

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on : 25.03.2015.*
Judgment delivered on : 07.04.2015

+ CS(OS) 1809/2009
VINOD KUMAR SINGH & ORS.

..... Plaintiffs

Through Mr. G.S. Raghav and Mr. Pankaj
Kumar, Advs.

versus

DEVRAJ SINGH & ORS.

..... Defendants

Through Mr. Rajiv Khosla, Mr. R.R. Saini
and Mr. Harshit Jain, Adv. for D-
1 to D-6.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

**I.A. No.5580/2010 (under Order 7 Rule 11 of the CPC filed by D-3,
D-4 & D-6) & CS(OS) 1809/2009**

1 The present application has been filed by defendants No. 3, 4 & 6 under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as the 'Code' seeking rejection of the plaint. Contention is that the plaint does not disclose any cause of action. It is barred under the provisions of the Delhi Land Reforms Act. It is also barred by the principle of res-judicata. Limitation is also a hurdle in the way of the

plaintiffs. On all the aforementioned grounds, the suit cannot proceed and the plaint is liable to be rejected.

2 There is no doubt to the settled legal proposition that to deal with an application under Order 7 Rule 11 of the Code it is the averments which are made in the plaint and the documents annexed along with the plaint which alone have to be adhered to and the defence sought to be set up by the defendant is not material for dealing with such an application.

3 Record discloses that

(i) Shiv Sheodan Singh was the owner of certain lands in village Rithala, Rohini. Pursuant to an Award which was passed in 1980-1980, a portion of his land was acquired and compensation was received.

(ii) Sheodan Singh had two sons i.e. Prithi Singh and Shivraj Singh. Prithi Singh died in 1949. Shivraj Singh died in 1948.

(iii) Prithi Singh left behind three sons Jai Pal Singh, Mahendra Pal Singh and Chandra Pal Singh. Chandra Pal Singh died issueless. Jai Pal

Singh died in 2007. He left behind sons and grandsons. Mahendra Pal Singh has been arrayed as defendant No. 7 in the present suit.

(iv) Shivraj Singh left behind two sons namely Ran Singh and Ami Singh. Ran Singh died in 1999. Ami Singh died in 1996. Both Ran Singh and Ami Singh left three sons each.

4 The pedigree chart showing the descendants of Sheodan Singh has been detailed in the plaint.

5 The plaint discloses that

(1) CS (OS) No.1299/1985 was filed by Ran Singh and Ami Singh (sons of Shivraj Singh). This was a suit for permanent injunction. The defendants were Mahendra Pal Singh, Jai Pal Singh and Chandra Pal Singh (the three sons of Prithi Singh). The plaintiffs claimed ownership and possession of khasras No. 193, 208, 209 & 210 of the land located in village Rithala. An ex-parte decree was passed in favour of the plaintiffs which was subsequently set aside. The suit stood abated on 09.04.2001. Appeal against this order was dismissed on 29.01.2007. This order has become final.

(2) CS (OS) No. 1159/2001 was thereafter filed by Mahendra Pal Singh, Jai Pal Singh and Chandra Pal Singh (claiming through Prithi Singh). This was a suit for partition and possession. The properties involved in this suit were the same i.e. khasras No. 189, 190 193, 208, 209, 210 & 211 of village Rithala. The defendants in this suit were three sons of Ran Singh and three sons of Ami Singh (claiming through Shivraj Singh).

6 The fate of CS (OS No. 1159/2001 was that an application under Order 7 Rule 11 of the Code was filed by the defendants. The plaint stood rejected on 30.05.2009. This was a speaking order. There were two reasons for rejection of the plaint. The first was that there was no cause of action and the second ground was that the suit was barred by limitation. This order has since become final. It was not challenged.

7 The position at law is that the rejection of a plaint amounts to a decree within the meaning of Section 2 (2) of the Code.

8 Section 2 (2) reads as under:-

2. Definitions.

In this Act, unless there is anything repugnant in the subject or context, -

(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within ¹ [* *] section 144, but shall not include-*

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

9 Thus a ‘decree’ is the formal expression of an adjudication which, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It includes the rejection of a plaint.

10 Thus the order dated 30.05.2009 vide which the plaint of CS (OS No. 1159/2001 was rejected being a decree was a final adjudication and determination of the rights inter-se the parties.

11 All these averments and facts as noted supra have been borrowed from the plaint. They are a part of the pleadings made by the plaintiff in his plaint. The documents annexed along with the plaint are also relevant. In CS (OS) No.1299/1985 a written statement had been filed

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by the defendants. For the purpose of recapitulation, this was a suit filed by the legal heirs of Shivraj Singh (Ran Singh and Ami Singh) against the legal heirs of Prithi Singh (Jai Pal Singh, Mahendra Pal Singh and Chandra Pal Singh). The written statement filed by the legal heirs of Prithi Singh disclosed that a partition had taken place of the suit properties i.e. of khasras No. 193, 208, 209 & 210 way back in the 1940's i.e. prior to the death of Prithi Singh and Shivraj Singh. (Prithi Singh had died in 1949 and Shivraj Singh had died in 1948). Thus, there was a categorical stand set up by the legal heirs of Prithi Singh, that the suit properties already stood partitioned during the lifetime of Prithi Singh and Shivraj Singh.

12 In CS (OS) No.1159/2001 which was the second suit interse the parties relating to the same properties, the plaint stood rejected. This was a suit filed by the legal heirs of Prithi Singh against the legal heirs of Shivraj Singh. This was a suit for partition and permanent injunction. The plaint stood rejected on 30.05.2009. This order has become final. The Court while rejecting the plaint had noted the averments made in that plaint. The averments in CS (OS No. 1159/2001 were to the effect

that Prithi Singh and Shivraj Singh during their own lifetime had orally partitioned and demarcated the land in question out of which khasras No. 189, 190, 209 and 211 came to the share of Prithi Singh and khasras No. 203, 208 & 210 fell to the share of Shivraj Singh. The averments in that suit had further disclosed that pursuant to this oral partition, the parties were in the actual and cultivatory possession of their respective shares. A preliminary decree of partition and possession was accordingly claimed in that suit.

13 The present suit (CS (OS) No.1809/2009) is a suit filed by the grandsons of Prithi Singh i.e. three sons of Mahendra Pal Singh and one son of Jai Pal Singh. This is also a suit for partition and permanent injunction. The suit properties are the same. The defendants in the present suit are the descendants of Shivraj Singh i.e. sons of Ran Singh and Ami Singh. They are arrayed as defendants No. 1 to 6. Defendant No. 7 is a proforma defendant being the father of plaintiffs No. 1 to 3. Defendant No. 8 is also a proforma defendant being another son of Jai Pal Singh. The prayers made in the present suit also seeks a partition of the same suit lands i.e. the lands situated in village Rithala, Rohini. The

prayer is to pass a preliminary decree of partition followed by a final decree of partition. The prayer clause has not disclosed the details of the properties but the averments in the plaint disclose that the properties involved are the same properties i.e. Khasras No. 189, 190 193, 208, 209 210 & 211. Prayer clause reads as follows:-

- (a) Pass a preliminary decree of partition of the suit land having admeasuring area of 23 bighas and 7 biswas situated in the urbanized village-Rithala, Rohini, Delhi-85 against the defendants separating the share of each party as shown in the site plan;*
- (b) Pass final decree of partition separating the shares of the parties in the suit property in the aforenoted manner;*
- (c) Pass a decree declaring that the bhumidari/ownership entries in the suit land comprised in all seven khasras recorded in the revenue records of the village Rithala as unvalied and not binding upon the plaintiffs;*
- (d) Pass a decree of injunction in favour of the plaintiffs and against defendants No. 1 to 6 them from selling/disposing of the suit land or creating any third party interest therein;*
- (e) Pass an order of cost of the suit in favour of the plaintiffs and against the defendants.*

14 Submission of the Prithi Singh group being that Shivraj Singh group is attempting to alienate this property which actually falls to their share.

15 Learned counsel for the defendants has argued on the principle of res-judicata. His submission is that these prayers already stand answered by the two litigations inter-se the same parties relating to the same properties. They cannot now be re-agitated. He has relied upon Explanation VI of Section 11 of the Code. Submission being that the plaintiffs are admittedly the descendants of Prithi Singh and the defendants are the descendants of Shivraj Singh who have already got their rights adjudicated in the earlier suits and as such the bar created by Explanation VI of Section 11 would be fully applicable to the present facts. Attention has been drawn to the memo of parties in the present suit as also in the earlier suit to substantiate this argument. Learned counsel for the defendants does not press the ground of limitation or cause of action to advance his argument on the present application. This is in answer to the judgment which has been relied upon by the learned counsel for the plaintiffs in (1997) 10 SCC 192 Delhi Wakf Board Vs.

Jagdish Kumar Narang and others. The Supreme Court in that case while relying upon the provisions of Order 7 Rule 13 of the Code had noted that where a plaint has been rejected on any of the grounds mentioned in Order 7 Rule 11 of the Code, it would not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Submission being that the order dated 30.05.2009 passed in CS (OS) No.1159/2001 had rejected the plaint on the ground of no cause of action and the ground of limitation. He does not press these prayers in the present application. His argument is founded on the doctrine of res-judicata.

16 Reply arguments have been submitted by the learned counsel for the plaintiffs. His submission is that the plaintiffs are the third generation in the lineage of Prithi Singh and Shivraj Singh. They are hindus and governed by Mithaksha law. Even presuming that a partition had taken place earlier, the plaintiffs in their own right are entitled to ask for a reopening of the partition. Reliance has been placed upon (1976) 1 SCC 214 Ratnam Chettiar and Others Vs. S.M. Kuppuswami Chettiar and Others to advance this argument. Submission being that it is the

duty of the Court to protect and safeguard the interest of the minors and the plaintiffs at that time when their father and forefathers had entered into the partition, being against the interest of the plaintiffs, is a partition which is liable to be reopened. For the same proposition, reliance has also been placed upon 1969 (2) SCC 33 State Bank of India Vs. Ghamandi Ram (Dead) through Gurbax Rai. Reliance has also been placed upon AIR 1966 SC 1332 Sheodan Singh Vs. Daryao Kunwar to support his submission that unless and until all the parameters of Section 11 are co-jointly met with, provisions of Section 11 would not apply. Submission being that CS (OS) No.1159/2001 was not a decision on merits as the order dated 30.05.2009 had rejected the plaint for want of cause of action and on the ground of limitation; such a judgment cannot be treated as a former suit which has been heard and finally decided by the Court. This doctrine is wholly inapplicable.

17 Arguments have been heard.

18 Section 11 of the Code engrafts the principle of res-judicata. It reads herein as under

Section 11:- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I- The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI- Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[Explanation VII.- The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

19 This statutory provision contains the rule of conclusiveness of a judgment and it operates as bar to trial of a suit or issue if the matter in the previous suit between the same parties litigating under the same trial in a Court competent to try the subsequent suit in which such an issue has been raised. This doctrine is based on public interest. The object of this section is to confer a finality of a former decision arrived at by the competent Court between the same parties. Once a matter has been finally heard by a competent Court, no party can thereafter be permitted to reopen it in a subsequent litigation. The superior Courts have time and again held that to apply the principle of resjudicata, Courts must first determine the case of the parties as put forward by them in their respective pleadings of the previous suit and then to find out what has been decided by the earlier judgment which may operate as res-judicata.

20 The following parameters must be fulfilled for giving effect to principle of res-judicata.

- (i) That the parties are same or litigating under same title.
- (ii) That the matter directly and substantially in issue in the subsequent suit must be same which was directly and substantially in issue in the former suit
- (iii) That the matter in issue has been finally decided earlier and
- (iv) That the matter in issue was decided by a Court of competent jurisdiction.

21 If one or the more of the conditions are not proved, the principle of res-judicata would not apply.

22 Applying the aforementioned principles to the facts of the instant case, this Court notes CS(OS) No.1299/1985 was filed by the sons of Shivraj Singh against the sons of Prithi Singh. This was a suit for permanent injunction but the prayer was for a claim of ownership and possession. The suit properties involved in the suit were the same. In the written statement which was filed by Prithi Singh group (the plaintiffs in the CS (OS No. 1809/2009

present suit) it was categorically stated that the partition of this suit land had already taken place prior to the death of Prithi Singh and Shivraj Singh i.e. prior to 1948-1949 and no cause of action had arisen in favour of the plaintiffs in that suit. That suit stood abated. Thus it was not a judgment which had heard and finally decided the issue in the suit.

23 CS (OS) No1159/2001 was thereafter filed by Prithi Singh group i.e. his three sons. This was a suit for partition, declaration and injunction. The prayer in that suit was a prayer for a preliminary decree of partition in favour of the plaintiffs and against the defendants of Khasras No. 189, 190, 209 & 210 and to separate the share of the defendants which was in khasras No. 191, 193, 208 & 211. This was to be followed up by a final decree.

24 The subject matter of the suit properties in CS (OS) No1159/2001 have been detailed in para 2 which includes khasras No. 189, 190, 191, 193, 208, 209 & 210. Para 4 of the plaint categorically recites that Prithi Singh and Shivraj Singh in their lifetime had orally partitioned and demarcated the land in question and khasras No. 189, 190, 209 & 210 came to the share of Prithi Singh vide which he had become the absolute

owner and khasras No.191, 193 & 208 fell to the share of Shivraj Singh. This was an oral partition which has been honoured and acted upon. Further averments in the plaint being that the entries in the revenue records have also been made to the said effect. Para 6 of the plaint discloses that 20 years back (after around 1980), the plaintiffs had constructed boundary wall of brick and cement in their khasras and had made permanent farm house in khasra No. 189 and since then, the said farm house has been exclusively used by them. Similarly the defendants had also constructed boundary wall around the land in khasras No. 191, 193 & 208. Para 8 of this plaint discloses that the property has been partitioned lawfully between Prithi Singh and Shivraj Singh as per oral partition effected during their lifetime and the division has also been effected. Written statement was filed in CS (OS) No1159/2001 wherein these facts were disputed.

25 In the course of the proceedings, an application under Order 7 Rule 11 of the Code was filed by the defendants. This application was taken up for hearing and was dismissed vide a speaking order dated 30.05.2009. The Court had gone into the merits of the controversy

between the parties while noting the facts of the earlier suit (CS (OS) No1299/1985) and the suit under challenge (CS (OS) No1159/2001) and had held that suit for partition is not maintainable as even as per the averments made by the plaintiffs (in CS (OS) No1159/2001), the plaintiffs are in actual and physical possession of the property in terms of the partition arrived at between their forefathers and as such a second suit for partition would not lie. It would be relevant to extract the judgment dated 30.05.2009. It reads herein as under:-

“Present: Counsel for the parties.

Heard the arguments addressed on behalf of the counsel for the parties on the application U/O 7 Rule 11 filed on behalf of the defendant claiming rejection of the plaint on the ground that there is no cause of action for filing the present suit and suit is barred by Limitation Act.

In brief the case of the plaintiff is that plaintiff and defendant are the descendants of common ancestor late Sh. Sheodan Singh who had two sons namely Sh. Prithi Singh and Sh. Shivraj Singh. Sh. Prithi Singh was the father of the plaintiffs who dies somewhere in the year 1949.

The entire land in question being ancestral land was in the joint ownership/bhumidari and cultivation of both the said deceased brothers Sh. Prithi Singh and Sh. Shivraj Singh.

During their lifetimes Sh. Prithi Singh and Sh. Shivraj Singh mutually and orally partitioned and demarcated the land in question. In the said partition/division

khasra Nos. 189, 190, 209 & 210 came to the share of Sh. Prithi Singh (the father of the plaintiffs) thus the plaintiff's father became absolute and exclusive owner of the land in said khasra Nos. and after the demise of Sh. Prithi Singh the said property came into the hands of the plaintiffs whereas the land in Khasra Nos. 191, 193 and 208 fell in the share of Sh. Shivraj Singh (grandfather of the defendants) which on the demise of Sh. Shivraj Singh and his two sons has come into the hands of the defendants.

Since the time of said oral partition of the land in question and during their life time the father of the plaintiffs and grandfather of the defendants were in actual, physical and cultivator possession of their respective shares as mentioned herein above. After the death of Sh. Shivraj Singh in 1948 the fathers of the defendants remained in actual, physical and cultivator possession of their respective share which at present is in the actual, physical and cultivator joint possession of the defendants similarly after the death of Sh Prithi Singh in 1949, the plaintiffs are in continuous actual and physical joint possession of their respective shares.

In 1985 the fathers of the defendants filed civil suit No. 1299/1985 entitled 'Ran Singh and Anr. Vs. Mahinder Pal Singh' in the court of Civil Judge, Delhi which was dismissed on 09.04.2001. Hence the plaintiff is entitled for a preliminary decree of partition of land against the defendants separating the share of the plaintiff's land in khasra No. 189, 190, 201 and 210 show in blue colour in site plan attached hereto and separating the share of the defendant's land in Khasra No. 191, 192 and 208 shown in red colour in site plan, pass a decree declaring that the bhumidari entries of the land comprise in Khasra Nos. 193, 208, 209 & 210 recorded in the revenue records of the village Rithala in the exclusive name of the fathers of the defendants/present defendants are not valid and thus not binding upon the plaintiffs. Pass a decree in favour of the plaintiffs declaring that the plaintiffs are the exclusive owner in possession of the land in Khasra Nos. 189 (are 1 bigha 15 biswas), 190 (area 2 bighas 14 biswas), 209 (aread 3 bighas 19 biswas) and 210

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(area 3 bighas 10 biswas), pass a decree of injunction in favour of the plaintiffs and against the defendants restraining the defendants from interfering in any manner with the possession and use of the share of the plaintiffs and selling/disposing of the said land or creating any third party interest therein.

I have heard the counsel for the parties at length. As far as the contention of the counsel for the plaintiff is concerned, according to hi, to which there is no dispute for deciding theapl U/O 7 Rule 11, only averments in the plaint are to be seen alongwith the documents filed with the plaint by the plaintiff.

As far as the provision of Limitation Act is concerned, counsel for plaintiff has argued that according to the Article 58 of the Schedule of Limitation Act and of limitation to obtain any other declaration, three years, when the right to sue first accrues and this case is covered by Article 113 of the Limitation Act where the period of limitation is three years when the right to sue accrues.

According to the counsel for plaintiff, right to sue accrued in his favour prior to year 1949 when the property was partitioned orally between the ancestors of the parties. Thereafter, it accrued in year 1985 when the suit for permanent injunction was filed by the defendants' father against the plaintiff and it finally accrued on 4th April, 2001 when the suit was dismissed.

On the other hand, counsel for defendants argued that plaintiff is claiming declaration of entries standing in the name of father of defendants since 1954 and at best when the suit for permanent injunction was filed in the year 1985 which gave the knowledge of entries in favour of defendant to the plaintiffs and he should have filed the suit for declaration within three years of the date of knowledge of the entries.

Counsel for the plaintiffs argued that entries in the revenue recorded per see does not given any cause of actions in the present suit only when it was threatened. No

date of actual cause of action has been mentioned. The cause of action reads as follows:-

“The cause of action further recently arose when the plaintiffs threatened to transfer/sell the land in Khasra Nos. 193, 208, 209 & 210 to third party.”

Since no particular date of cause of action is given, and any third party to whom the defendants are threatening to sell the land in question has been mentioned, cause of action is devoid of particulars.

Further more, in view of the averments in the plaint that plaintiffs are in actual, physical possession in property in suit as per oral partition arrived at between the forefathers of the parties, no suit for partition lies. As far as declaration pertaining to entries standing in favour of defendants and their father since 1954 are concerned, this claim barred by time. Plaintiffs are seeking declaration to entries made in year 1954 onwards till date.

Hence clearly suit of the plaintiff is barred by time on this count. With these observations, application U/o 7 Rule 11 is allowed. Plaint is dismissed for not disclosing any cause of action and suit for declaration is also dismissed being barred by time.”

26 The first question which has to be answered by this Court is as to whether the dismissal of the application under Order 7 Rule 11 of the Code was a judgment passed after hearing and finally deciding the issue in that suit. The dismissal of an application under Order 7 Rule 11 of the Code amounts to a ‘decree’ within the meaning of Section 2 (2) of the Code and the definition of ‘decree’ as quoted supra clearly amounts to a

final adjudication and determination of the rights inter-se the parties. The aforementioned quote of the order passed on 30.05.2009 clearly shows that the issue of partition inter-se the sons of Prithi Singh and Shivraj Singh had been finally decided and the Court had held that such a suit for partition does not lie.

27 The parties in CS (OS) No1159/2001 are the fathers of the plaintiffs and the defendants in the present suit. The plaintiffs in the present suit are the grandsons of Prithi Singh and are admittedly claiming title in the suit property through their forefathers.

28 The submission of the learned counsel for the plaintiffs that up to three generations under the Mithakshi law, a minor hindu can ask for reopening of partition if such a partition is against his interest and is unfair is a submission which is wholly untenable in the factual matrix of the present suit. Even presuming that up to three generations, the right of a coparcener to ask for a reopening of a partition is available to such a party, in the present case there is nothing on record to show that the partition which had been carried out during the lifetime of Prithi Singh and Shivraj Singh which was in mid 1940's and which was finally acted

upon when the parties in 1980's made a demarcation of their individual khasras and so much so that both Prithi Singh and Shivraj Singh group had made constructions and boundary walls in their properties and the plaintiffs' ancestors had constructed a farm-house in which they were admittedly living since that period of time and where the present plaintiffs are also living since the time of their birth, would not in any manner leave any scope for the plaintiffs to aver that this act on the part of their fathers and forefathers was either fraudulent or an unfair. The averments made in the present suit in fact do not substantiate any such submission. The word 'fraudulent', which is appearing in a part of the plaint is to the effect that the entries made by the revenue authorities in the revenue records was fraudulent. There is no averment in the plaint which shows that the act of their fathers/grandfather in dividing the properties orally in the mid 1940's and thereafter finally acting upon it in early 1980's by making constructions and individual farm houses in their individual khasras was an act which was unfair and unjust to the interest of the present plaintiffs. Thus it does not now lie in their mouth to say that the partition should be reopened.

29 Relevant would it be also to note that there are 4 plaintiffs in the present suit. Plaintiff No. 1 was born in August, 1965. He attained the majority in 1983. Plaintiff No. 2 was born in October 1971. He attained the majority in 1989. Plaintiff No. 3 was born in September, 1976 and attained the majority in 1994. Plaintiff No. 4 was born in June, 1964. He attained the majority in 1982. The present suit has been filed by the plaintiffs in September, 2009. The plaintiffs all having attained majority in 1980's and early 1990's did not agitate the issue till almost 15 to 20 years after having become majors. Even presuming that during their minority, the act of their fathers and forefathers in partitioning the property in which they have coparcenery rights was unfair and unjust (although neither pleaded and not evident), the long gap of 15 to 20 years to agitate a right (from the date of majority) is wholly unjustified and unexplainable. The judgment of Ratnam is wholly inapplicable to the facts of the instant case.

30 The parties in the instant suit are all descendants of Prithi Singh group. Defendants No. 7 & 8 are proforma defendants. They also relate to the Prithi Singh group. Defendants No. 1 to 6 are the contesting

defendants. They are of Shivraj Singh group. The matter in issue in the present suit is the partition of the same suit lands i.e. khasras No. details of which finds mention in para 2 and which is noted supra. The earlier suit also dealt with the same properties. The earlier judgment of 30.05.2009 has set the matter to rest and has categorically held that partition between the parties inter-se already stands effected way back in 1940's and the second suit for partition (in view of the earlier suit i.e. CS (OS) No1299/1985) does not lie. This judgment dated 30.05.2009 has become final.

31 All the ingredients of the doctrine of res-judicata stand satisfied.

32 Under Order 7 Rule 11 (d) of the Code where a suit is barred by any provision of law, the plaint is liable to be rejected. The plaint in the present suit is accordingly rejected.

33 The application of the defendants is allowed in the aforementioned terms.

**I.A. Nos. 12378/2009 (under Order XXXIX Rules 1 & 2 of the CPC),
12379/2009 (under Order 13 Rule 1 of the CPC) and 6020/2010
(under Order 7 Rule 11 of the CPC)**

These applications have become infructuous. Disposed of accordingly.

INDERMEET KAUR, J

APRIL 07 , 2015

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