

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

**R.S.A No.1526 of 2014(O&M)
Date of decision : 01.12.2016**

Hargursharan Singh

..... Appellant

Versus

Lt. Col. Hargobind Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.G.S.Kaura, Advocate
for the appellant.

Mr.Gurbaksh Singh, Advocate
for LR's of the respondent.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 16.10.2013 passed by the learned Additional District Judge, Chandigarh, whereby the appeal filed by the appellant-plaintiff against the judgment and decree dated 24.04.2013 passed by the learned Civil Judge (Jr. Division), Chandigarh, has been dismissed.

2. Appellant-plaintiff has filed the suit for declaration to the effect that he is owner in possession of 50% share of house/plot no.1394, Sector 33-C, Chandigarh. He has also sought the consequential relief of permanent injunction restraining the defendant from selling/ mortgaging/ alienating the aforesaid house/plot in any manner without the written

consent of the plaintiff and further to restrain him from interfering in the possession of the plaintiff. He also sought the decree for mandatory injunction directing the defendant to get the name of the plaintiff entered in the revenue record and the record of the Estate Office, Chandigarh as 50% share holder in the aforesaid disputed property.

3. As per averments in the plaint, the plaintiff-appellant and defendant-respondent were the real brothers having no other brother. The defendant joined the Army in young age and plaintiff helped his father as well as was cultivating the agricultural land. In the year 1968, defendant approached the plaintiff with an idea that they should purchase some property outside their native village and proposed to buy house in a modern city like Delhi or Chandigarh. He told that he was eligible for allotment of plot in defence quota at Chandigarh. He proposed that if the plaintiff pays money to him, he shall buy a plot and construct the house in Chandigarh as their children will study in good city. Defendant represented that both of them shall be joint owner of the plot and house purchased and constructed by the money of the plaintiff. The plaintiff believed and trusted his elder brother blindly and gave him ₹ 48,000/- in cash out of his income and funds earned from agriculture on the promise that defendant shall buy the plot in Chandigarh in the joint names of the plaintiff and defendant showing both of them as owner to the extent of 50%. Later on, he came to know that defendant has purchased/got allotted a two canal plot out of the said money. Defendant told that the said plot has been purchased solely in his name as the rules does not allow the allotment of the plot of quota of defence personnel in the name of

anybody, who does not belong to the defence services. Thereafter, they decided that they will put their entire transaction in writing, so that there may not be any dispute in future and both the brothers would keep their share to the extent of 50% each. Ultimately, a family settlement regarding the aforesaid plot/house in question was executed between the parties in the presence of the witnesses on 10.11.1970, which was executed by defendant out of his free will since he felt morally bound and obliged as all the money for buying as well as for raising construction thereupon was raised by the plaintiff. Defendant also gave an undertaking that he will get 50% share of the demised property entered in the records in the name of the plaintiff as soon as the rule permits. Thereafter, the plaintiff has been reminding the defendant off and on with respect to the entry in the record of the Estate Office, Chandigarh regarding 50% ownership in his favour, but each time the defendant had been putting off the matter on the excuse that rules did not permit the transfer. But, later on the plaintiff came to know that the said embargo was for initial few years, which was over. Then, the plaintiff immediately demanded from the defendant regarding the change in the records as per the terms and conditions of the family settlement, but of no avail. Hence the suit.

4. The suit was contested by the defendant-respondent-Lt. Col. Hargobind Singh (now deceased) on the grounds *inter alia* that the father of the parties was a retired Head Master of School and was getting ₹ 38/- as pension. They had eight sisters. Defendant helped his father for the marriage of the sisters and that of the plaintiff. He joined the Army as an officer in the year 1949. At that time, the plaintiff was minor. He

purchased about 70 acres of land in District Udham Singh Nagar with his own funds. Later on, this land was developed into a big farm. Defendant transferred some of land in favour of the plaintiff. Plaintiff did not have a single penny when the land was purchased. The father of the parties died in the year 1985. He has further pleaded that he had appointed the plaintiff as his attorney in good faith to look after and manage the aforesaid land. But, later on the said power of attorney was cancelled on 29.07.1975 as the plaintiff in connivance with some other persons had intention to grab the land of the defendant. He also forged and fabricated a sale deed in favour of Prabhjot Singh and Balbir Singh etc. It was further pleaded that no family settlement has ever been entered into with regard to the house/plot in dispute in the year 1970 as there was no allotment of the plot in that year. It was further pleaded that the said family settlement is a forged and fabricated document. The same is hit by the provisions of The Benami Transactions (Prohibition) Act, 1988 and the Indian Registration Act, 1908(for short 'Registration Act'). With these pleas, he pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 14.09.2004:-

1. Whether the plaintiff is owner in possession of 50% share of the suit property on the ground taken in the plaint?OPP
2. If issue no.1 is proved, whether the plaintiff is entitled for declaration and injunction on the groudns taken in the plaint? OPP
3. Whether the suit is barred by limitation?OPD
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the alleged family settlement is forged and fabricated and is not legal for want of registration?OPD
6. Whether the present suit is bad being provisions of Benami transaction?OPD
7. Whether the suit is bad for non joining of Estate Officer being necessary party?OPD

8. Whether the Court fee has not been affixed?OPD
9. Relief.

6. On appreciation of the evidence adduced by the parties and the contentions raised by the learned counsel for the parties, the learned trial Court dismissed the suit vide impugned judgment and decree dated 23.04.2013.

7. Aggrieved with the aforesaid judgment and decree, the appellant-plaintiff preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Chandigarh, vide impugned judgment and decree dated 16.10.2013. Hence this Regular Second Appeal.

8. I have heard Mr. G.S.Kaura, Advocate, learned counsel for the appellant, Mr. Gurbakhsh Singh, Advocate, learned counsel for LR's of respondent and have meticulously gone through the record of the case.

9. Initiating the arguments, Mr. G.S.Kaura, Advocate, learned counsel for the appellant contended that the property in dispute was purchased by the defendant by utilizing the money i.e. ₹ 48,000/- given to him by the plaintiff. The earnest money for allotment of the plot was deposited with the Estate Office, Chandigarh on 05.08.1969. Thereafter, the family settlement has taken place between the parties as they were the real brothers. The plot was allotted to the defendant out of the defence quota and due to this reason, the allotment was in favour of the defendant. There was also a condition in the allotment letter that the said plot could not be transferred before the expiry of the period of ten years. Thus, in these circumstances, in order to rule out any future dispute

between the parties, both the parties ultimately entered into the family settlement dated 10.11.1970 (Ex.P-1). He contended that the execution of the said family settlement is duly established from the statement of PW-1-Hargursharan Singh-plaintiff himself and PW-4-Harbans Singh, the attesting witness of the family settlement. Second attesting witness Fateh Singh had already died. He further contended that even the testimony and report of the handwriting expert shows that the family settlement (Ex.P-1) was very much signed by deceased-defendant Lt. Colonel Hargobind Singh. Thus, he contended that the oral evidence adduced by the plaintiff on the execution of the family settlement is also corroborated from the expert evidence. He contended that even defendant has admitted his signatures on the family settlement (Ex.P-1). Thus, he contended that the plaintiff by leading cogent and convincing evidence has established the execution of the family settlement (Ex.P-1) by the defendant, whereby the plaintiff was admitted to be the owner of 50% share of the suit property.

10. He further contended that there is no rebuttal to the aforesaid evidence adduced by the plaintiff. Defendant-Hargobind Singh has appeared in the witness box. He filed his affidavit in his examination in chief. He also faced the part cross-examination and thereafter, he did not appear. So, his incomplete statement cannot be taken into consideration. He further contended that the defendant has raised the plea that the family settlement (Ex.P-1) was forged and fabricated, these facts could only be in the personal knowledge of the defendant. DW-1-Parminder Kaur, the power of attorney of the defendant is not a competent witness to depose on these facts, which were in the personal knowledge of the defendant

and her testimony carries no evidentiary value. To support his contentions, he relied upon cases **Man Kaur (dead) by LRs. Vs. Hartar Singh Sangha 2011(1) R.C.R.(Civil) 189** and **Bhajan Kaur and others Vs. Tarlok Singh 2009(3) RCR (Civil) 609**.

11. He further contended that the learned Courts below have wrongly discarded the family settlement (Ex.P-1) on the ground that it requires registration. He contended that the plaintiff-appellant was having the pre-existing rights in the suit property as he has already paid ₹ 48,000/- for the purchase of the suit property, so the family settlement (Ex.P-1) did not require any registration. To support his contentions, he relied upon case **Bhoop Singh Vs. Ram Singh Major and others 1996(1) PLR 559**. He further contended that the learned Courts below should lie in favour to recognize the family settlement. There is no necessity to establish the pre-existing rights when the family settlement is otherwise proved to be *bona fide*. He relied upon case **Mythili Nalini Vs. Kowmari and others 1991 (2) HLR 689**. Thus, he contended that the family settlement (Ex.P-1) is legal and valid. Appellant-plaintiff is owner in possession to the extent of 50% share of the house in dispute.

12. On the other hand, Mr. Gurbakhsh Singh, learned counsel for the LRs of respondent contended that the whole suit of the plaintiff is based on the alleged family settlement dated 10.11.1970 (Ex.P-1), which is a forged and fabricated document. He contended that there are various suspicious circumstances surrounding the said family settlement. He contended that from the letters Ex.D-1 to D-7, it is established that the plaintiff had no source of income to pay the amount of ₹ 48,000/- in those

days. It is nowhere mentioned in the family settlement as to on what date and month, the said amount was paid. He further contended that even the plot was not allotted by 10.11.1970, the alleged date of family settlement, so there can be no question of any family settlement even before the allotment of the plot. He contended that as per the case of the plaintiff, the family settlement took place after 2-3 days of his marriage. As per the letter written by the father of the parties, his marriage was fixed for 16.11.1970, whereas the family settlement has been shown to be of 10.11.1970, even prior to the marriage. He further contended that PW-4-Harbans Singh, the attesting witness is the father-in-law of the appellant, it is not believable that a new relative shall be involved in these matters. The family settlement is not signed by their father, sisters or other family members. He further contended that it is alleged that ₹ 48,000/- was paid by the plaintiff for the purchase of the plot and for raising construction. Whereas, even the possession of the plot was delivered to the defendant on 26.04.1971. So, it is not expected that the money for raising construction will also be paid by the plaintiff even before the delivery of possession of the plot. He further contended that the sale price of the plot was only ₹ 18,729/- as per the conveyance deed, so it is not expected that the plaintiff will pay ₹ 48,000/- for 50% share. He further contended that in-fact, the defendant has taken the housing loan from the bank for raising the construction.

13. He further contended that the testimony and report of the handwriting expert examined by the plaintiff cannot establish the execution of the family settlement (Ex.P-1). The expert evidence is only

an opinion and the Court is required to record the findings independently by applying the mind to all the material available on record. He relied upon case **Shashi Kumar Banerjee and others Vs. Subodh Kumar Banerjee and others AIR 1964 (SC) 529.**

14. He further contended that as per Section 17(1)(b) of the Registration Act, the family settlement (Ex.P-1) was compulsorily registrable as the said document is shown to have created the right in favour of the plaintiff for the first time. Admittedly, the family settlement deed (Ex.P-1) is not a registered document. So, the same is inadmissible in evidence for all purposes. He relied upon cases **Bhoop Singh Vs. Ram Singh Major (supra)** and **Bankey Behari Vs. Surya Narain @ Munnoo 2004(11) Supreme Court Cases 393.** He further contended that the plaintiff was having no pre-existing rights in the suit property. The alleged payment of ₹ 48,000/- is not established at all. So, the family settlement (Ex.P-1) did not convey any title in favour of the plaintiff

15. He further contended that the suit of the plaintiff is hopelessly time barred. The family settlement (Ex.P-1) is stated to be of 10.11.1970. The plot in question was allotted on 11.01.1970. The condition for non transfer of the plot of ten years had come to an end in the year 1981, whereas the suit has been filed in the year 2004 i.e. after 23 years. Thus, the suit is time barred.

16. He further contended that in-fact the present suit is a counter blast to the proceedings initiated by the defendant to get the sale deeds executed by plaintiff declared null and void with respect to the agricultural land situated in District Rampur and has only been filed to

harass the defendant and his family members. Thus, he contended that the learned Courts below have rightly dismissed the suit of the plaintiff.

17. I have given my thoughtful consideration to the aforesaid contentions.

18. There are certain admitted facts that defendant-Horgobind Singh has moved the application on 15.02.1967 (Ex.P-11) for allotment of the plot. He was conveyed that the plot no.1394, Sector 33-C, Chandigarh has been allotted to him vide letter dated 15.01.1968 (Ex.P-12). The allotment letter dated 11.01.1971 (copy Ex.P-13) for the aforesaid plot was issued in favour of the defendant by the Chandigarh Administration. As per the said allotment letter, the approximate price of the plot was ₹ 18729/-. The conveyance deed was executed in favour of the defendant on 26.04.1971 by the Estate Officer, Chandigarh Administration (Copy Ex.P-14). In the conveyance deed also the sale price is mentioned as ₹18729/-. Thus, the aforesaid documents shows that it was defendant who had applied for the plot and the plot in dispute was allotted to him. As per the condition no.11 of the allotment letter, the transfer of the plot was not permissible before the expiry of the period of ten years. As per condition no.12 of the allotment letter, no fragmentation of the plot was permitted. Similarly, as per the para no.9 of the conveyance deed, the defendant was not competent to transfer the plot by way of sale, gift, mortgage or otherwise except by way of lease on a monthly basis or any right, title or interest therein for a period of ten years from the date of completion of the construction on the said site.

19. The entire case of the plaintiff-appellant is based on the

family settlement dated 10.11.1970 (Ex.P-1). It is the settled principle of law that the plaintiff has to stand on his own legs. He cannot take the benefit of the weakness in the case of the defendant. Reference can be made to case **Punjab Urban Planning and Dev. Authority Vs. M/s Shiv Saraswati Iron & Steel Re-Rolling Mills, 1998(2) R.C.R (Civil) 292**. Thus, it was incumbent upon the appellant-plaintiff to establish that the due execution of the family settlement (Ex.P-1) by the defendant. He was also duty bound to clear all the suspicious circumstances surrounding the validity and legality thereof.

20. There can be no dispute with the proposition of law that an attorney is not a competent witness with respect to the facts which could be in the personal knowledge of the party to the suit. So even if the statement of DW-1-Parminder Kaur, on those facts which could be in the personal knowledge of defendant, is not taken into consideration, that will not absolve the appellant-plaintiff to prove his case to claim the title to the suit property. To prove the execution of the family settlement (Ex.P-1), plaintiff-Hargursharan Singh has himself stepped into the witness box as PW-1 and has also examined PW-4-Harbans Singh, one of the attesting witness. The second attesting witness namely Fateh Singh is stated to have died. But, it is pertinent to mention that PW-4 Harbans Singh is none else then the father-in-law of the plaintiff. Plaintiff has also examined the expert witness PW-3-Devendra Parsad, the handwriting expert to establish that the family settlement (Ex.P-1) bears the signatures of the defendant. It is the settled principle of law that the expert evidence is only an opinion. It could just corroborate

the substantive evidence. The expert evidence cannot substantiated the execution of the document. It is also the settled principle of law that mere proof of signatures cannot establish the due execution of a document. So, the expert evidence adduced by the plaintiff-appellant will not be of much consequence to establish the due execution of the family settlement (Ex.P-1) and to explain the suspicious circumstances surrounding it.

21. It is the basic plea of the plaintiff as pleaded in para no.8 of the plaint that the family settlement was executed after the solemnization of his marriage. Even in his statement, he stated that the said family settlement was executed after 2-3 days of the marriage while his brother was leaving for his destination, where he was posted. As per the letters Ex.DW1/L-1 and DW1/L-2 written by the father of the parties to the defendant, it was intimated that the marriage of the plaintiff has been fixed on 16.11.1970. The said date mentioned in these letters could not be rebutted by the plaintiff. As per these letters, the marriage of the plaintiff has taken place six days after the date of the alleged family settlement. Thus, this evidence contradicts the very foundation of the date of the family settlement.

22. It is alleged in the family settlement (Ex.P-1) that the appellant-plaintiff has paid ₹ 48,000/- to the defendant in cash for the purchase of the plot and its construction. But, the family settlement (Ex.P-1) is totally silent as to when the said payment was made. ₹ 48,000/- was a big amount in the year 1970. The plaintiff has not led any evidence to establish his source of income to pay such a amount to the defendant. In the cross-examination, he has stated that he has paid this

money out of his agricultural income. But, he has not produced any corroborative evidence showing the sale of the crops and realization of sufficient amount to pay ₹ 48,000/- to the defendant. It is the admitted case of the plaintiff in the cross-examination that he was a student in the year 1962-63 and was studying at Randhir College, Kapurthala. In the cross-examination, he has admitted that he has written the letters Ex.D-1 to Ex.D-7 to the defendant and also admitted that the contents thereof are correct. In the letter Ex.D-1, the plaintiff has written that they were in hard condition and it was difficult for them to make both ends meet. In the letters Ex.D-2, D-3, D-4, D-5 and D-6, he has sought the financial help from the defendant. These letters shows that in those days, the plaintiff was not even having sufficient income to properly maintain him. He required the money for his education and for making both ends meet. Thus, it is not possible that suddenly in 2-3 years his financial position improved so much that he was able to spare and pay ₹ 48,000/- to his brother, who was a well settled army officer to purchase the plot. The payment of this amount of ₹ 48,000/- is also not supported from any documentary evidence. Even, in the oral evidence there is the sole statement of the plaintiff on this aspect and his statement is not corroborated from any source. PW-4-Harbans Singh, his father-in-law and the attesting witness of the family settlement has also stated in the cross-examination that he had no personal knowledge about the transaction. Thus, in the absence of any corroborative evidence, the sole statement of the plaintiff will not establish the payment of ₹ 48,000/- by him to the defendant, particularly when no specific date, month and year

of the said payment has been mentioned either in the plaint or in the statement of the plaintiff and even in the family settlement (Ex.P-1).

23. There was also no occasion to make the payment of ₹ 48,000/- by the plaintiff to the defendant in the year 1970 or before that as the allotment letter of the property in dispute was issued in favour of the defendant on 11.01.1971. The possession thereof was delivered to him on 26.04.1971. So, the construction could only be raised after 26.04.1971. Moreover, as per the conveyance deed, the total sale price was ₹ 18729/-, so there was no reason with the plaintiff to advance a sum of ₹ 48,000/- to the defendant for the purchase and construction of the plot before the said alleged family settlement. It has also come in the evidence that defendant had taken the loan for the construction of the house. The plaintiff could not deny this fact in the cross-examination that the defendant has taken the loan of ₹ 73,000/- for the construction of the house. It has also come in evidence that the house was not constructed prior to year 1977 as the building plan submitted by the defendant for raising the construction was revalidated up to 31.03.1977 by the Estate Office, Chandigarh. The construction was raised somewhere in the year 1976-77 and sewerage connection was released on 26.02.1977. If that was so, there was absolutely no need for the plaintiff-appellant to pay ₹ 48,000/- to the plaintiff prior to the family settlement dated 10.11.1970 (Ex.P-1). Thus, it appears that the story regarding payment of ₹ 48,000/- has only been coined by the plaintiff to show the family settlement genuine. But, on appreciation of the evidence available on record, the plaintiff has not been able to establish that he had advanced ₹ 48,000/- to

the defendant for purchase and construction of the house.

24. The presence of PW-4-Harbans Singh at the time of execution of the family settlement (Ex.P-1) is not believable. He has deposed that the document Ex.P-1 was not typed in his presence. He did not remember that where the document was typed. He further deposed that the same was signed at petrol pump of Udampur, but he did not remember who was the owner of the said petrol pump. He even did not remember the trade name of said petrol pump. He admitted that no money transaction took place in his presence. He is the father-in-law of the plaintiff. Even as per the case of the plaintiff, this family settlement was executed 2-3 days after his marriage. So, it is not believable that such a new relative will be roped in such affairs of the family. If in-fact, any family settlement would have taken place between the parties, it must have been signed at least by their father, sisters and other family members, who must be present in the house due to the occasion of the marriage of the plaintiff. There was also no reason to attest the family settlement (Ex.P-1) by PW-4-Harbans Singh at the petrol pump, rather than the house of the plaintiff. The plaintiff also could not tell the name of the typist and he took the plea that the same was got typed by the defendant.

25. It is further the settled principle of law that Court can only act upon on the clear, categoric and unequivocal admission of the parties to arrive at the conclusion. The vague or the retracted admission carries no evidentiary value. In the instant case, though initially the defendant in his part cross-examination has stated that the signatures on the family

settlement looks like his signatures, but in the same breath he added that these are not his signatures. So, there is no admission on the part of the defendant that the family settlement (Ex.P-1) bears his signatures. Thus, the family settlement (Ex.P-1) is surrounded by various suspicious circumstances, which negates the valid execution thereof. Consequently, the plaintiff has not been able to establish the genuineness and valid execution of the family settlement (Ex.P-1) by the defendant.

26. The family settlement (Ex.P-1) is unregistered document. The law is well settled that where the document creates the right, title or interest for the first time in any immovable property worth more than ₹ 100/-, the same is compulsorily registrable as per the provisions of Section 17(1) (b) of the Registration Act. Even, in case **Bhoop Singh Vs. Ram Singh Major & Ors. (Supra)** relied upon by learned counsel for the appellant, the Hon'ble Apex Court has laid down as under:-

12. The aforesaid decisions do not cover the whole ground, according to us. They meet our approval as far as they go. But something more is required to be said to find out the real purport of clause (vi). It needs to be stated that sub-section (1) of section 17 mandates that the instrument enumerated in clauses (a) to (e) shall be registered compulsorily if the property to which they relate is immovable property value of which is Rs.100/- or upwards. When the document purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest therein, whether vested or contingent, it has to be registered compulsorily.

It was further laid down as under:-

13. In other words, the court must enquire whether a document has recorded unqualified and unconditional words of present demise of right, title and interest in the property and included the essential terms of the same; if the document, including a compromise memo,

extinguishes the rights of one and seeks to confer right, title or interest *in praesenti* in favour of the other, relating to immovable property of the value of Rs.100/- and upwards, the document or record or compromise memo shall be compulsorily registered.

It was further laid down as under:-

17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest *in praesenti* in immovable property of the value of Rs.100/- or upwards in favour of other party for the first time, either by compromise or presented consent. If latter be the position, the document is compulsorily registerable.

The same legal position has been reiterated by the Hon'ble Apex Court in case **Bankey Behari Vs. Surya Narain alias Munno (supra)**.

27. The legal position thus enunciated by the Hon'ble Apex Court in the cases referred above is that where the document is containing terms and recitals of a family settlement made under the document and the beneficiary thereof had no pre-existing rights and the rights in the property are being created, declared and assigned for the first time by the documents itself in present or in future in any immovable property worth more than ₹ 100/-, the said family settlement will require compulsory registration. It is the duty of the Court to examine the family settlement to arrive at the conclusion as to whether the said document is just a memorandum of the family settlement which has already taken place or the document itself creates right. If it is found that it was just a memorandum of partition/family settlement, which has already taken place between the parties and said memorandum has only been reduced

into writing later on, that will not require registration. But, at the same time, as already mentioned if the document itself in present or in future creates a right, title or interest in the property for the first time, it shall be compulsorily registrable. The family settlement (Ex.P-1) reads as under:-

FAMILY SETTLEMENT

This family settlement has been executed at Rudarpur on 10th of November 1970 between myself Lt. Col. Hargobind Singh son of S. Gurbaksh Singh and Gursharan Singh, who is my younger brother, regarding plot no. 1394, Sector-33-C, Chandigarh. Whereas, my brother had paid me Rs. 48,000(Forty Eight thousands) in cash for purchase of aforesaid plot and for its construction. On consideration of Rs. 48,000/- taken by me from my younger brother, I hereby hold and undertake that my brother shall be owner of plot no. 1394, Sector-33-C, Chandigarh and the house build thereon to the extent of 50% share for all the time to come. The need to execute this family settlement has arise on, as the plot detailed above has been purchased out of defence quota in my name and since there is a legal bar on the transfer of this plot for some time, as such, the plot and the house can not be held in the joint name of my brother and myself. I shall have my brother's name entered in the records of Estate Office, Chandigarh, as 50% owner, after the bar on transfer of this property is lifted. Once bar on the transfer is lifted, I shall transfer 50% share of the said property as and when my brother demands me to do so. Till then, he shall remain in possession of 50% share of the said property, on the basis of this family settlement without being shown on the records of the Estate Office, Chandigarh.

Further, I also undertake not to sell, alienate in any way the said property, without the written consent of my brother. I shall not be entitled to raise any loan against 50% of this property, which belongs to my brother Hargursharan Singh.

I have executed this family settlement, so that there may not be any dispute in future amongst the family members in connection with the ownership of the property. This family settlement has been executed in the presence of my brother and witnesses, who have signed in my presence and in presence of each other and who are known to each other. Dated 10.11.1970.

Place: Rudarpur.

28. The tenor of the aforesaid document shows that the right in the property has been created for the first time in favour of the plaintiff through the family settlement (Ex.P-1), the plot in question was allotted to defendant from the defence quota being an Army Officer. As already discussed, it is not established that the plaintiff has paid or contributed any amount for the purchase of the said plot, so he was not having any pre-existing rights in the said plot. So, the family settlement (Ex.P-1) was compulsorily registrable, but the same is an unregistered document, hence the same is inadmissible in evidence and will not convey any right, title or interest in the suit property in favour of the plaintiff. Thus, he cannot claim himself to be the owner in possession of the plot in dispute to the extent of 50% share by dint of the family settlement Ex.P-1.

29. The suit of the plaintiff is also hopelessly time barred. The family settlement (Ex.P-1) is alleged to have been executed on 10.11.1970. The allotment letter in favour of the defendant was issued on 11.01.1971. The conveyance deed was executed on 26.04.1971. The possession of the plot was also taken over by the defendant on 26.04.1971. As per the terms and conditions in the allotment letter and the conveyance deed, the transfer of the plot was not possible before the completion of 10 years from the date of completion of the construction. The sewerage connection was released on 26.02.1977. So, the said embargo came to an end on 26.02.1987, but the plaintiff has filed the suit on 27.03.2004 i.e. after more than 17 years. As per article 58 of the Limitation Act, 1963, the period of limitation to file the suit for

declaration is three years when the right to sue first accrues. In this case, at the most the right to sue accrued to the plaintiff on 26.02.1987. Thus, the suit of the plaintiff is also hopelessly time barred.

30. Thus, keeping in view my aforesaid discussion, the plaintiff has failed to establish the due execution of the family settlement (Ex.P-1). The same is also inadmissible in evidence and cannot convey any right, title or interest in favour of the plaintiff in the suit property being an unregistered document. So, the plaintiff is not entitled to claim himself to be the owner in possession to the extent of 50% share in the house in dispute.

31. Consequently, I do not find any perversity in the concurrent findings recorded by the learned Courts below.

32. Thus, no substantial question of law for consideration of this Court arises in the present appeal as the question of law raised by the learned counsel for the appellant were already the settled question of law.

33. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

December 01, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No