

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

**RSA No.2788 of 2002 (O&M)
Date of Decision.12.10.2018**

Jal Singh and anotherAppellants

Vs

Chunni Lal and others ...Respondents

2. RSA No.3915 of 2006 (O&M)

Jal Singh and anotherAppellants

Vs

Bhajan Lal and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Adarsh Jain, Advocate
for the appellants.

Mr. Sanjay Vij, Advocate
for the respondent No.5 in RSA No.3915 of 2006 and
for respondent No.1 in RSA No.2788 of 2002.

Ms. Deepa Jain, Advocate for
Mr. Yash Dev Kaushik, Advocate
for respondent No.4 in RSA No.2788 of 2002.

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AMIT RAWAL J.

This order of mine shall dispose of two appeals bearing
No. 2788 of 2002 and 3915 of 2006. The former arises out of Civil
Suit No.482 of 1997 (hereinafter called the 1st suit) and the latter from
Civil Suit No.245 of 1998 (hereinafter called the 2nd suit).

In both cases, defendants are the appellants before this
Court challenging the concurrent finding rendered by both the Courts
below.

In the 1st suit, the plaintiffs are sons of Duli Chand, who
was arrayed as defendant No.3 in the 2nd suit as well. They instituted

the suit claiming declaration and possession on the ground that Duli Chand was owner in possession of 1/3rd share i.e. 8 kanals 5 marlas in agricultural land comprised of Khewat No.91, Khata No.107, Rect. No.29, Killa No.24/3 (2-7), Khata No.109, Rect. No.29, Killa No.25/2 (5-17), Khewat No.331, Khata No.373, Rect. No.29, Killa No.17/1 (3-17) 24/2 (2-0), Khata No.374 Rect. No.29, Killa No.16 (8-0) 17/1 min east (0-10) and khewat No.411, khata No.483 Rect. No.29 Killa No.25/1 (2-3), total measuring 24 kanals 14 marlas, situated within the revenue estate of village Gangoli, Tehsil Nuh, District Gurgaon on the premise that the judgment and decree dated 12.02.1996 passed in Civil Suit No.52 of 1996 was illegal, null and void and not binding upon them. Duli Chand-defendant No.3 had no right to enter into family settlement with defendant Nos.1 and 2 as the suit land was ancestral property. The plaintiffs were also minors at the time when the decree aforementioned was passed.

In the 2nd suit, titled as “Bhajan Lal and others Vs. Jal Singh and others”, plaintiffs also sought declaration that plaintiff No.1 was owner in possession of 1/6th share i.e. 4 kanals 3 marlas in the agricultural land comprised in Rect. No.29 Killa No.24/3 (2-7), 25/2 (5-17), 17/1 (3-17), 24/2 (2-0), 16 (8-0), 17/1 min east (0-10), 25/1 (2-3), total measuring 24 kanals 14 marlas, situated in revenue estate of Village Gangoli, Tehsil Nuh, District Gurgaon qua the judgment and decree dated 12.2.1996 passed in Civil Suit No.52 of 1996 to be illegal, void and non est in the eyes of law, on the basis of which defendant Nos.1 and 2 claimed that they had become owner of 1/6th share of the land owned by plaintiff No.1. In pursuance to

aforementioned decree, mutation bearing No.1433 was also sanctioned in their favour. Defendant No.3-Duli Chand had 1/3rd share in the aforementioned land but defendant Nos.1 and 2 claimed ownership over the share of defendant No.3 on the basis of aforementioned decree. Defendants No.1 and 2 were called upon to admit claim of plaintiffs but they refused, hence, cause of action arose to file the suit.

Defendants contested both the suits by taking preliminary objections qua locus standi and non-maintainability etc. On merits, it was stated the defendant were exclusive owners in possession of the suit land. The plaintiff No.1, Bhajan Lal in the 2nd suit and defendant No.3, Duli Chand in both suits, murdered father of defendant No.1 and 2. When criminal proceedings were undertaken against them, they entered into a compromise relinquishing their rights in the suit land in order to compensate the defendants. In the decree under challenge, plaintiff No.1 and defendant No.3 admitted and acknowledged the relinquishment of their share and pre-existing rights of defendants No.1 and 2 and alleged that the same was not collusive or illegal, thus, prayed for dismissal of suits.

On the basis of pleadings in the 1st suit which is subject of challenge in RSA No.2788 of 2002, the trial Court framed following issues:-

“1. Whether the decree in Civil Suit No.52/96 titled as “Jal Singh Vs. Bhajan etc.” dated 12.2.1996 passed by the court of Shri N.K. Biriwal, the then Ld. Addl. Civil Judge (Sr. Divn), Nuh is null and void as alleged? OPP

2. *If issue no.1 is proved in affirmative, whether the plaintiffs are entitled to the decree of possession of the suit land? OPP*

3. *Relief.”*

In the 2nd suit, which is subject matter of RSA No.3915 of 2006, the trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled to the declaration sought? OPP

2. Whether the suit of the plaintiffs is not maintainable? OPD

3. Whether the suit is barred under Order 23 Rule 3-A of CPC? OPD

4. Whether the suit is barred by principle of res judicata and u/o 13 Rule 6 of CPC? OPD

5. Whether the suit is time barred? OPD

6. Whether the suit is liable to be stayed u/s 10 of CPC in view of pendency of other suit? OPD

7. Whether the suit is not properly valued and its effect? OPD

8. Relief.”

In the 1st suit, plaintiff Chunni Lal, examined himself as PW1 and tendered into evidence documents Ex.P1 jamabandi for the year 1989-90, Ex.P2 copy of judgment dated 12.2.1996 and copy of decree sheet dated 12.2.1996 as Ex.P3. Defendants examined Kela as DW-1, Nathi as DW-2 and Charan Singh as DW-3 and tendered compromise as Ex.DW3/A.

In the 2nd suit, plaintiff Bhajan Lal, examined himself as PW1 and Omwati as PW2 and tendered documents Ex.P2 to P11. On the other hand, defendants examined Kela Devi as DW1 and tendered documents Ex.DA to Ex.DC.

The trial Court on the preponderance of evidence, decreed the suit of the plaintiffs by holding that there was no bar of arriving at a settlement between co-parceners but held that the decree declared pre-existing right for the first time required registration and declared the decree dated 12.02.1996 to be null and void and not binding upon the plaintiffs, which was affirmed by the lower Appellate Court in appeal.

In the 2nd suit also, the trial Court decreed the suit on same line as has been done in the 1st Suit and the appeal preferred against the same was also dismissed.

Mr. Adarsh Jain, learned counsel appearing on behalf of the appellants in support of the grounds of appeals submitted that both the Courts below have abdicated and committed illegality, perversity in decreeing the suit without noticing the following legal proposition:-

- (i) Plaintiffs have failed to prove the nature and character of the property to be ancestral.
- (ii) The decree dated 12.2.1996 was not acknowledgment of right for the first time or *in presentia* but of a settlement as both Duli Chand and Bhajan Lal were accused of committing offence of murder of appellants' father and in lieu

thereof, they agreed to transfer their share. It is in these circumstances, decree aforementioned was passed and therefore, it did not require registration.

(iii)As per Ex.DW1/A, Kela Devi had filed affidavit dated 23.05.2003 acknowledging the agreement entered into between the parties whereby Duli Chand and Bhajan Lal had agreed to transfer their share. In view of this, the eye-witnesses turned hostile, resulting into their acquittal vide Ex.D2.

(iv)In support of the aforementioned contentions, drew attention of this Court to para 9 and 14 of the judgment **Som Dev and others Vs. Rati Ram and another (2006) 10 SCC 788** to contend, that where relinquishment or surrender was by way of a family arrangement in view of the close relationship enjoyed by the present plaintiff and his brother, the uncles (not direct) on the one hand and nephew on the other, being of the family arrangement did not require registration. On similar lines, judgment rendered by this Hon'ble Court in **Smt. Phullan (deceased) through LR vs. Smt. Bharpai and others 2017(1) PLR 619** and **Dhian Singh and others Vs. Mohinder Singh and others 2017 (4) PLR 729.**

(v)The ratio decidendi culled out in by Hon'ble

Supreme Court in **Bhoop Singh Vs. Ram Singh and others (1995) 5 SCC 709** would not be applicable but the judgment and decree of the trial Court, which was affirmed by the lower Appellate Court, was erroneous as it has been held that it was for the first time acknowledgment of right and therefore, the decree in question required registration, thus, urges this Court for setting aside the judgments and decrees under challenge.

Per contra, Mr. Sanjay Vij, learned counsel appearing on behalf of the respondent-plaintiff and Ms. Deepa Jain for Mr. Yash Dev Kaushik appearing for respondent No.4 in RSA No.2788 of 2002 raised common arguments that amongst Hindu family, there was presumption of jointness of the property, which continues to operate unless and until contrary is proved. In support of the aforementioned, laid reliance to *ratio decidendi* culled out in paragraphs 19, 21 and 25 of the judgment of Hon'ble Supreme Court in **Adiveppa and others Vs. Bhimappa and another (2017) 9 SCC 586** and **Phool Patti and another Vs. Ram Singh (dead) through LRs and another (2015) 3 SCC 465** to contend that there was a conflict of opinion with regard to judgment rendered in **Bhoop Singh Vs. Ram Singh and others (1995) 5 SCC 709** and **K. Raghunandan Vs. Ali Hussain Sabir (2008) 13 SCC 102**. A three Judges Bench of Hon'ble Supreme Court in **Phool Patti's case** (supra) held that there was no conflict of interest and decided the reference on the basis of statements made by the counsel. It was submitted that where a compromise decree is passed

in favour of the plaintiff comprising of property 'A' as well as self-acquired property 'B', the property 'A' in respect of which decree acknowledges a pre-existing right, do not require registration but with regard to self acquired property registration is required. The defendants had no pre-existing right. The decree created right for the first time and therefore, required registration under the Registration Act. The concurrent finding of fact cannot be interfered unless and until there is gross illegality and perversity, which has not been pointed out in the present case, thus, urges this Court for confirming the finding under challenge.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is force in the submissions of Mr. Adarsh Jain. It would be apt to reproduce relevant paragraphs of the suit, resulting into decree dated 12.02.1996:-

“In the Court of Shri Nand Kishore Biriwal, Additional Civil Judge (Senior Division), Nuh

1. Jal Singh 2. Om Parkash; minor sons of Jas Ram s/o Cheti, as their next friend and guardian, residents of village Gangoli, Teh. Nuh, Distt. Gurgaon.

.....Plaintiffs

vs.

1. Bhajan son of Bhagwan Sahai 2. Duli Chand s/o Hari Ram s/o Udai Singh, residents of village Gangoli, Teh Nuh, Distt. Gurgaon.

....Defendants

Suit for declaration.

Sir,

The plaintiffs named above most respectfully submit as under:-

1. That the defendant No.1 is wrongly recorded as owner in possession to the extent of 1/6 share and the defendant No.2 is wrongly recorded as owner in possession to the extent of 1/3 share in respect of the agricultural land bearing Khewat No.91 Khata No.107 Rect. No.29 Killa No.24/3(2-7) and khata No.109 Rect. No.29 Killa No.25/2(5-17), Khewat No.331 Khata No.373 Rect No.29 Killa No.17/1(3-17) & 24/2 (2-0), Khata No.374 Rect. No.29 Killa No.16(8-0), 17/1 min east (0-10), and Khewat No.411 Khata No.483 Rect. No.29 Killa No.25/1 (2-3), total measuring 24 kanals 14 marlas which comes to 12 kanals 7 marlas, situated within the revenue estate of village Gangoli Teh.Nuh Distt. Gurgaon, as per copy of jamabandi for the year 1989-90 which are enclosed with the plaint.

2. That the plaintiffs and the defendants belong to one family and they are the owners in possession of the land in the same khewat. In a family settlement, which arrived at between the defendants and the father of the plaintiffs, during the life time of father of the plaintiffs, by which the land detailed in para No.1 of the plaint came in the ownership and possession of the plaintiffs and since then the father of the plaintiffs and now after

the death of their father, the plaintiffs are the owners in possession of the land detailed in para No.1 of the plaint. The defendants at the time of said settlement promised that the revenue entries of the suit land shall be got corrected and incorporated in the names of the father of plaintiffs but the defendants could not do so and the plaintiffs could not put pressure upon the defendants due to thick relations with them. Since the day of the said family settlement the father of the plaintiffs and after his death, the plaintiffs are the owners in possession of the suit land detailed in para No.1 of the plaint and the defendants have no right, title and interest in the same.

3. That now the defendants by taking undue advantage of revenue entries of the suit land existing in their names, out of sheer greed, are threatening to make interference in the peaceful ownership and possession of the plaintiffs and they are denying the factum of the said family settlement of which the defendants have no right to do so and the plaintiffs have every right to get the revenue entries of the suit land corrected and incorporated in their names through this Hon'ble Court and as such the present suit.”

The aforementioned paragraphs were not denied in the written statement. The corresponding paragraphs of the written statement are reproduced as under:-

1. That the para no.1 of the plaint is correct and

admitted.

2. That para No.2 of the plaint is correct and admitted.

And the plaintiff and their four fulhension in possession of the suit land last 20 years.

3. That para No.3 of the plaint is correct and admitted.”

A perusal of the aforementioned averments as well as memo of parties, much less, statement recorded by Duli Chand and Bhajan Lal wherein they had acknowledged transfer of property in favour of the appellants-defendants by virtue of a settlement, in my view, did not create a right for the first time as they had already agreed to transfer land, in view of arrangement *ibid* for a reason that they were accused in FIR lodged against them in respect of murder of father of the appellants-defendants.

There is another aspect of the matter. Ex.DW1/A, affidavit of Kela Devi has gone urebutted, which resulted into acquittal of Duli Chand and Bhajan Lal. The right created, thus, was not for the first time but acknowledgment as per the arrangement, which crystallized into ownership by virtue of decree. It would be in the fitness of things to extract paragraph 14 and 15 of the judgment rendered in **Som Dev's case** (supra) are reproduced herein below:-

“14. We shall now advert to the position in the present case. The plaintiffs in Civil Suit No. 398 of 1980 were the descendants of Jeeta @ Chet Ram. Sheo Ram, the defendant in that suit, was the descendant of Deepa. Deepa and Jeeta were children of Mauji. The property

descended from Mauji and one half of the entire property came to the present plaintiff and his brother, the descendants of Jeeta and the other half descended to Phusa and through him to the assignor of the contesting defendants and to Sheo Ram, the defendant in the earlier suit, through his mother. It was in this property that a half-share was surrendered or relinquished by Sheo Ram in favour of the present plaintiff and his brother. The present plaintiff and his brother could not take possession of the property since Phusa Ram was alive at the relevant time. After the death of Phusa Ram the present plaintiff and his brother filed the earlier suit for establishment of their right on the basis of the arrangement came to with Sheo Ram even during the lifetime of Phusa Ram. It was that arrangement or relinquishment of right by Sheo Ram that was admitted by him in his written statement in the earlier suit and it was based on that admission that a decree was given to the plaintiff and his brother. It was pleaded that the relinquishment or surrender by Sheo Ram was by way of a family arrangement in view of the close relationship enjoyed by the present plaintiff and his brother, the uncles (not direct) on the one hand and Sheo Ram on the other, who was actually their nephew one step removed, but who was treated by them as their own real nephew. There was no case that his share was gifted by

Sheo Ram in favour of the present plaintiff and his brother so as to attract clause (a) of Section 17(1) of the Registration Act. It was really a case of clause (b) of Section 17(1) being attracted, if at all. All the courts have found that the relinquishment was part of a family settlement and hence its validity cannot be questioned on the ground of want of registration in the light of the decisions of this Court. Apart from that strand of reasoning, it appears to us that the decree in Civil Suit No. 398 of 1980 did not create, declare, assign, limit or extinguish any right in the suit property. It merely recognised the right put forward by the plaintiffs in that suit based on an earlier family arrangement or relinquishment by the defendant in that suit and on the basis that the defendant in that suit had admitted such an arrangement or relinquishment. Therefore, on principle, it appears to us that the decree in Civil Suit No. 398 of 1980 cannot be held to be not admissible or cannot be treated as evidencing the recognition of the rights of the present plaintiff and his brother as co-owners, for want of registration. Nor can we ignore the relief obtained therein by the plaintiff and his brother.

15. Almost the whole of the argument on behalf of the appellants here, is based on the ratio of the decision of this Court in Bhoop Singh (1995) 5 SCC 709 : 1995 Supp (3) SCR 466. It was held in that case that

exception under clause (vi) of Section 17(2) of the Act is meant to cover that decree or order of a court including the decree or order expressed to be made on a compromise which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs 100 or upwards. Any other view would find the mischief of avoidance of registration which requires payment of stamp duty embedded in the decree or order. It would, therefore, be the duty of the court to examine in each case whether the parties had 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 a right in praesenti in immovable property of the value of Rs 100 or upwards in favour of the other party for the first time either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable. Their Lordships referred to the decisions of this Court in regard to the family arrangements and whether such family arrangements require to be compulsorily registered and also the decision relating to an award. With respect, we may point out that an award does not come within the exception contained in clause (vi) of Section 17(2) of the Registration Act and the exception therein is confined to

decrees or orders of a court. Understood in the context of the decision in Hemanta Kumari Debi (1918-19) 46 IA 240 : AIR 1919 PC 79 : ILR (1920) 47 Cal 485 and the subsequent amendment brought about in the provision, the position that emerges is that a decree or order of a court is exempted from registration even if clauses (b) and (c) of Section 17(1) of the Registration Act are attracted, and even a compromise decree comes under the exception, unless, of course, it takes in any immovable property that is not the subject-matter of the suit.”

Similarly in para 6 of the judgment rendered in Smt. Phullan's case (*supra*) and para 13.1 of the judgment rendered in Dhian Singh's case (*supra*) by this Court, it was held as under:-

“Smt. Phullan (deceased) through LR vs. Smt. Bharpai and others 2017(1) PLR 619

6. As regards the registration of decree, there is a categorical averment in paragraph 3 of the previous suit resulting into passing of the decree. It is a settled law that if a right had already been accrued before filing of the suit, it would not tantamount to creating right for the purpose of time requiring the decree to be registered in law. This aspect has been taken care by the Courts below.”

Dhian Singh and others Vs. Mohinder Singh and others 2017 (4) PLR 729.

“13.1. Question No.(ii)

Whether in a family settlement, the word family includes the persons who are having right of succession only or the word family is to be given a wider meaning so as to include even those persons who are related and may not have direct right of inheritance?

*The concept of family settlement, who are members of family settlement, has already been discussed in detail by the Hon'ble Supreme Court of India in various judgments. In the case of **Tek Bahadur Bhuji v. Debi Singh Bhujil (supra)**, the Hon'ble Supreme Court held that person entering into a family settlement, is not required to be necessarily having some antecedents title in the property. It was held that the Courts must assume that parties to the arrangement had an antecedent title of some sort.*

*Still further in the case of **Ram Charan Dass vs. Girija Nandini Das (supra)**, the Court went on to hold that the word "Family" in the context is not to be understood in a narrow sense being a group of persons who are recognized in law as having a right of succession or having a claim to a share in the property in dispute. Further in the judgment reported as **(1971) 1 SCC 837**, the Court went on to hold that all the parties to a family settlement/arrangement are not required to be belonging to one family. It is enough if they are in near relations.*

In these circumstances, defendants-appellants are in near relations of late Smt. Jattan. Late Smt. Jattan was issueless. She was not having any brother or sister. Therefore, her close relatives were defendants-appellants who were great grand sons of Jaura Singh, the grand father of late Smt. Jattan. In fact, the plaintiffs and defendants were only the relatives of late Smt. Jattan.

Hence, defendant-appellants were rightly given

land measuring 57 bighas and 6 biswas through a family arrangement.”

There is no dispute to the ratio decidendi culled out in para 29 of the judgment rendered in **Phool Patti's case** (supra), the same is reproduced as under:-

“29. The terms of the family settlement are not on record. As mentioned above, the family settlement could relate to the ancestral as well as self- acquired property of Bhagwana or only the ancestral property. It appears that it related only to the ancestral property and not the self-acquired property (hence the reference to a hibba). The decree relating to 32 kanals of land did not require compulsory registration, as mentioned above. However, the self acquired property of Bhagwana that is 20 kanals, therefore, in view of the law laid down in Bhoop Singh the gift of 20 kanals of land by Bhagwana in favour of Ram Singh, notwithstanding the decree in the first suit, requires compulsory registration since it created, for the first time, right, title or interest in immovable property of a value greater than ₹100/- in favour of Ram Singh.”

In the present case, respondents-plaintiffs have not been able to prove that the land was ancestral and therefore, Duli Chand and Bhajan Lal could not alienate the property except for legal necessity, in essence, the case cited by Mr. Vij related to ancestral property would not be applicable as the nature and character of the

property as ancestral, which is required to be proved by bringing on record the original revenue excerpt has not been proved. The aforesaid view of mine is derived from the ratio decidendi culled out by this Court in **Banta Singh and others Vs. Phuman Singh and others 1972 PLJ 275**. Mere admission of the nature and character of the property as ancestral would not clothe it ancestral unless and until onus to prove the same has been discharged.

All these factors have not been looked into by both the Court below, therefore, there is abdication and perversity.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in

Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that

since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

As an upshot of my finding, the judgments and decrees rendered by both the courts below are set aside. Resultantly, suits of the respondents-plaintiffs are dismissed.

Accordingly, both the appeals are allowed.

**(AMIT RAWAL)
JUDGE**

October 12, 2018
Pankaj*

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No