

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.786 of 2010 (O&M)

Date of Decision: 06.07.2015

Rajinder Kumar

.... Appellant

Versus

Smt. Satya Wati @ Satya
and others

.... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Pankaj Jain, Advocate,
for the appellant.

Mrs. Kiran Bala Jain, Advocate,
for R-2 to 9.

Mr. Arun Jain, Sr. Advocate,
with Mr. Deepak Basatia, Advocate and
Mr. Sudhir Pruthi, Advocate,
for R-10.

1. To be referred to the Reporters or not? **Yes.**
2. Whether the judgment should be reported in the Digest? **Yes.**

RAJIV NARAIN RAINA, J.

1. This is the unsuccessful defendant's second appeal in primarily a partition suit with additional prayers which has been decreed by the courts *a quo*.

2. **Pedigree of the disputing members of the family of late Lala Jit Mal Jain (for short "Jit Mal") over properties and businesses.**

The property dispute is within the members of the family of late Lala Jit Mal who died on March 17, 1962 leaving behind four sons and two daughters. He was an Executive Magistrate and Naib Tehsildar and later a Jullunder [presently spelt Jalandhar] based businessman of considerable

wealth who established and managed joint Hindu family businesses, the mainstay of which was a firm in the name and style of Jain Iron Works, Jalandhar with branches at Delhi and Calcutta and another business by the name and style of Charanji Lal Jain and Sons, Jalandhar. During Jit Mal's life-time the family was joint in business with concerns shown in Schedule C to the plaint. He contracted three marriages during his life-time at different times. Charanji Lal Jain was the eldest son of Jit Mal who used to manage the affairs of the family in the old age of Jit Mal and became the manager of the Joint Hindu Family (for short "JHF"). His brother Vidya Parkash Jain the third son of Jit Mal married a girl from Ambala City by the name of Gian Wati. Gian Wati was the only child of her parents and died in 1945. Soon after marriage, Vidya Parkash Jain shifted his base to Ambala from Jalandhar, took to the pursuit of law and later became an Advocate of considerable reputation at the Ambala Bar and was a social worker. Charanji Lal Jain remained Jalandhar based and became the Karta of the JHF being the eldest son of Jit Mal.

3. **Parties to Civil Suit # 114 of 1982 (renumbered) instituted on January 08, 1974 by Vidya Parkash Jain.**

Vidya Parkash Jain was the plaintiff in the suit for possession by partition of 7/30 shares of Joint Hindu Family Property mentioned in Schedule A & B annexed to the plaint and for rendition of accounts of HUF properties and income from family businesses. He also prayed for a declaration that the business concerns mentioned in Schedule C are JHF businesses and the plaintiff is entitled to rendition of accounts thereof and for recovery of the share in income shown in the accounts. Schedule A are

immovable properties, Schedule B, movable properties and Schedule C of Business concerns). The defendants to the suit as originally filed were ten in number who are members of the family. Defendant 1 was Charanji Lal Jain who passed away on December 13, 1978 pending suit and is represented by eight of his legal representatives. Defendant 2 is Vidya Sagar Jain, one of the brothers. Defendant 3 is the widow of Niranjan Dass Jain son of Jit Mal who also died before the suit was instituted. Defendants 4 and 5 are the daughters of late Niranjan Dass Jain. Defendant 6 and 7 are the daughters of Jit Mal. Defendant 8 is the Kasturi Lal son of Gokal Chand Jain who is a non-family member and the alleged benamidar. Defendant 9 is the wife of Charanji Lal Jain and defendant 10 is the son of Charanji Lal Jain. It appears that due to re-location at Ambala to pursue his professional career plaintiff Vidya Parkash Jain grew distant from the traditional family roots at Jalandhar occupied with his family and career. If I were to put the predicament of plaintiff Vidya Parkash Jain in my own words on an overview of the case and opinion formed at the hearing I would say that his problems arose from being out-of-sight-out-of-mind engaged in the daily humdrum of his professional work visiting Jalandhar now and then.

4. When the trial commenced, defendant 1 Charanji Lal Jain filed written statement raising objections as to valuation, limitation, locus standi and non-joinder of necessary parties. He admitted the pedigree table to be correct but denied the plaintiff and defendants remained members of the JHF. It was his stand that the plaintiff shifted to Ambala as he was not “pulling on nicely” with his father in his life-time. Jit Mal had separated the plaintiff from the family fold of joint business whereafter the plaintiff had

been living separately at Ambala and was in separate exclusive possession as owner of the properties which fell to his share. Charanji Lal Jain disputed the family being JHF business run by Jit Mal who was in Government service. Nor had the father purchased various properties and business/es with the funds of the JHF. The firms detailed in Schedule C were partnership firms and Jit Mal had nothing to do with these concerns. He denied existence of JHF properties mentioned in Schedule B. Firm Charanji Lal and Sons was his sole proprietorship while Jain Iron Works, Jalandhar was a partnership firm. These businesses were not started with the income of JHF. The constitution of Jain Iron Works, Jalandhar changed from time to time. Since plaintiff had separated during the life-time of Jit Mal he had no right to inherit any property left by Jit Mal. Defendant 9 and 10 were with Charanji Lal Jain in the suit and denied that the plaintiff was a co-sharer in any of the properties left behind by Jit Mal.

5. Defendant 3 and 5 also denied existence of JHF. They asserted that certain properties in Schedule A belonged exclusively to late Naranjan Dass although Jit Mal possessed considerable properties of JHF. These two claimed exclusive rights over property detailed in Schedule C.

6. Vidya Sagar Jain– defendant 2 filed a separate written statement. He admitted the pedigree table and marriage of the plaintiff in the family at Ambala. He admitted Jit Mal was joint with his sons and the family ran joint business. He accepted the correctness of details of property in Schedule A, B & C and affirmed they were joint properties. He said that the properties were owned by different defendants in different shares at different times. He admitted that Jain Iron Works was run as a partnership concern. He admitted

that some of the business concerns shown in Schedule C were floated by Charanji Lal Jain as Karta of the family with the income of Joint Family funds. He admitted that no partition had been effected so far between the members of the family. Defendant 4 denied rights of plaintiff in properties in Schedule C although he has share in some of the properties mentioned in Schedule A and Schedule B. She also admitted that no partition has taken place of the properties left behind by Jit Mal. She asserted that there were no JHF properties. She agreed with the plaintiff that he is entitled to properties left by Jit Mal to the extent of his share allowed under the law.

7. **The Issues and the Trial.**

On the pleadings of the parties, the learned trial court struck as many as 20 issues to return findings thereon. These are:-

"1. Whether the plaintiff and defendants no.1 to 7 are members of the Joint Hindu Family as alleged in the plaint? O.P.P.

2. Whether Jit Mal was the Karta and the Manager of the Joint Hindu Family? O.P.P.

3. Whether the properties Nos.13, 14 and 15 mentioned in Schedule A were purchased in the name of defendant no.8 by Karta of Joint Hindu Family and defendant no.8 is a benamidar? O.P.P.

4. Whether the firm Jain Iron Works is Joint Hindu Family business? O.P.P.

5. Whether the other concerns shown in Schedule C are Joint Hindu Family concerns? O.P.P.

6. Whether the properties mentioned in Scheduled A and B are Joint Hindu Family properties? O.P.P.

7. What are the share of the parties in the properties in dispute and the concerns mentioned in Schedule C? O.P.P.

8. Whether the suit is properly valued for the purposes of court fee and jurisdiction? O.P.P.

9. Whether the suit is barred by time? O.P.P.

- 10. Whether the plaintiff was separated by Jit Mal during his life time in the family properties? If so, to what effect? O.P.P.*
- 11. Whether the suit is bad for non-joinder of necessary parties? O.P.P.*
- 12. Whether the suit is not maintainable in the present form? O.P.P.*
- 13. Whether the plaintiff is entitled to the rendition of accounts of the concerns and the properties in dispute? O.P.P.*
- 14. Whether the property mentioned in Sr. No.8, 10 and 11 in Schedule A belong exclusively to Naranjan Dass? If so, to what effect? O.P.P. 3 to 5.*
- 15. Whether the defendant No. 2 is in possession of ½ share of shop no. 987 as tenant? O.P.P.2*
- 16. Whether the suit is bad for misjoinder of parties and causes of action? O.P.P.*
- 17. Whether the defendant no. 9 is the absolute owner in possession of frontal half portion of H. No. 694 as alleged in the written statement? O.P.P.*
- 18. Whether defendant no. 10 is the owner of the plot in Veer Colony, Delhi? O.P.P.10*
- 19. Whether Roshan Lal and defendant no. 10 are owners of property no.S-210 in Industrial area? O.P.P.*
- 20. Relief"*

8. Extensive oral and documentary evidence was produced by the parties at the trial in support of their respective conflicting stands in the partition proceedings etc.

9. The plaintiff appeared as his witness and recanted in his deposition that the family are Jains by caste governed by Hindu Law. His grandfather was a Honorary Magistrate during the British times. He was a money lender and possessed sufficient properties in the shape of buildings, lands and shops at Phagwara, Kapurthala and Jalandhar. He lived in a huge building at Bansanwala Bazar, Jalandhar. He died in the year 1916. His properties were inherited by his five sons who constituted JHF with him.

His sons remained joint up till the year 1923. They partitioned the residential and moveable properties including cash and jewellery in the year 1923. Some of the immovable properties were partitioned in the year 1926. He deposed that there had been no partition of property among the plaintiff, his brothers and his father. They continued to constitute JHF till the presentation of the suit. During his life-time Jit Mal was the Karta of the family. However, Charanji Lal, being the eldest started acting as Karta during his father's life-time.

10. There are miniscule facts enumerated by the trial Judge in his judgment which ought not to detain this Court presently as forthcoming during the course of arguments since the point of utmost friction was reduced to issue # 9 as to whether the suit was barred by limitation. On this issue, the court heard the learned counsel at great length to determine and adjudicate the substantial question of law arising and identified by the learned counsel whether the suit is barred or not. A finding on this issue is all that remains in residue from the extensive arguments addressed by Mr. Pankaj Jain, learned counsel for the appellant, Mrs. Kiran Bala Jain, learned counsel appearing for respondents 2 to 9 and Mr. Arun Jain, learned Senior counsel assisted by Mr. Deepak Basatia, Advocate and Mr. Sudhir Pruthi for respondent 10 in support of the stand of Mrs. Kiran Bala Jain, learned counsel.

11. On May 21, 2015, I heard arguments of the learned counsel and adjourned the matter to May 27, 2015 to hear Mr. Arun Jain, learned senior counsel on the question of limitation by treating the case as part heard.

When the matter was taken up on May 28, 2015 arguments were heard at

length but the matter could not be concluded before vacations and, therefore, I ordered that case be not treated as part heard in case of change of roster on the opening of the court. Since this court remained the roster Bench the concluding arguments were heard on July 06, 2015 when Mr. Arun Jain, learned senior counsel was heard and Mr. Pankaj Jain, learned counsel in rebuttal. On hearing the parties I formed opinion that the appeal merits dismissal. Accordingly I dismissed the appeal with reasons to follow. The following are the reasons which have persuaded me to dismiss the appeal.

12. On the issue of limitation the learned Senior Sub Judge, Jalandhar has returned a finding in his judgment dated March 29, 1985 in para.23 assigning reasoning to the following effect:-

"23. It has been argued for defendant No. 3 that the plaintiff was deprived of all the properties, presuming but not admitting the same to be J.H.F. properties, when he was married in or about 1939 and limitation started to run at that time and the suit has not been brought within 12 years, According to the learned counsel for defendant No. 1 suit is time barred because oral partition took place in 1943-44 and the suit was brought only in 1974. As already observed by me the alleged oral partition of 1943-44 has not been established by any cogent evidence. It also cannot be said that the plaintiff was deprived of all the properties in 1939. The fact that he became resident son-in-law in or about 1947 would again not mean that he has been out of possession of joint properties. Legally each and every co-shared has joint possession over all the properties. Cause of action for partition arises when some differences crop up. It is not defendants case that they have been denying shares of the plaintiff for more than 12 years ad he has not brought a suit for partition during all his time. Therefore, the suit is within time and I decide the issue against the defendants."

13. Having considered all the issues and weighed them with the scales of evidence on record the trial court granted a preliminary decree for partition of properties mentioned in Schedule A & B excluding $\frac{1}{2}$ share of Roshan Lal, (who was alleged to be one of the co-sharers in property situated in Industrial Area) and, therefore, beyond the pale of the suit but at the trial the plaintiff had given up his claim in that property to the extent of share of Roshan Lal. The trial court also decreed the suit for rendition of accounts of JHF properties mentioned in the suit in terms of the prayers made. Plaintiff was also granted declaration that business concerns given in Schedule C are JHF business and held the plaintiff entitled to rendition of accounts therefor, as prayed for by him. A preliminary decree was drawn on March 29, 1985. The children of late Naranjan Dass Jain carried RCA 97 of 2007 (renumbered) instituted on September 16, 1985 in the court of the learned Additional District Judge (Ad-hoc) Fast Track Court, Jalandhar.

14. A cross appeal was filed by Charanji Lal Jain – defendant 1 against the common judgment and decree. Both the appeal and cross appeal were dismissed on November 14, 2008.

15. During the course of the arguments in the present appeal apart from the issue of limitation, Mr. Pankaj Jain, learned counsel appearing for the appellant made two-fold submissions on the merits of the case as well. Firstly, he argues that the trial court and the court of first appeal misread the evidence inasmuch as they did not read the material evidence being an affidavit submitted before the Income Tax Authorities by the plaintiff which showed that he had taken his share of the joint family properties. He submits that this amounts to an admission of an oral partition and taking his share of

the joint family property.

16. Secondly, he submits that there is an admission in the plaint itself of knowledge of exclusion from joint family property and, therefore, the suit filed in 1974 was barred by lapse of 12 years prescribed by article 110 of the Limitation Act, 1963 (for short "the 1963 Act") to apply for partition. To understand the drift of the argument, reference is necessary to the averments in the plaint. Though the plaint is not on the appeal paper-book but was produced by the learned counsel at the time of hearing. The averments in paras.2, 12, 13, 14, 15, 18 & 21 are adverted to and they read as follows:-

"2. *That the Plaintiff was married at Ambala City and started living at Ambala City in or about 1944-45.*

12. *That after the death of Jit Mal, the Karta and Manager of Joint Hindu Family in 1962, the Plaintiff became entitled to $\frac{1}{5}$ plus $\frac{1}{5} \times \frac{1}{6}$ equal to $\frac{7}{30}$ share in the entire family properties detailed in Schedules A, B, and C and Shri Chiranjee Lal Defendant No.1, the eldest son, who had started managing the affairs of the family even during the old age of L.Jit Mal, became the manager of the Joint Hindu Family and the Defendant No.6 and 7 (sisters having been married in affluent families) never cared to claim the share of the property which comes to $\frac{1}{30}^{\text{th}}$ for each. However their shares in the property is not denied.*

13. *That Chinranji Lal Defendant No. 1 being the eldest member of the Joint Hindu Family had started managing the affairs of the Family during the old age of the Karta Shri Jit Mal Jain. On account of his being karta of the Joint Hindu Family he also came into possession of all the accounts of immoveable property mentioned in Schedule.*

14. *Since the Plaintiff was living in Ambala City, he had been excluded from the benefit of Joint Hindu Family Property as well as business and therefore the Plaintiff is entitled to rendition of accounts of Joint Hindu Family concerns and the income and expenses of Joint Hindu Family property and business. The Plaintiff is also entitled to the*

declaration that the said businesses given in Schedule C are the Joint Hindu Family businesses and as such the Plaintiff is entitled to 7/30th share in the said Joint Hindu Family businesses.

15. *That since the Plaintiff is excluded from the enjoyment of the Joint Hindu Family property and business therefore the Plaintiff wants the Joint Hindu Family's properties separated to effectively enjoy his share of the properties.*

18. *That the Plaintiff is in actual joint possession of some of the Joint Hindu Family properties and is constructive joint possession of each and every bit of Joint Hindu Family property. The possession of the Defendants share be presumed to be on behalf of the Plaintiff.*

21. *That the cause of action arose to the Plaintiff in 1962 when Shri Jit Mal and father of the Plaintiff died at Jullundar City, where the property in dispute and the business is situated and further in the year 1969. This court has got jurisdiction to entertain and try the suit."*

17. As he reads the relevant parts of the plaint to address argument relied upon by him he contends that plaintiff admitted exclusion from property when he says that he has been living in Ambala city. He links residence in Ambala as knowledge of exclusion from the benefit of JHF properties as well as family businesses and takes the plaintiff back to his admission in para.2 of the plaint that he had been living in Ambala city after his marriage from or about 1944-45 and, therefore, the suit is barred when filed beyond 12 years from knowledge of date of exclusion.

18. I heard counsel on both sides on this aspect at great length and I have read and re-read the plaint as a whole with special reference to the above quoted portions and I do not find therein any categorical or emphatic admission of knowledge of exclusion on the part of the plaintiff. However, before I discuss the matter further on the point of limitation I would be apt

to reproduce what the learned court of first appeal found with this issue and which aspect has been hammered by Mr. Arun Jain, learned Senior counsel and Mrs. Kiran Bala Jain, learned counsel that the issue of limitation (issue # 9) was not pressed in the appeal or in the cross objections by the defendants and, therefore, para.19 of the judgment is reproduced to understand the case properly:-

"19. Now come to appeal filed by L.Rs of Naranjan Dass. I do not find that the judgment passed by the learned Senior Sub (impugned judgment) deserve any interference. While deciding issues no. 1 and 2, the learned Senior Sub Judge has found that there was jointness of the properties as mentioned in Schedule A and B and there was no evidence to show that there was any partition. Similarly, while deciding issue no.7 share of all the legal heirs of Jit Mal has been determined. Moreover, nothing has been argued regarding this. So, I find that this issue is not under challenge from any quarter. Similarly, issues no.8, 9 11, 12 and 16 has not been argued by any of the party. Similarly, the cross appeal filed by the L.Rs of Charanje Lal does not make out any case for any interference in the impugned judgment. As per my detailed discussion supra the jointness of the properties earlier held by Jit Mal is proved. The onus then shifted to other party to prove that there was partition, but the other party has miserably failed to prove the same. So, I find that there is no force in the cross appeal filed by L.Rs of Charanje Lal. Neither there is any appeal filed by Trishalla Devi being L.R of deceased Naranjan Dass. Hence, there is no ground of any interference in the judgment passed by the court of Sh. A.B Singh Wasu, learned Senior Sub Judge, Jalandhar dated 23.03.1985. cccordingly, both the appeals are dismissed. Decree sheet be prepared."

19. One of the two substantial questions of law arising in this appeal, as said before, and the major one is as to the effect of the issue of limitation and what effect it could have when the jurisdictional issue is not argued and

pressed by any of the parties before the court of first appeal.

20. It is Mr. Pankaj Jain's case that the governing provision is section 3 of the 1963 Act which deals with bar of limitation and prescribes in sub-section 1 of section 3 that subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence to the suit. It is trite law that limitation is a mixed question of law and fact. It is equally settled that section 3 of the 1963 Act is addressed to the court upon whom the duty lies in dismissing a suit which is barred by limitation. On this proposition of law there can be no dispute. To examine the issue, the plaint has to be read as a whole. In the plaint, the plaintiff pleaded that the cause of action arose in the year 1962 when Jit Mal died. It is not disputed that the date of death of Jit Mal is March 17, 1962. The suit for partition was brought on January 08, 1974 that is within 12 years of the limitation prescribed for such suits in article 110 of the 1963 Act. Article 110 prescribes the period of 12 years when suit is by a person excluded from a joint family property to enforce a right to share therein. Thus, partition suits are governed by article 110 of the Limitation Act. The point of time from which the period begins to run under article 110 is "when the exclusion becomes known to the plaintiff". The contesting defendants' case to show that suit was time barred rests on an oral partition having taken place in 1943-44. The only reasoning available on the point of jurisdiction on the judicial file is contained in para.23 of the impugned judgment of the court of first instance since the issue was not pressed in first appeal. A finding of fact has been returned by the learned trial Judge in his

order after appreciating the evidence on record stems from the assertion that the oral partition took place in 1943-44 has not been established by any cogent evidence. If oral partition was not proved then it is trite to say that each and every co-sharer has joint possession over all the suit properties. The cause of action for partition suit arises when differences surface between the co-sharers. The trial court reasoned on the pleadings and evidence that the defendants' case was not that they had been denying the shares of the plaintiff for more than 12 years and he did not bring a suit for partition during the intervening years. If the finding on issue # 1 is sustained it would be an end of the defence and the duty of the court under section 3 of the 1963 Act stands discharged. In order to decide this issue by this court, two things are to be ascertained. One, is from a reading of the plaint whether there was an admission of exclusion at any point within 12 years from the date of institution of the suit in the year 1974. If we are to read the averments in the plaint then it cannot be said with any amount of certainty that the right to sue stood extinguished on the date of institution of the suit. When the theory of oral partition is discredited then it is neither safe nor probable to hold that any other date should be reckoned of exclusion becoming known to the plaintiff prior to the death of Jit Mal when succession opened and rights came for adjudication and the right to seek partition crystallized.

21. This court would now proceed to examine the legal position in the light of section 3 of the 1963 Act when neither in appeal nor in cross appeal against the decree of the trial court was the issue of limitation argued or pressed by any of the parties. Can it then be said that the unsuccessful

parties have succumbed to the findings of the trial court not just on point of law but on point of fact as well, given that limitation is a mixed question of law and fact. The further question is, whether the court of first appeal was duty bound to examine the issue of limitation afresh, even when not pressed, by embarking upon a journey re-appreciating the evidence even when the point was not urged or argued in appeal. Are the contesting defendants then still within their right to contend in second appeal that a serious flaw remains on the face of the proceedings and in the appellate judgment?

22. Mr. Arun Jain, learned senior counsel contends that when the court of first appeal records that issue # 9 was not argued by any party then such an observance can be controverted only on an affidavit filed before the same Judge that there has been an error in recording the statement. For this section 3 of the 1963 Act would not come into play and it would not remain an argument and the point of limitation was required to be decided *de hors* parties pressing their cases for or against that the proposition that the duty still remains in the court of first appeal to fish out the date from the record and the evidence adduced by the parties as to the date when exclusion become known to the plaintiff. It is nobody's case that the defendants filed an affidavit to controvert the statement of the court when recording that the issue was not argued.

23. **The case law cited by the learned senior counsel/counsel.**

Learned Senior counsel relies on a selection of judgments where the courts have consistently taken the view that the court is bound to accept the statement of the Judges recorded in their judgment as to what transpired in court. But the statement of the Judges recorded in judgments cannot be

permitted to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. Such statements are conclusive of the facts so stated. If a party thinks that the happenings in court have been wrongly recorded in the judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily rest there. This is the view expressed by the Supreme Court in a catena of rulings including **State of Maharashtra vs. Ramdas Shrinivas Nayak and another**, AIR 1982 Supreme Court 1249. This view has been reiterated time and again by the Supreme Court in **Central Bank of India vs. Vrajlal Kapurchand Gandhi and another**, 2003(2) RCR (Rent) 186 and two Single Judge decisions of this court applying the law in the aforesaid two cases in **Milkha Singh and others vs. Nirmal Singh and others**, 2007(4) RCR (Civil) 842 & **Hardevinder Singh and another vs. Smt. Nirmal Kaur and another**, VOL.CLIV-(2009-2) The Punjab Law Reporter 537.

24. On her turn, Mrs. Kiran Bala Jain cites the decision of the learned Single Judge of the Bombay High Court in **Gulabrao Maruti Bhagat vs. Bhagwan Nana Bhagat and others**, 2001(3) Civ CC 493 on the question of exclusion from joint family property with reference to article 110 of the 1963 Act that where the right to a share of property is asserted in a suit for partition of JHF the limitation of 12 years begins to run when exclusion

becomes known to the plaintiff and for this there has to be a positive act or conduct by which the exclusion from joint family property becomes known to the plaintiff. On the evidence, she submits that in the present case, there is absolutely no evidence to suggest that the plaintiff was excluded from the property of the joint family for more than 12 years prior to the institution of the suit. When the findings of the court below regarding oral partition are found to be fair and proper on the evidence that it did not take place then exclusion did not take place in 1944-45 when the plaintiff migrated to Ambala to set up his personal matrimonial and professional life as a lawyer. That did not mean that by pursuing the legal profession at a place elsewhere than Jalandhar which was the joint family base the plaintiff had given up his rights in joint property. He remained in constructive possession with the co-sharers and, therefore, he was within his rights to institute a suit within 12 years from the date of death of Jit Mal who admittedly died intestate and without dividing the properties within the family during his life-time by partition of shares.

25. The other judgment relied on by Mrs. Kiran Bala Jain is **Mohinder Singh (died) and Rep. by his Lrs. and another vs. Kashmira Singh**, 1985 AIR Punjab & Haryana 215 where the court considered article 65 of the Limitation Act, 1963 and held that the suit for possession on the basis of inheritance and title can be brought at any time since no limitation period is prescribed. Inheritance does not remain in abeyance and after death of the last male-holder the heirs succeed to the property and they are not even required to file a suit to establish their right as heirs. The court considered the issue in the background of a claim by defendant of

ownership based on adverse possession. She also cites the decision in **Swarna Devi and others vs. Mahant Nath Ram Sharma**, 2005(2) RCR (Civil) 358 for the proposition that when suit is filed on the basis of title, no limitation is prescribed.

26. On the other hand Mr. Pankaj Jain, learned counsel appearing for the appellants has also placed reliance on a selection of judgments. In his feeble attempt to meet the challenge posed against him in the judgment cited by Mr. Arun Jain he cites the decision of the Supreme Court in **Kamlesh Babu and others vs. Lajpat Rai Sharma and others**, (2008) 12 Supreme Court Cases 577. He refers to paras.17 and 18 of the judgment to harp on the duty cast on the court by section 3(1) of the 1963 Act. The relevant paragraphs read as follows:-

"17. It is well settled that Section 3(1) of the Limitation Act casts a duty upon the court to dismiss a suit or an appeal or an application, if made after the prescribed period, although, limitation is not set up as a defence.

18. In the instant case, such a defence has been set up in the written statement though no issue was framed in that regard. However, when the trial court had in terms of the mandate of Section 3(1) come to a finding that the suit was barred by limitation, it was the duty of the first appellate court and also of the High Court to go into the said question and to decide the same before reversing the judgment of the trial court on the various issues framed in the suit. Even though the various issues were decided in favour of the plaintiff, both by the first appellate court and the High Court, the same were of no avail since the suit continued to remain barred under Article 59 of the Limitation Act, 1963."

27. On this I would only say that a general proposition of law has to be read in the light of facts from case to case. Section 3(1) is no doubt an over-arching provision and thus casts a duty upon the court but at the same

time it is also the duty of the court to decide the point of limitation from all possible angles available from the evidence on record to arrive at an appropriate decision on the bar, if any, operating on the suit. If the facts speak to the contrary then the bar would not come in as in this case as thrashed out above. A plethora of judgments cited by Mr. Jain to support his case other than discussed above for setting aside the appellate decree are: (i) **Satyanarain Prasad vs. State of Bihar**, 1970(2) Supreme Court Cases 275; (ii) **Janatha Textiles and others vs. Tax Recovery Officer and another**, (2008) 12 Supreme Court Cases 582; (iii) **Vijay Narayan Thatte and others vs. State of Maharashtra and others**, (2009) 9 Supreme Court Cases 92; (iv) **Huvappa Irappa Ballari vs. Basava and another**, (2005) 12 Supreme Court Cases 164; (v) **Padmanath Goswami vs. Banamali Das alias Banoram Das**, (2004) 13 Supreme Court Cases 651; (vi) **Bhagwan Bala Mahanavar vs. Sandipan Laxman Shinde and others**, (2002) 9 Supreme Court Cases 532; (vii) **Inspector of Police, CBI vs. B.Raja Gopal and others**, (2002) 9 Supreme Court Cases 533; (viii) **Syed Abdul Wahab (Dead) by LRS. vs. Ayisha Beevi (Dead) through LR. and another**, (2005) 10 Supreme Court Cases 455; (ix) **Sameer Kumar Pal and another vs. Sheikh Akbar and others**, (2010) 11 Supreme Court Cases 777; (x) **Venkataramana and others vs. N. Munuswamy Naidu and others**, 2010 (4) CTC 640; (xi) **Shanthappa vs. Channabasavaiah**, 2010(8) RCR (Civil) 572; (xii) **Abdul Basheer (Shri) Through Lrs. vs. Abdul Kareem and others**, 2008(2) RLW 1025.

28. **The end result of the discussion in short is:**

I have gone through the judgments with much pleasure and not

without interest with reference to the facts of this case but I am inclined to think none of them is pat on the point or can tilt the case in favour of the appellant and therefore they do not require any special mention in dispatches as to their special features with reference to their ratios in relation to this case only to burden this judgment with superfluity as they all are clearly distinguishable on facts. Courts should forever remain guided by the words of Lord Denning when he famously said: "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo, J.) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive." Then again; "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

29. It is trite law that when the suit was filed on the basis of title then no limitation is prescribed and the suit is not barred. There is sufficient weight of law on the subject which requires no repetition here. The substantial questions of law as to whether the suit was barred and whether the appellant can in law be permitted to raise the issue of limitation in issue # 9 in second appeal when it was not pressed by the appellant in the court of first appeal are answered against the appellant and in favour of the contesting respondents. The suit was within limitation. Moreover, the point

was given up at the hearing although there was an issue was framed for trial and answered by the trial Judge against the defendant and in favour of the plaintiff by fair and proper reasons recorded under issue # 9.

30. On merits the two points urged by Mr. Pankaj Jain with respect to Income Tax Returns of the plaintiff or that those verily amount to an admission of fact of separation from JHF property by the plaintiff is not determinative of title or share in joint property and the estate of late Lala Jit Mal listed in the Schedule of properties annexed with the plaint. No other point on merits of the case was pressed before me. Mr. Jain in order to fish out an admission in the pleadings in the plaint not only misreads but over-reads them and sees things which are not present in any of the quoted paragraphs independently or when read together in text and context and I am unable to find any admission in them to defeat the plaintiff and non-suit him altogether. Moreover, there are general principles that language used in pleadings have to be read as a whole with reference to the prayers made in the setting of the totality of facts presented which are relevant and in issue to the determination of the real dispute between the parties on which they went to trial. Language and specifically in English in Indian courts is not the controlling factor as the nuances and the subtleties of the English language are not best left in the hands of lawyers practising in the moffusil courts and some allowance has to be given to parties for them not to be pinned down to a word here or a word there, or crucified on an expression here or a sentence there. Justice does not lie in the dissection of words or in Hamlet's answer to the question posed by Lord Polonius in 'The Tragedy of Hamlet- Prince of Denmark'- "What do you read, my lord": "Words, words,

words.”

31. For the reasons recorded above, the appeal is found without merit and the same is ordered to stand dismissed with costs in favour of the contesting respondents in all the courts.

(RAJIV NARAIN RAINA)
JUDGE

06.07.2015
manju