

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

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**RSA No.1722 of 2013(O & M)
Date of Decision:22.09.2015**

Divij Manchanda and another

....petitioners

Versus

Rattan Dei and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

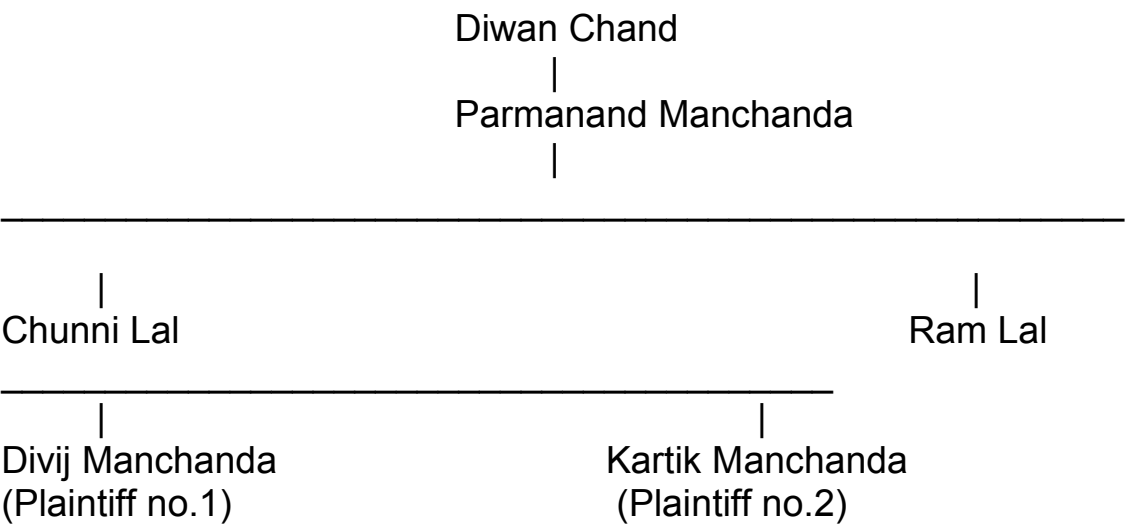
Present: Mr.Birender Singh Rana, Senior Advocate with
Mr.Rajinder Paul, Advocate
for the petitioners

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was dismissed by the trial Court, vide judgement and decree dated 04.06.2010. As even the appeal preferred against the said decree failed, and, was dismissed vide judgement dated 31.10.2012, the plaintiffs are before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

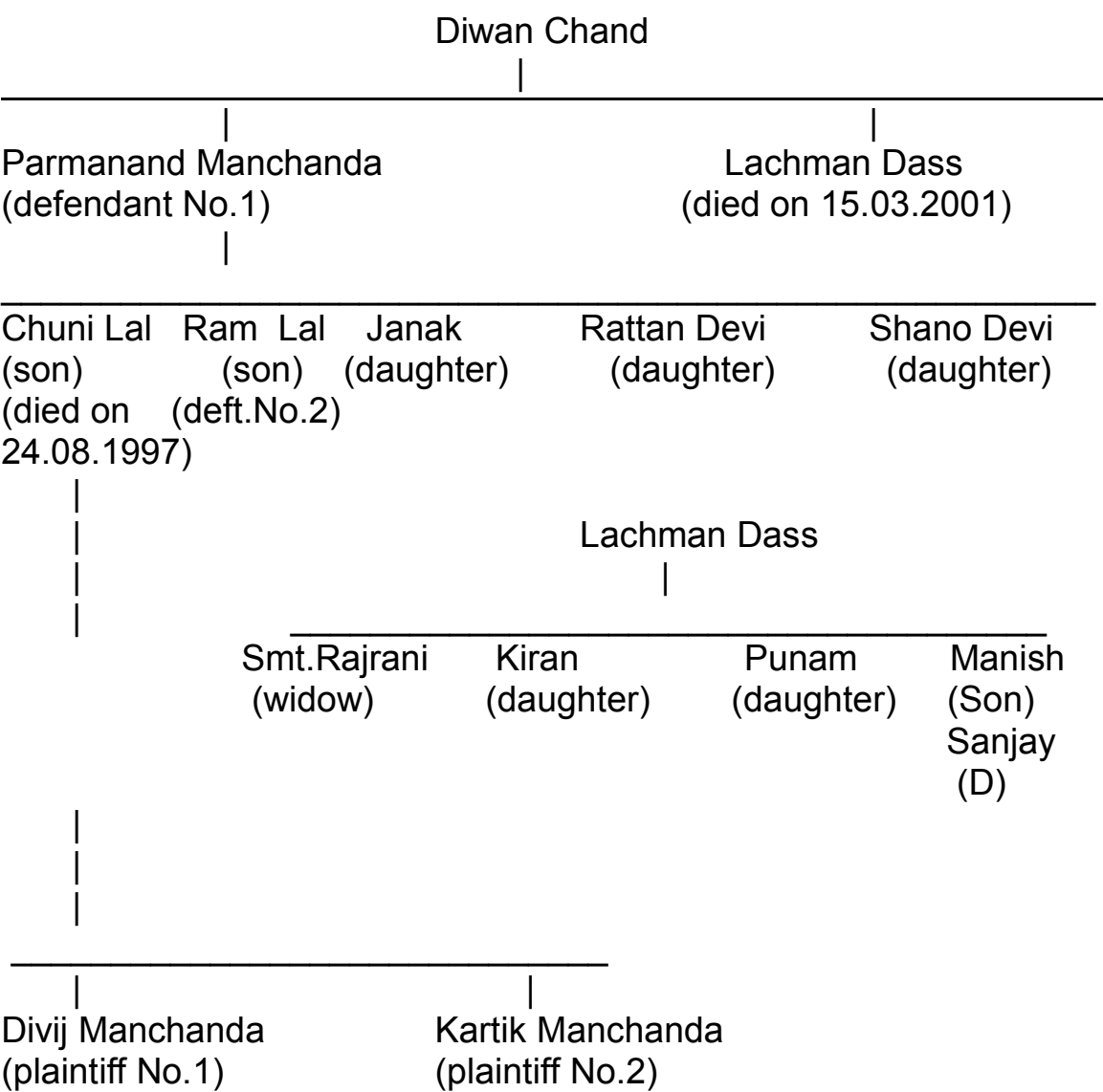
In a suit filed by the plaintiffs, they prayed for a declaration that they were co-owners/co-sharers in possession of the properties described in para No.3 (A to C) of the plaint, to the extent of 1/3rd share, and, thus, had a right to seek partition by metes and bounds. Accordingly, the plaintiffs were entitled to be put in actual

and physical possession of their share. The suit land stated in para no. 3 (A) of the plaint was allotted to Shri Diwan Chand, the great grand father of plaintiffs in lieu of the ancestral properties left by him in West Pakistan at the time of partition of India and the house stated in para no. 3 (B) of the plaint was allotted to Shri Diwan Chand in lieu of the ancestral house left by him in West Pakistan. Shop detailed in para no. 3 (C) of the plaint was purchased in the name of defendant no. 1 out of the Joint Hindu Family funds vide two registered sale deeds dated 05.07.1991 and 17.07.1992. It was maintained that the suit properties were coparcenaries and joint Hindu family properties. Pedigree table of the parties to the suit reads as thus:



28.03.1996), was suffered by their grandfather, defendant No.1 in favour of defendant No.2, regarding the house mentioned in para No.3(B) of the plaint. Thus, both the aforesaid decrees were illegal and not binding on the rights of the plaintiffs. Further, the shop mentioned in para No.3(C) of the plaint was purchased in the name of defendant No. 1 but out of Joint Hindu Family funds. Therefore, plaintiffs being coparceners of the properties detailed in para No.3 (A to C), did not wish to keep the properties joint, and, thus, the suit.

In defence, it was pleaded, inter alia, that the pedigree table drawn in the plaint was incorrect as the true position reads as thus:-



It was denied that the properties mentioned in para No.3 of the plaint were joint Hindu family coparcenary properties. It was maintained that the joint Hindu family consisting of Diwan Chand and his sons Parmanand Manchanda and Lachman Dass disintegrated and separated in mess, residence, religion and earnings, during the life time of Diwan Chand and post disintegration of the joint Hindu family, all the parties started living separately and carried out their respective businesses and activities. During the family settlement between Diwan Chand and his two sons namely Parmanand Manchanda and Lachman Dass, Diwan Chand alienated his entire agricultural land as also portion of House No.54R, New Colony, Palwal, in favour of his sons Parmanand and Lachman Dass, vide a decree dated 28.06.1971, and, since then no property remained joint between Diwan Chand and both his sons. Therefore, plaintiffs had no right, title or interest in any of the suit properties.

On a due and comprehensive consideration of the matter in issue, and the evidence on record, both the Courts below concurrently concluded that as regards the property/shop mentioned in para No.3(C) of the plaint, admittedly the same was purchased by defendant No.1 i.e.Parmanand, vide two separate sale deeds dated 05.07.1991 (Ex.DW1/A) and 17.07.1992 (Ex.DW1/B). Nothing was brought on record, least any cogent or credible evidence to prove that the said property was indeed purchased out of joint Hindu family funds. Rather, the documents Ex.DW2/A to Ex.DW2/C revealed that father of the plaintiffs namely Chunni Lal had left the business in the year 1974, after he sold all the machinery and goods to defendant

No.1. So much so, he also transferred the registration certificate of Agricultural and Allied Industries in favour of his father i.e.defendant No.1. Since then, defendant No.1 had been running the firm being a sole proprietor. Divij Manchanda-Plaintiff No.1 (PW5) admitted that his father was a Lecturer in YMCA in the year 1974, and, since then he had been residing in Faridabad. No evidence was led to show that defendant No.1 ever constituted a joint Hindu Family with father of the plaintiffs namely Chunni Lal and his other brother namely Ram Lal. That being so, it was concluded that the property depicted in para No.3(C) of the plaint was a self acquired property of defendant No.1 and, thus, he had every right to use the same in the manner he liked. As regards other two properties i.e.agricultural land mentioned in para No.3(A) and residential house mentioned in para No.3(B) of the plaint, it was concluded that although plaintiffs claimed that agricultural land was allotted to their great grandfather Diwan Chand in lieu of the ancestral property left by him in West Pakistan and likewise even the house mentioned in para No.3(B) was allotted to Diwan Chand in lieu of the ancestral house that was left by him in West Pakistan, remained un-substantiated on record, for lack of cogent evidence. Nothing was brought on record to show that Diwan Chand ever held any properties in Pakistan that were ancestral in nature. Apparently, the onus to prove the nature of properties strictly lay upon the plaintiffs which they failed to discharge. Insofar as, allotment of land depicted in para No.3(A) of the plaint, in favour of Diwan Chand, it was observed that jamabandi for the year 1957-58 (Ex.P1) revealed that Diwan Chand i.e.great grandfather of the

plaintiffs, was shown to be the owner in possession of the suit land. Sale document dated 29.12.1954 (Mark A) proved that the site bearing No.54R, was also purchased by Diwan Chand. No evidence was led to prove that the land as also the house mentioned in para No.3A and 3B was allotted to Diwan Chand in lieu of ancestral properties left by them in West Pakistan. The judgement and decree dated 28.08.1971 (Ex.D3) and (Ex.D2), respectively, revealed that defendant No.1 was declared to be the owner in possession of the properties mentioned in para No.3A and B of the plaint. The plea that the decrees dated 28.08.1971 and 28.05.1996 were liable to be set aside for want of registration, was also rejected, as, at the time, when these decrees were suffered, father of the plaintiffs namely Chunni Lal, was alive, and, thus, if at all, he was aggrieved by the said decrees, he could question the same during his lifetime. But he did not, and he died in the year 1997. It was observed that even the limitation to assail the said decrees had run out during the life time of Chunni Lal. Present suit was instituted on 04.09.2001 i.e. after over three decades of passing of the decree dated 28.08.1971 and after five years of the decree dated 28.05.1996. In any case, plaintiffs only produced certified copies of the said decrees but pleadings of the parties were never proved so as to ascertain whether the said decrees were passed on the basis of a family settlement or not.

Learned senior counsel for the appellants could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to question the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed in limine.

22.09.2015*neenu***(ARUN PALLI)
JUDGE**