Respondent no.1-plaintiff was not made party as he had blatantly refused to be party to that suit and was insisting to a position of 'vantage' in the settlement. He was asked to come to the negotiation table and in order to settle all possible future disputes, share all belongings fairly with his other two brothers, but he always spurned the requests and made complaint to the police. He is having in his possession 300 gms. of gold belonging to respondent no.1 and ₹10,000 belonging to Lachhi Ram-appellant no.2.

Plaintiff re-asserted his case in the replication and pleadings of the parties led to the framing of following issues:-

- (1) Whether there had been any family settlement between the parties on 24.5.84 as alleged. If so, to what effect? OPP
- (2) Whether the parties left 1½ killa each for the maintenance of deft. no.1 as alleged in family settlement? OPP
- (3) Whether after the said family settlement there had been any exchange of properties on 24.5.84 between the plaintiff and deft. no.2 as alleged? OPP
- (4) Whether the decree dated 6.12.85 in suit no.1107 is illegal, collusive and liable to be set aside as alleged? OPP
- (5) Whether the plaintiff has no locus standi to file the suit? OPD
- (6) Whether the plaintiff has no cause of action? OPD
- (7) Whether the suit does not lie in the present form? OPD
- (8) Whether the suit is not valued properly for the purposes of court fee and jurisdiction? OPD
- (9) Whether the plaintiff is estopped from filing the present suit

by their own act, conduct and acquiescence? OPD

- (10) Whether the plaintiff has not come with clean hands in the court as alleged in para no.3 of the preliminary objection? If so, to what effect? OPD
- (11) Relief.

Learned Sub Judge 1st Class, Palwal vide judgment dated 11.12.1986 decreed the suit and plaintiff-respondent No.1 was declared as owner in possession of the property which fell to his share under family settlement dated 24.05.1984 and described in para 2(c) of the plaint. The decree dated 06.12.1985 passed in civil suit no.1107 was held as not binding on the rights of respondent no.1 and his ownership over the property in dispute.

Not satisfied, the defendants filed appeal, which was dismissed by the Additional District Judge, Faridabad. Daya Kishan (since deceased) and Lachhi Ram, defendant no.3 have filed this regular second appeal against the concurrent finding of the Courts below raising the plea in the grounds of appeal as follows:-

- (1) The family settlement Ex.P3 being a partition deed required registration. Respondent no.1-plaintiff was not a co-owner in the property on the alleged date of family settlement.
- (2) Respondent no.1-plaintiff failed to prove that the property in dispute was joint Hindu family coparcenary property.
- (3) Mere exhibition of a document does not dispense with the onus upon a party which has to prove that document in accordance with law.
- (4) Even a collusive decree is as good as a contested one. Respondent no.1-plaintiff has not proved any misrepresentation, fraud or undue influence exercised by defendants no.2 and 3 sons of Daya Kishan which might have resulting in passing of the decree in question.

RSA-4881-1999

Lachhi Ram appellant-plaintiff filed suit (Civil Suit no.773 of 27.05.1989) challenging the sale of land measuring 26 kanals 12 marlas by Bhim Singh respondent-defendant no.3 which fell to his share by way of family settlement dated 24.05.1984 and the decree dated 06.12.1985 passed in civil suit no.1107 of 06.12.1985. The basis of challenge to the alienation made by Bhim Singh was that civil suit filed by Kanwar Lal challenging the decree dated 06.12.1985, was decreed by the Court of Sub Judge 1st Class, Palwal and the appeal against the same was dismissed by Additional District Judge, Faridabad against which Regular Second Appeal no.2115 of 1987 was pending. That appeal was admitted and the parties were restrained from alienating the property in dispute. However, during the pendency of the regular second appeal, Bhim Singh, respondent-defendant no.3 disposed of 26 kanals 12 marlas of land bearing khewat/khatauni no.126/204 killa nos. 13/1/6/1(1-5), 14/2/7/2(1-7), 8(8-0), 9(8-0), 10(8-0) for a sale consideration of ₹3,30,000 in favour of respondents-defendants no.1 and 2, Rajesh Kumar Chaudhary son and Lajwanti wife of Bishan Lal. Appellant-plaintiff Lachhi Ram alleged that the sale deed is void as alienation could not be effected during continuation of the interim injunction. Respondents-defendants no.1 and 2 further alienated the suit land in favour of respondents-defendants no.4 and 5 by executing lease deed dated 03.01.1992 and 04.02.1992 for 99 years in their favour.

Appellant-plaintiff Lachhi Ram alleged that Daya Kishan had got 60 kanals 12 marlas of land which was one half share of Smt. Anchi wife of Ram Lal under gift deed dated 10.05.1985. This land was exclusively owned by Daya Kishan. He bestowed the same upon appellant-plaintiff Lachhi Ram by way of Will dated 22.01.1988. It was also pleaded that the sale by Bhim

Singh was for a meagre amount, in comparison to the prevailing market price, as defendant no.3 Bhim Singh was a mentally weak person and respondents-defendants no.1 and 2 exercised fraud and misrepresentation in getting the sale deeds from him without sufficient and reasonable consideration.

Respondents-defendants no.1 and 2 and respondents-defendants no.4 and 5 in separate but almost identical written statements, contested the claim of appellant-plaintiff. It was pleaded that respondents-defendants no.1 and 2 were bona fide purchasers of the suit land for consideration and without notice. The land purchased by them had fallen to the share of Bhim Singh, respondent-defendant no.3 under the family settlement dated 24.05.1984, which was affirmed in civil Suit no.1166 of 1985 decreed on 11.12.1986. In the decree dated 06.12.1985 passed in Civil Suit no.1107 of 06.12.1985 titled as Bhim Singh and another Vs. Daya Kishan, the land purchased by respondents-defendants no.1 and 2 was allotted to respondent-defendant no.3 Bhim Singh, vendor. The injunction order passed in the Regular Second Appeal pertains to subject matter of civil suit no.1166 of 1987, which was share of Kanwar Lal under family settlement dated 24.05.1984 and not the other land including the land in dispute already allotted to Bhim Singh. All the other averments of the appellant were contested, controverted and denied, inter-alia pleading that the appellant-plaintiff had filed the suit with mala fide intention, knowing well that respondents-defendants no.4 and 5 have invested more than four crores rupees in raising construction and setting up industry over the suit land where the manufacturing activities were going on.

Appellant-plaintiff reiterated his case in the replication and pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the father of plaintiff Daya Kishan(sic Lachhi Ram) and deft. no.3 Bhim Singh were(sic was) the owners(sic owner) in possession of the suit land? OPP

- (2) Whether after the death of Daya Kishan, the plaintiff and deft. no.3 succeeded the suit property? OPP
- (3) Whether the sale deed dt.30.7.89 executed by deft.no.3 with respect to the suit land as detailed and described in para no.4 and 5 of the plaint totalling 26 K 12 M was without the consent of the plaintiff and the same was illegal, null and void? OPP
- (4) Whether the plaintiff has no locus-standi to file the present suit? OPD
- (5) Whether the deft.no.1 and 2 are bonafide purchaser of the suit land as detailed and described in para no.4 and 5 of the plaint without notice and for consideration? OPD
- (6) Relief.

Learned Civil Judge (Junior Division), Palwal dismissed the suit.

Not satisfied, the appellant-plaintiff filed appeal, which was also dismissed by learned District Judge, Faridabad vide judgment dated 27.08.1999.

I have heard learned counsel for the parties and perused the record of the Courts below with their assistance.

RSA-2115-1987

This fact is not disputed that Daya Kishan was the owner of the land measuring 144 kanals 10 marlas. The Courts below have upheld the legality and validity of the family settlement dated 24.09.1984. The plea was raised that document of family settlement dated 24.05.1984 (Ex.P3) was only a proposal for family settlement. This plea was dealt with by learned first Appellate Court in para 7 of the judgment as follows:-

“7. The learned counsel for the appellants argued that Ex.P3 dated 24.5.84 was only a proposal of family settlement and thus does not create any title. I however do not agree with this contention of the learned counsel because Ex.P3 on the record is a family settlement and Ex.P4 is an exchange dated 24.5.84 which bears the signatures of the appellants as well as the respondent and

two attesting witnesses namely Dallu and Hazari Lal and Kanwal Lal when appeared as PW4 has stated that on 24.5.84 his father Daya Kishan called Dallu and brother-in-law Hazari and it was resolved to distribute the properties between the three brothers and on the dictation of Daya Kishan Ex.P3 was written and it was read over to all of them and on admitting it to be correct, they alongwith the witnesses signed the document and after family settlement with respect to the share of the properties, everybody got their possession according to their share and on the same day, he also exchanged with him his share of his residential portion with that of Bhim and in that regarding a writing Ex.P.4 was also made which as written by him and its contents were read over to them and signed by all of them and further Daya Kishan appellant-defendant no.1 when appeared as DW-1 in his cross examination has admitted that on 24.5.84 in a private settlement he distributed six killas land each to his three sons and then take back 1½ killa each from them for his own livelihood and in his examination in chief has admitted that on Ex.P.3 and P.4 his signatures were taken although he has stated that he never accepted but has admitted his signatures on those documents and its contents. Therefore as per his own admission, he distributed the land in his sons on the same day i.e. 24.5.84 when the said documents were executed and has also admitted that Hazari, his son in law and Dalu were present on the day of the execution of the document. Further DW3 Dalu Ram has admitted the execution of the document Ex.P3 and P4 and that he attested the documents and further PW4 Hazari who is the son-in-law of appellant-defendant no.1 Daya Kishan has also admitted the execution of the document Ex.P3 and that he attested it and also proved that the parties also signed in their presence and lengthy cross-examination on these witnesses has been done but nothing has come out to disbelieve their statements. Therefore, on the overall discussion in earlier para, it is proved with

cogent evidence that there took a family settlement which is Ex.P.3 on 24.5.84 and exchange Ex.P.4 which was signed by all the parties and attested by the close relations regarding the partition of their properties.”

The family settlement had taken place during the life time of Daya Kishan. Vide this family settlement, Daya Kishan gave separate shares to his three sons Lachhi Ram, Bhim Singh and Kanwar Lal in the property/land owned by him. Daya Kishan had admitted his signatures on this family settlement. Other beneficiaries have also not disputed their signatures on this family settlement. The close relatives Hazari Lal and Dalu have proved this settlement which was acted upon and some modification by way of exchange took place between Kanwar Lal and Bhim Singh vide writing Ex.P4.

It has been argued that this family settlement was not got registered and carries no value in the eyes of law. Perusal of the family settlement shows that it has recited the manner in which the land/property owned by Daya Kishan was distributed among his three sons namely Lachhi Ram, Bhim Singh and Kanwar Lal. This family settlement recites the terms already settled between the parties with their mutual consent. It was not a partition deed which had to take effect at any point of time in future. It was a memorandum of family settlement which did not require registration. Hon'ble Supreme Court while dealing with object, value and effect of family settlement in case *Kale Vs. Deputy Director of Consolidation, AIR 1976 Supreme Court 807* observed in para 9 of the judgment as follows:-

“9. Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes

once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise "Kerr on Fraud" at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus;

"The principles which apply to the case of ordinary compromise between strangers, do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to that their rights actually are, or of the points on which their rights actually depend."

The object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. **A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of**

a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successions so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country.

The Courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the Courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same.

While discussing the legal position relating to registration of family settlement, it was conclusively settled by the Apex Court in para 10 as follows:-

10. "In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions: (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family: (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence: (3) The family arrangements may be even oral in which case no registration

is necessary: (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immoveable properties and therefore does not fall within the mischief of Section 17(2)(sic) Section 17(1)(b)(?) of the Registration Act and, therefore, not compulsorily registerable; (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owners, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same; (6) Even if bona fide disputes, present or possible which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangements is final and binding on the parties to the settlement."

The legal principal thus enunciated by the Apex Court is that where the document is containing terms and recitals of a family arrangement made under the document, it requires registration whereas a mere memorandum prepared after the family arrangement had already been effected, does not require registration, as in such a case the memorandum itself does not create or extinguish any rights in immoveable properties and

therefore does not fall within the mischief of Section 17(1)(b) of Registration Act.

On examination of document of family settlement Ex.P3, I find that it recites the manner in which the parties had already agreed by mutual consent to divide the property owned by Daya Kishan. It is a memorandum prepared after the family arrangement had already been reached, just to have a record of the same, as such, was not required to be compulsorily registered. This family settlement was also acted upon by the parties as reflected by document Ex.P4 vide which Kanwar Lal and Bhim Singh exchanged some of the portion which fell to their shares under memorandum of partition Ex.P3. This document (Ex.P4) was signed by Kanwar Lal, Bhim Singh, Daya Kishan and Dalu.

The family settlement had already taken place during life time of Daya Kishan and with his consent, as such, this fact loses its significance as to whether the property owned by Daya Kishan was ancestral or self-acquired property. It was Daya Kishan, who had divided his property amongst his sons. Even after the collusive decree, he had no objection in giving share as per the family settlement Ex.P3 to Kanwar Lal. The only dispute was with regard to some cash and jewellery which he asked Kanwar Lal to account for. In these circumstances, this fact is not required to be discussed in detail as to whether property given to his sons by Daya Kishan under the family settlement Ex.P3 was his ancestral or self-acquired property. After the family settlement Ex.P3 which was scribed on 24.05.1984, Bhim Singh and Lachhi Ram filed a suit (Civil Suit no.1107, instituted and decreed on 06.12.1985) seeking declaration that Bhim Singh had become owner of land measuring 48 kanals 14 marlas and a portion of the residential house while Lachhi Ram claimed to have become owner of 47 kanals 16 marlas and a

portion of residential house. The share of land and house which was given to Kanwar Lal measuring 48 kanals was retained by Daya Kishan. In the suit (Civil Suit no.1107 of 06.12.1985) neither any reference was made to the family settlement Ex.P3 nor Kanwar Lal, respondent-plaintiff was made party. After the family settlement, Daya Kishan was left with no right, title or interest in the property owned by him, as such, he was not competent to suffer a decree of part of the land which was subject matter of the family settlement Ex.P3.

Both the Courts have rightly upheld the right of the parties as per family settlement Ex.P3. Consequently, the decree suffered by Daya Kishan and the Will executed by him were meaningless and do not affect the rights of the parties under the family settlement Ex.P3 in any manner.

On perusal of record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal and the same is without merit.

RSA-4881-1999

Lachhi Ram appellant-plaintiff filed civil suit challenging the sale of land made by Bhim Singh, his brother in favour of respondents-defendants no.1 and 2. As already discussed in the foregoing paragraphs, that Bhim Singh had become owner of 48 kanals 3 marlas of land under the family settlement. He had sold the land which had fallen to his share, as such, the sale deed executed by him was not bad in the eyes of law. Lachhi Ram had filed the suit only because of the pendency of Regular Civil Appeal no.2115 of 1987. While deciding Regular Civil Appeal no. 2115 of 1987, family settlement dated 24.05.1984 has been held to be valid. The sale made by Bhim Singh pertain to the land he got by way of family settlement.

Appellant-plaintiff Lachhi Ram, who had based his claimed in that suit (Civil Suit No.1166 of 1985) on the basis of collusive decree, lacks any locus standi to challenge the sale made by Bhim Singh of the land which had fallen to his share under the family settlement or under the collusive decree. The suit filed by Lachhi Ram is a misuse of process of Court.

Both the Courts below have committed no error of law or fact while dismissing that suit, calling for any interference.

No substantial question of law requiring determination arises in this appeal, which lacks any merit.

As a sequel of my above discussion, both the appeals (RSA-2115-1987 and RSA-4881-1999) are dismissed with costs.

April 08, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE

