

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

RSA No.2722 of 2015 (O&M)

Date of decision:17.06.2016

Bharat Bhushan and others

... Appellants

Vs.

Anand Kumar and others

... Respondents

RSA No.1263 of 2015 (O&M)

Bharat Bhushan and another

... Appellants

Vs.

Anand Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Ashish Aggarwal, Senior Advocate with
Ms. Ritu Pathak, Advocate
for the appellants.

Mr. Ravish Bansal, Advocate
for respondent No.1 (in RSA No.1263 of 2015) and
for respondents No.1 and 5 (in RSA No.2722 of 2015).

AMIT RAWAL J.

This order of mine shall dispose of two Regular Second Appeals, one bearing No.2722 of 2015 arising out of decision of civil suit No.165 of 2005 titled as Bharat Bhushan and others vs. Anand Kumar and others (hereinafter called suit no.1) claiming separate possession through partition of ½ share and the other bearing No.1263 of 2015 arising out of decision of civil

suit No.392 of 2005 titled as Anand Kumar and another vs. Bharat Bhushan (hereinafter called suit no.2) for permanent injunction seeking restraint order against the appellant-plaintiffs from interfering into peaceful possession of the suit property.

Suit No.1 has been dismissed, whereas, suit No.2 has been decreed. It is in these circumstances that both the Regular Second Appeals are filed at the instance of plaintiffs in suit no.1 and defendants in suit no.2.

It would be apt to give preface of the matter.

Bharat Bhusan, Brij Bhushan and Sanjiv Kumar sons of Piare Lal claiming to be adopted sons of Sohan Lal son of Ram Bhagat, Geeta Devi (widow) and Anita Rani, Sunita Rani (daughters) of Piare Lal instituted a suit for separate possession claiming $\frac{1}{2}$ share in respect of suit property on the premise that Piare Lal, predecessor of the plaintiffs was the natural son of Arjan Dass but adopted by Sohan Lal as he had no male issue. It was mentioned that property comprising of 7 Kothas, 1 Godown, 1 Deori, one shop and a court yard was sold by Janki Dass son of Ganeshi Mal to firm M/s Kesho Ram Kedar Nath, Vikram Mandi Kotkapura through its partner Hardwari Lal, vide registered sale deed dated 454 dated 19.5.1933 which consisted of following partners in equal share:-

1. Hardwari Lal
2. Sohan Lal
3. Kedar Nath
4. Kesho Ram

Later on, Kedar Nath and Kesho Ram retired as partners and only Hardwari Lal and Sohan Lal became its partners and after the death of Sohan Lal, his

adopted son Piare Lal became partner of the firm. It has been further pleaded that the firm stood dissolved since long and the suit property was owned by plaintiffs in ½ share being legal heirs of Piare Lal, adopted son of Sohan Lal and Hardwari Lal's natural heirs Anand Kumar, Kulbhushan and children of Arjan Dass namely, Sham Lal and Pardeep Kumar. The property was demolished and a new shopping complex was constructed on the ground floor and residential complex on the first floor.

Defendants No.1 and 2 filed their written statement and the aforementioned suit was contested by the aforesaid defendants raising numerous preliminary objections vis-a-vis value of the Court fee, jurisdiction and the fact that plaintiffs were not in possession of the suit property, much less, owners. Piare Lal was not the adopted son of Sohan Lal, nor was ever partner in the firm Kesho Ram Kedar Nath and neither had any links with the suit property, thus, the factum of Piare Lal becoming partner of the firm on the death of Sohan Lal was meaningless. The factum of retirement of Kesho Ram and Kedar Nath was not denied but it was stated that plaintiffs never became the owners to the extent of ½ share of the suit property being legal heirs of Piare Lal. The expenses spent on the construction was borne out of the pocket of the answering defendants.

Defendants No.3 and 4 also filed their separate written statement and admitted the factum that Hardwari Lal was the son of Ram Bhagat and reiterated the averments made in the written statement of defendants No.1 and 2. Similar stand was taken in respect of the written statement filed by defendants No. 5 and 7.

In the replication, plaintiffs denied the pleadings qua possession

of the suit property. It was stated that Om Parkash predecessor in interest of the parties admitted the stand of the plaintiffs that there was a partial partition which was duly signed by predecessor of the defendants, i.e., Hardwari Lal, Arjan Dass, Om Parkash and Piare Lal. Copy of the same was attached and in the earlier partial partition, the fact that father of the plaintiffs was owner with regard to ½ share had been acknowledged.

Since the parties were at variance, the trial Court on 04.06.2008 framed the issues. When the case was listed for plaintiffs' evidence, an application under Order 1 Rule 10 read with Order 6 Rule 17 of the Code of Civil Procedure was moved for impleading the persons in the array of defendants, which was allowed. Thereafter, plaintiffs moved another application to disclose the legal heirs of Om Parkash. Two witnesses were examined and thereafter counsel for plaintiff closed his evidence on 5.12.2009. Two applications were filed, one to bring on record the certain documents by way of secondary evidence and the other in regard to production of rent deed but the Court rejected the aforementioned prayer. On the said date, an application for granting leave of the Court to produce on record "Bahi entry", its translation and copy of the "sale deed" on behalf of the plaintiffs was filed which was allowed by the trial Court vide order dated 05.11.2009 subject to deposit of costs of ₹2,000/- and question qua forgery and fabrication was kept open and to be decided at the time of final decision of the case inter se the parties.

In rebuttal, regarding the objection qua Court fee and jurisdiction, Registration Clerk from the office of Tehsildar was summoned to bring on record the collector rate.

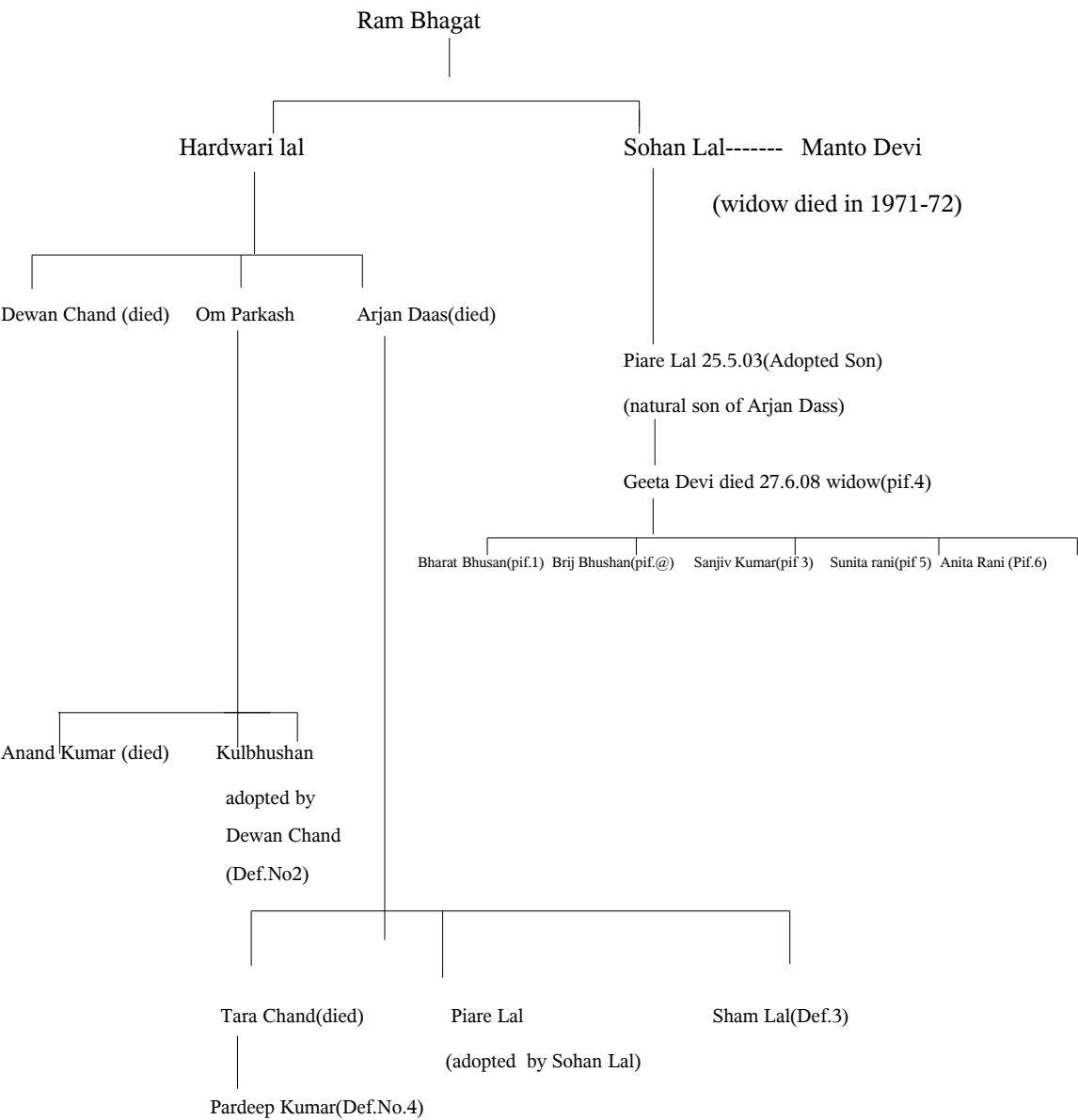
The trial Court dismissed the suit, bearing No.165 of 2005.

Respondent-defendants in the first suit and plaintiffs in second suit sought restraint order against the appellants (herein) on the ground that both Om Parkash and Dewan Chand died and Om Parkash left behind two sons, namely, Anand Kumar and Kulbhushan Kumar and three daughters, namely, Manju, Anuradha and Krishna. It was further stated that Dewan Chand had no issue of his own and adopted Kulbhushan as his son and Krishna as his daughter. Dewan Chand and Om Parkash remained owners in possession since 1975-76 upto 2005 and all the legal heirs of Piare Lal had been alleging some share in the property and had been threatening to interfere into peaceful possession as such suit was filed. The aforementioned suit has been decreed.

It is also pertinent to mention here that during the appellate stage, an application under Order 41 Rule 27 of the Code of Civil Procedure, at the instance of the appellant-plaintiffs before the Lower Appellate Court was moved seeking leave of the Court for placing on record the certified copy of the plaint of the suit titled as Anand Kumar and another vs. Bharat Bhushan and another decided by Court of Ms. Sushma Devi, Civil Judge (Junior Division), Faridkot, decided vide judgment and decree dated 18.11.2011 claiming permanent injunction filed by the defendants, wherein, respondent-defendants had admitted that Piare Lal was the adopted son of Sohan Lal. The Lower Appellate Court disposed of the application by holding that the said admission of the fact without any other evidence would not create an admission branding the status of Piare Lal to be adopted son of Sohan Lal.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by

Ms.Ritu Pathak, Advocate appearing on behalf of the appellant-plaintiffs has referred to the pedigree table which reads thus:-



to contend that Piare Lal was natural son of Arjan Dass son of Hardwari Lal. Hardwari Lal and Sohan Lal are the real brothers and sons of Ram Bhagat, common ancestor. Since the factum of Kedar Nath and Kesho Ram having retired as partners from the partnership had been admitted, Hardwari Lal and Sohan Lal remained partners. As per contents of para 6 of the partnership deed dated 25.06.1952 (Ex.P4), it has been specifically mentioned that partnership was at Will and on the death of partner, the partnership shall not dissolve but egal heir or heirs will automatically become the partner or partners. The copy

of the partnership deed (Ex.P4) has been annexed with the Regular Second Appeal No.2722 of 2015 as Annexure A-2. Relevant clause of the same reads thus:-

“That the partnership is at Will and the death of a partner shall not dissolve the partnership but his legal heir or heirs will automatically become partner or partners.”

He further submits that no doubt, as per the provisions of Section 43 of Indian Partnership Act (hereinafter referred to as “Act”), where the partnership is at Will, it can be dissolved by any partner giving a notice and date of effecting the dissolution is from the date mentioned in the notice. No doubt the provisions of Section 42 of the Act, deals with the dissolution of the partnership deed owing to certain contingencies and one of them is that on account of death of one partner of firms to dissolve but since partners were aware of this fact having intentionally mentioned that on death of partner, it will not dissolve and legal heirs will automatically become partner, thus, findings of the trial Court by relying upon the provisions of Section 41 of the Act, which deals with the compulsory dissolution, is not tenable. In fact, compulsory dissolution is not applicable to the facts and circumstances as per pleadings of the case. He further submits that vide order dated 5.11.2009, once bahi entry and original copy of the sale deed had already been placed on record, the Courts below have erroneously and fallaciously erred in not referring/relying the documents and ought not to have rejected the same on the ground having been produced at later stage. This is not the scope and ambit of the Code of Civil Procedure, much less, against settled the canons of law. He further submits that the Court below has rejected the bahi entry on the ground

that few of the pages were in LANDA script. However, the relevant entry was in Urdu script. The writing/agreement dated 28.03.1988 (Ex.P6) shows that same was signed by Om Parkash father of respondents No.1 and 2, admitting other ½ share of Piare Lal and ½ share of sons of Hardwari Lal. Signatures of Om Parkash have been proved through the testimony of PW3-Anil Kumar Gupta through his report as PW3/1 and PW3/2. No doubt, defendants have also examined their expert but the Court had not assigned any reasons for neglecting the report of expert and the Court should have assumed the role of expert by examining the signatures of Om Parkash. He further submits that the aforementioned witnesses had examined the signatures of Hardwari Lal at Mark H1 and H2, as well as, of Om Parkash at Mark A1 and A2, standard signatures of Arjan Dass, Mark as Y1, standard signatures of Dewan Chand Mark as Z1 from the sale deed dated 07.12.1960 exhibited in a suit titled as Anand Kumar vs. Bharat Bhushan. He also submits that he compared the disputed signatures alleged to be of Om Parkash appearing at Q1 to Q3 on the agreement dated 28.03.1988 at Mark Q4 on the partnership deed dated 24.06.1952 (Ex.P4), signatures of Hardwari Lal Mark X1 and of Piare Lal Mark X2 on the partnership deed, aforementioned and as well as of Hardwari Lal Mark X1/A and of Piare Lal Mark X2/A, on family partnership deed dated 25.06.1952. He was also shown the standard signatures of Om Parkash appearing at S1 on the rent deed dated 11.01.1986 (Ex.P1) and Mark S3 on rent deed dated 02.06.1985 Ex.P4/C. He submits that disputed signatures Q1 to Q4 and standard signatures of Om Parkash Mark S1 and S2, A1 and A2 are similar and had similar writing characteristics. The defendants failed to prove anything contrary in the cross examination of the aforementioned witnesses.

One of the attesting witnesses of the writing/agreement has already died and other witness was won over by the defendants. He further submits that the Courts below have ignored the fact that bahi entry in question was prepared in regular course of business. He submits that suit for injunction where the property is found to be owned by co-parceners or by co-owners, the suit for injunction at the instance of the defendants simpliciter, in the absence of exclusive possession would not be maintainable and the proper and legal remedy, as done by filing suit no.1 has been adopted. The respondent-defendants have failed to prove the exclusive possession and therefore, the suit was also liable to be dismissed. He further submits that the respondent-plaintiffs in suit no.2 also placed on record only copies of the house tax receipts, assessment register of Municipal Committee, Kotkapura. All these documents did or do not show the exclusive possession. He further submits that even an application for appointment of Local Commissioner was moved but the same was also dismissed and in this regard, he has drawn attention of this Court to the zimni order dated 24.08.2005 extracted in the memorandum of appeal in RSA No.1263 of 2015. He further submits that the Court has also non-suited the appellants on the premise that factum of bahi entry was not pleaded. He also submits that as per the provisions of Order 6 Rule 2 of the Code of Civil Procedure evidence has to be concise and brief and not to be pleaded. This fact has totally been ignored by the Courts below and thus, prays for setting aside of the impugned judgments and decrees of the Courts below and urges this Court to formulate the following substantial questions of law arising for adjudication of the present appeals:-

“1. Whether from the own admission of the defendants-

respondents, Piare Lal is proved to be the adopted son of Sohan Lal?

2. *Whether the Bahi Entry as well as the Writing/Agreement signed by the predecessors-in-interest of both the parties as well as the father of respondents No.1 and 2 proved on record that the family branch of Sohan Lal is entitled to one half share in the suit property?*

3. *Whether the appellants could be non-suited solely on the ground that they have not pleaded the factum of bahi entry/agreement in the plaint, whereas, it is well settled that in the pleadings, the evidence sought to be led is not to be pleaded?*

4. *Whether the Courts below have erred in granting injunction in favour of the plaintiff-respondents inspite of the fact that they are co-sharers in the suit property and their exclusive possession over the same has not been proved on record?*

5. *Whether the Courts below have ignored the statement of Vijay Kumar (PW-1) from which it is apparent that the respondents are not even residents of Kotkapura and are residing at Ahmedabad and Bathinda?"*

In support of his aforementioned contentions, he relies upon the judgment of the Hon'ble Supreme Court in **Amteshwar Anand vs. Virender Mohan Singh and others 2005(4) R.C.R.(Civil) 485** to contend that observation of the Court below in rejecting the agreement being unregistered document would not be fatal to the decision of the case as the transaction was between the members of the same family for mutual benefits of such members.

Similar situation arose in the judgment cited supra and the Hon'ble Supreme Court in para 29 negated the objection of registration of the document and held that the Court should always lean in favour of upholding a family arrangement instead of disturbing the same on technical or trivial issues particularly when the parties have mutually received benefits under the arrangement and to the similar lines, also cited the judgment of the Delhi High Court rendered in **Narinder Kaur and another vs. Amar Jeet Singh Sethi and another 2000 (3) R.C.R.(Civil) 508**. He also cited judgment of this Court rendered in **Mangat Ram and others vs. Om Parkash and others 2016 (1) Law Herald 95** to contend that though the opinion of the expert is not binding upon the Court but it is solemn duty of the Court to take a decision with regard to genuineness of the signatures as it is the final authority to look into the document and compare it with the acknowledged signatures in order to arrive at irresistible conclusion with regard to the genuineness or otherwise. On the similar lines, also cited the judgment of this Court rendered in **Kishan Chand vs. Sita Ram and others 2005(1) R.C.R.(Civil) 460** to contend that when there is conflict of opinion between experts, the Court is competent to form its own opinion and on similar lines, he referred the judgment of Karnataka High Court in **M/s Kisha Impex Pvt. Ltd. vs. M/s Srinivasa Minerals and Traders Ltd. and others 2011(8) R.C.R.(Civil) 1014** and judgment of Allahabad High Court rendered in **Smt. Rasheedan vs. Amar Singh and others 1997(2) CivCC 533**. He also cited the judgment of the Hon'ble Supreme Court rendered in **Man Kaur (dead) by LRs vs. Hartar Singh Sangha 2010(10) SCC 512** to contend that defendants would not be

having personal knowledge with regard to execution of the agreement, bahi entry and partnership deed as the documents are of 1952 and therefore, they could not depose as the personal knowledge of the transaction was between the predecessor in interest and the documents being old carried a presumption of truth being admissible in view of the provisions of Section 90 of the Indian Evidence Act, as per the ratio decidendi culled out by the Hon'ble Supreme Court in **The State of A.P. and others vs. M/s Star Bone Mill and Fertiliser Co. 2013(9) SCC 319.**

Mr. Ravish Bansal, learned counsel appearing on behalf of the respondent-defendants submits that bahi entry could not be looked into and rightly so, has been rejected for want of registration. Agreement dated 28.03.1988 (Ex.P6) did not bear the signatures of other party except for Om Parkash. Ramesh Kumar-witness was summoned, but not examined. Even the aforementioned document could not be looked into being beyond pleadings. Bahi entry Mark A has also not been proved in accordance with law as it was in different language and the Court after examining the thread bare evidence produced on record formed its opinion that the same had not been proved in accordance with law as the relevant entry was in Urdu language and therefore, the element of forgery and fabrication cannot be ruled out. The appellant-plaintiffs have failed to prove any document of title to claim the separate possession by way of partition. Both the Courts below have rendered the concurrent findings of facts and law which cannot be upheld until and unless substantial questions of law do not arise for determination of this Court. The plaintiffs have miserably failed to prove bahi entry, copy of the sale deed and therefore, the same has rightly been rejected having not been brought on

record in accordance with the provisions of Order 13 Rule 1 of the Code of Civil Procedure, much less, as per the provisions of Rule 4 Order 13 inserted by this Court. He further submits that even Punjabi translation of bahi entry was not proved. He also submits that alleged family partition/ agreement has also been held beyond pleadings and therefore, rightly so, has been ignored for adjudication of the lis. The appellants have also failed to prove the factum of Piare Lal being adopted by Sohan Lal. Once the foundation qua adoption has not been proved, claim of partition on the ground that Piare Lal alleged to have acquired $\frac{1}{2}$ share in the property remained unsubstantiated and thus, urges this Court for affirming the findings rendered by the Courts below by dismissing the appeals.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees, as well as, record of the Courts below and the case law cited at bar and of the view that there is merit and force in the submissions of Mr. Aggarwal and the judgments and decrees are liable to be set aside for the following reasons:-

- i) The trial Court, in my view, has committed illegality and perversity, much less, abdicated in not relying upon its own order dated 05.11.2009, whereby, bahi entry, its translation and copy of the sale deed have been allowed to be taken on record.
- ii) Signatures of Om Parkash on agreement (Ex.P6), have been proved through the testimony of PW3, expert.
- iii) Even on going through the record of the Courts below, I am of the view that standard signatures of Om Parkash when compared with the questioned signatures are of one and the same

person.

iv) The core question for adjudication of the lis is to be seen is the partnership deed dated 25.06.1952. As per clause 6 of the partnership deed supra, it is ex facie proved on record that on death of one of the partners, the partnership deed would come to an end and continue to exist as per the provisions of Section 42 of the Act.

v) It is a matter of record that the property aforementioned was purchased by the partnership firm consisting of Hardwari Lal son of late Ram Bhagat (common ancestor), Om Parkash son of Hardwari Lal and its partners were Hardwari Lal son of late Ram Bhagat, Om Parkash son of Hardwari Lal, Piare Lal son of Sohan Lal and Arjan Dass son of Hardwari Lal. This aforementioned partnership deed dated 25.06.1952 is co-related with the bahi entry of the same date, i.e., 25.06.1952, wherein, all the persons namely, Hardwari Lal, Piare Lal, has been referred to as adopted son of Sohan Lal and Dewan Chand son of Hardwari Lal, Arjan Dass son Hardwari Lal, had acknowledged the same, whereby, property has been shown to be fallen in joint ownership of the aforementioned persons. The factum of Piare Lal being adopted by Sohan Lal had also been denied. Om Parkash as per the agreement Ex.P6 admitted the fact that property in dispute would be in ½ share of Hardwari Lal and Sohan Lal. Once the signatures have been proved, the documents, in my view, are deemed to have been proved and cannot be thrown out for want of proving

of the same through attesting witnesses.

vi) I am totally in agreement with the ratio decidendi culled out by the Hon'ble Supreme Court rendered in Amteshwari Anand's case (supra), where the Court has to lean in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Bahi entry, in my view, did not require any registration as approach of the Court is to give effect to such family arrangements, rather than rejecting it on a forensic technicalities and this view of mine is supported by the judgment of the Delhi High Court rendered in Narinder Kaur's case (supra). Even otherwise bahi entry is of 19 years old and could be looked into as per the provisions of Section 90 of the Indian Evidence Act, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in The State of A.P.'s case (supra).

vii) I am also in agreement with the ratio decidendi culled out in the judgment referred above with regard to presumption of role of the Court in examining the disputed signatures of Om Parkash. Once there were two contradicting reports of the experts examined by the parties to the lis, having gone through the record of the Courts below, it is irresistibly concluded that standard signatures as noticed above of Om Parkash, after having compared with the disputed signatures, are of the same person. The respondents have failed to prove the exclusive possession except producing on record the house

tax receipts and assessment register which did not prove the ownership, much less, exclusive possession. It is only payment of tax to the Department and such an act can be done by any of co-sharers would not clothe exclusive possession and ownership. The relationship of Sohan Lal and Hardwari Lal being brothers from common ancestral, has not been denied. No doubt, Arjan Dass is the real father of Piare Lal and factum of being adopted by Sohan Lal has been admitted in the suit. The copy of the judgment and decree has been placed on record by way of additional evidence which itself shows that parties to the lis, have been treating Piare Lal to be adopted son of Sohan Lal. All these facts have been ignored by the Courts below and rather have granted the injunction to the co-sharer, who has not been able to prove the exclusive possession. The provisions of Order 13 Rules 1 and 9 of the CPC inserted by this Court would also leave no manner of doubt that non-production of original documents would not be fatal to the adjudication of the suit. Once the sale deed having purchased the property has been brought on record, property in the name of partnership firm, namely, Kesho Ram Kedar Nath from Janki Dass, the jointness of the property has been proved. On the contrary, the defendants have failed to prove that it was exclusive property of Hardwari Lal and therefore, Sohan Lal, other branch of common ancestors had no right and interest in the property. Sohan Lal is stated to have died in the year 1937, whereas,

Piare Lal died on 25.05.2003.

For the foregoing reasons, I am of the view that the judgments and decrees of both the Courts below are not sustainable in the eyes of law and thus, same are hereby set aside. Suit seeking partition is decreed by passing preliminary decree, whereas, suit for injunction is dismissed.

The substantial questions of law as noticed above are answered in favour of the appellants and against the respondents.

Accordingly, the appeals are allowed. Preliminary decree sheet be prepared.

(AMIT RAWAL)
JUDGE

June 17, 2016
savita