

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

RSA No.1102 of 2013 (O&M)
Date of decision:06.07.2018

Lt. Col.Prithvi Singh (Retd.) ... Appellant

Vs.

Krishan Chander Singh and others ... Respondents

RSA No.3159 of 2014 (O&M)
... Appellant

Harbans Singh

Vs.

Lt. Col. Prithvi Singh (Retd.) and others ... Respondents

RSA No.3195 of 2014 (O&M)

Lt. Col. Sat Pal Singh (Retd.) ... Appellant

Vs.

Lt. Col. Prithvi Singh (Retd.)and another ... Respondents

RSA No.3910 of 2014 (O&M)

Krishan Chander Singh ... Appellant

Vs.

Lt. Col. Prithvi Singh (Retd.)and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Prem Nath Aggarwal, Advocate and
Mr. Govind Chauhan, Advocate
for the appellant in RSA No.1102 of 2013 and
for the respondent in RSA No.3195, 3159 and 3910 of 2014.

Mr. S.K.Pipat, Sr. Advocate with
Mr. Manoj Kumar Pundir, Advocate
for respondent No.1 in RSA No.1102 of 2013 and
for the appellants in RSA Nos.3159, 3195 and 3910 of 2014.

AMIT RAWAL J.

C.M.No.6088-C of 2015 in RSA No.1102 of 2013

Prayer in the application filed under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure is for permission to place on record Annexures A-4 and A-5 by way of additional evidence.

For the reasons stated in the application which is duly supported by an affidavit, same is allowed and documents, Annexures A-4 and A-5 are taken on record.

C.M.No.735-C of 2015 in RSA No.1102 of 2013

Prayer in the application filed under Order 1 Rule 10 of the Code of Civil Procedure, for impleading the applicants, namely, Kushal Singh and Partap Singh Chauhan sons of Sh. Hari Singh as respondents No.5 and 6 in the present appeal.

It is alleged that since the change of land was during the pendency of the appeal, therefore, no subsequent vendee whatsoever together vis-a-vis claim of the vendor. Few of the vendors are already party in the Regular Second Appeal. It is too late in a day for allowing the applicants, Kushal Singh and Partap Singh Chauhan sons of Sh. Hari Singh to be impleaded as respondents No.5 and 6 in the present appeal.

In view of the aforementioned, application stands dismissed.

C.M.No.9030-C of 2014 in RSA No.3910 of 2014

For the reasons stated in the application which is duly supported by an affidavit, delay of 201 days in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.9031-C of 2014 in RSA No.3910 of 2014

The application is allowed, subject to all just exceptions. Legal representative of respondent No.1-Smt. Ajmer Kanwar as mentioned in the application is ordered to be brought on record for the purpose of prosecuting the present appeal.

C.M.No.9032-C of 2014 in RSA No.3910 of 2014

For the reasons stated in the application which is duly supported by an affidavit, delay of 208 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA Nos.1102 of 2013, 3159, 3195 and 3910 of 2014

This order of mine shall dispose of four Regular Second Appeals bearing Nos.1102 of 2013, 3159, 3195 and 3910 of 2014.

RSA No.1102 of 2013 is arising out of decision of civil suit No.436-CS of 2005 titled as “Ajmer Kanwar and another Vs. Krishan Chander Singh and others”, whereby, the suit claiming declaration and permanent injunction was partly decreed, for, the plaintiffs had been found

in possession of the suit land but claim regarding declaration was rejected. The appeal filed by the defendants *vis-a-vis* injunction and cross-objections filed by the appellant-plaintiffs with regard to non-grant of relief of declaration before the Lower Appellate Court, have also been dismissed.

RSA No.3195 of 2014 is arising out of decision of civil suit No.76 of 2005 titled as “Lt. Col. Prithvi Singh (Retd.) and another Vs. Smt. Narinder Pal Kaur and another”, whereby, the suit claiming permanent injunction was decreed and appeal preferred before the Lower Appellate Court was dismissed.

RSA No.3159 of 2014 is arising out of decision of civil suit No.76 of 2005 titled as “Lt. Col. Prithvi Singh (Retd.) and another Vs. Smt. Narinder Pal Kaur and another”, whereby, the suit claiming permanent injunction was decreed and appeal laid before the Lower Appellate Court was dismissed.

RSA No.3910 of 2014 is arising out of decision of civil suit No.436-CS of 2005 titled as “Ajmer Kanwar and another Vs. Krishan Chander and another”. Defendant No.1 has preferred an independent appeal with regard to relief of injunction in favour of the respondent-plaintiffs and against the appellant-defendants.

Since the appeals have arisen out of decision of two civil suit Nos.436-CS of 2005 and 76 of 2005, the facts are being taken from lead case, i.e. RSA No.1102 of 2013.

The appellant-plaintiffs instituted the suit bearing No.436-CS of 2005 claiming declaration to the effect that they were the owners and in possession of the land bearing khewat/khatauni No.168/188, khasra no.10//21, 22;11//16, 23/1/2, 23/2, 24, 25; 25//3/1/2/2, 3/2, 4, 5, 6, 7/2, 8/1/1/2, 14/2/2 15; 26//1, 2, 10 measuring 88 kanals 15 marlas with all rights appertaining thereto and by further seeking declaration that sale deed dated 25.09.1970 bearing No.2522 in book no.1 volume 474 registered with Sub-Registrar, Ambala on 28.9.1970 being illegal, null and void, ineffective and not binding upon the rights of the plaintiffs, for, the revenue entries in favour of the defendants were wrong and liable to be corrected and a decree for permanent injunction restraining the defendants from interfering in any manner in peaceful possession over the suit land.

It was alleged that Kanwar Raja Ram Singh son of Sh. Chamel Singh resident of village Adhoya Hinduan, Tehsil Ambala now Tehsil Barara District Ambala was the owner of the land bearing khasra no.68//14, 7,8,9, 12, 13, 19 measuring 45 kanals 12 marlas situated in village Adhoya Hinduan and land bearing No.26//1 (7-6), 2(1-3), 10(1-14), 21(7-2), 22(1-0); 11//16(6-0), 23/2(4-0), 23/1/2(0-8), 24(8-0), 25(8-0); 25//3/2(4-0), 4(8-0), 5(8-0), 3/1/2(0-8), 6(7-18), 7(8-0), 8/1/1(2-16), 15(2-12), 14/2(2-19), measuring 89 kanals 6 marlas situated in village Kambas H.B.No.242, previous Tehsil Ambala now Tehsil Barara, District Ambala.

Kanwar Raja Ram Singh breathed his last on 6.12.2004. Plaintiff no.1 was widow and plaintiff no.2 is son. Plaintiff no.1 and

Kanwar Raja Ram Singh had one daughter, namely, Pratha who predeceased mother and father on 18.2.2001, her death was stated to be under mysterious circumstances. Defendant no.1 is none else but husband of Pratha; defendant 2 is her son and defendants No.3 and 4 are daughters.

It was averred that Kanwar Raja Ram Singh during his life time in full senses executed a valid Will dated 3.4.2004 in favour of the plaintiffs by bequeathing all movable and immovable properties in their favour. The aforementioned Will stated to have been dictated by testator and signed the same after reading, understanding and admitting the same as correct in the presence of the witnesses.

Kanwar Raja Ram Singh was having sufficient agricultural land in his name and was apprehensive that some land out of the land owned by him might be taken in surplus pool either under the provisions of Punjab Security of Land Tenures Act or the new Act Haryana Ceiling on Land Holdings Act, 1972 which was likely to be passed in order to avoid said land being fallen in surplus pool transferred the land detailed in para no.1 of the plaint by way of sale deed dated 25.9.1970 in favour of his daughter Smt. Pratha with understanding that at later point of time in one way or the other, the land would be re-conveyed by Smt. Pratha to the family of Kanwar Raja Ram Singh. The alleged sale consideration of ₹14,000/- was never paid by Pratha. In fact, the aforementioned sale deed was a sham and benami transaction. Even the possession also remained with Kanwar Raja

Ram Singh and plaintiffs.

Plaintiff no.2 installed a tubewell and electric connection in his name and had been paying electricity expenses. Pratha, vide decree dated 7.12.1982 re-conveyed/transferred the land measuring 45 kanals 12 marlas situated in village Adhoya Hinduan in favour of plaintiff no.2. In those proceedings, Pratha admitted the transaction to be *benami*, much less reconveyance but the land situated in village Kambas continued to stand in the name of Pratha in the revenue record but the actual physical possession had always been of Kanwar Raja Ram Singh and the plaintiffs as owners. Neither Pratha nor the defendants ever objected to the possession of the plaintiffs and the crops on the land had been sown and harvested by them.

After demise of Kanwar Raja Ram Singh on 6.12.2004, defendants started asserting the rights in the property by attempting to interfere in peaceful possession of the plaintiffs. Defendants were apprised of the paper transaction of the sale deed.

Defendant no.1-husband of Pratha instituted a fallacious and baseless civil suit no.18/25-1-2005 against plaintiff no.2-Prithvi Singh and his wife Smt. Gian Chauhan in respect of the suit land claiming title and possession over the suit land on the basis of the sale deed dated 25.9.1970 and by challenging the Will. The aforementioned suit was dismissed as withdrawn on 4.2.2005 but the unabated and perpetual threats of defendants continued, for, defendant no.1 filed another suit for permanent injunction on identical facts as taken in the previous suit. It is in these circumstances, the

suit aforementioned alongwith an application under Order 39 Rules 1 and 2 CPC was filed.

The defendants contested the suit by filing written statement, wherein, following pleas including the preliminary objections were taken:-

- a) locus standi;
- b) barred under provisions of Section 10 of Code of Civil Procedure (in short “CPC”) in view of the pendency of earlier civil suit bearing No.267 of 2005 titled as “Krishan Chander Singh Vs. Prithvi Singh Chauhan and others”;
- c) estoppel;
- d) barred by law of limitation;
- e) concealment of true and material facts;
- f) mis-joinder and non-joinder of the parties;

On merits, it was denied that Kanwar Raja Ram Singh executed any Will during his life time, much less, on 3.4.2004. More than one year before his death, he was totally bed ridden and unable to understand the complexity of document like Will . It was alleged that he was in comma like condition. Kanwar Raja Ram Singh was one of the renowned personalities of the area as he had been working as Chief Judicial Magistrate (Revenue). He was not in senses and never expressed any intention to execute any such Will. Neither the Will was dictated or understood by him. In fact, the Will was example of the forgery and fabrication by plaintiff no.2 with an attempt to usurp the property left by others.

The holdings of said Kanwar Raja Ram Singh was never put to any test either under the Punjab Security of Land Tenures Act or the Haryana Ceiling on Land Holdings Act as alleged in the plaint. In fact, Kanwar Raja Ram Singh executed sale deed on account of his own free will and volition bequeathing the land situated in both the aforementioned villages in favour of daughter Pratha. Even at the time of death, Kanwar Raja Ram Singh was owner of land measuring 132 kanals 14 marlas in village Adhoya Hinduan. The sale deed was for a valuable consideration of ₹14,000/- and Raja Ram Singh during his life time did not challenge the same. It was averred that tubewell was installed by deceased wife of defendant no.1 which had been reflected in the jamabandi for the year 1974-75. Pratha did not transfer or reconvey the land measuring 45 kanals 12 marlas situated in village Adhoya and the decree aforementioned was an act of fraud and misrepresentation. Ajmer Kanwar-plaintiff no.1 (mother of plaintiff no.2) vide gift deed dated 26.11.1984 gifted the land measuring 63 kanals 14 marlas situated in village Adhoya in favour of plaintiff no.2.

After the death of Kanwar Raja Ram Singh, plaintiff no.2 alongwith his wife made repeated abortive attempts to grab the suit land but could not succeed and FIR bearing No.6 dated 12.01.2005 under various provisions of Indian Penal Code (in short "IPC) was registered at Police Station Barara besides the proceedings initiated under Sections 107, 150 and 151 Cr.P.C. Kanwar Raja Ram Singh throughout his life time resided in

house No.67 Sector 10-A, Chandigarh, whereas, plaintiff no.2 resided in different house but in same sector. Written statement was concluded with a prayer for dismissal of the suit.

Detailed replication to the averments made in the written statement and as well as preliminary objections was filed.

Since both the parties were at variance, the trial Court framed following issues:-

- “1. Whether the sale deed dated 25.9.1970 registered on 28.9.1970 is illegal, null and void, ineffective and not binding upon the rights of the plaintiffs, if so its effect? OPP*
- 2. Whether the revenue entries in the name of defendants are wrong and are liable to be corrected in the name of the plaintiffs? OPP*
- 3. Whether the plaintiffs are entitled to the relief of declaration as prayed for by them? OPP*
- 4. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for by them? OPP*
- 5. Whether the plaintiffs have no locus standi and cause of action to file and maintain the present suit? OPD*
- 6. Whether the plaintiffs are stopped by their act and conduct from filing the present suit?OPD*
- 7. Whether the suit is barred by limitation? OPD*
- 8. Relief.”*

The appellant-plaintiffs in support of the aforementioned pleadings examined following witnesses:-

1. PW1 - Gulab Singh
2. PW2 - Jagat Singh
3. PW3 - Gulshan Rai Sharma
4. PW4 - Gian Chauhan

and brought on record the following documents:-

1. Ex.P1 – certified copy of sale deed dated 25.9.1970
2. Ex.P1 – attested copy of power of attorney dated 23.12.2001
3. Ex.P2 – attested copy of Will dated 23.12.2004
4. Ex.P3 – Will dated 03.04.2004
5. Ex.P4 – certified copy of the order dated 04.02.2005
6. Ex.P5 – copy of statement dated 04.02.2005
7. Ex.P6 – copy of order dated 25.05.2007
8. Ex.P7 - copy of order dated 25.05.2007
9. Ex.P8 - copy of order dated 09.04.2010
10. Ex.P9 - Khasra girdawari
11. Ex.P10 - Marriage invitation card of daughter of Krishan Chand.
12. Ex.P13- copy of order dated 11.10.2010
13. Ex.P14- copy of order dated 07.06.2005
14. Ex.P15 - copy of order dated 31.3.2008
15. Ex.P16- electricity bill in the name of P.C.Chauhan.

16. Ex.P17- Order dated 02.08.2010
17. Ex.P18- Copy of order dated 22.7.2010
18. Ex.P19- Copy of written statement filed by Pratha in civil suit no.447 of 1981.

On the other hand, defendants examined following witnesses:-

1. DW1 - Krishan Chander-defendant No.1 himself.
2. DW2 - Kali Charan, Ahlmad, office of Deputy Commissioner, Ambala City.
3. DW3 - ASI Ranbir Singh, office of Inspector General, Ambala, Cantt.
4. DW4 - Constable Rohtas No.386, SP Office Ambala.
5. DW5 - Harbans Singh son of Gurdev Singh.
6. DW6 - Mewa Singh, Clerk Record Room, DC Office Ambala.
7. DW7 - Rajiv Sharma, Tehsildar, Barara

and brought on record the following documents:-

1. Ex.D1 jamabandi for the year 1973-74
2. Ex.D2 jamabandi for the year 1978-79
3. Ex.D3 jamabandi for the year 1983-84
4. Ex.D4 jamabandi for the year 1988-89
5. Ex.D5 jamabandi for the year 1993-94
6. Ex.D6 copy of order dated 16.3.2005
7. Ex.D7 copy of order dated 08.04.2005
8. Ex.D8 copy of order dated 16.5.2005

9. Ex.D9 certified copy of FIR No.6 dated 12.01.2005
10. Ex.D10 copy of report submitted by ASP in FIR in question
11. Ex.D11 copy of summoning order dated 21.4.2008
12. Ex.D12 copy of order dated 21.1.2005
13. Ex.D13 certified copy of the plaint of civil suit no.447 of 1981
14. Ex.D14 certified copy of judgment dated 7.12.1982
15. Ex.D15 certified copy of decree sheet dated 7.12.1982
16. Ex.D16 copy of order dated 15.6.2010
17. Ex.D17 certified copy of order dated 6.2.2009
18. Ex.D18 jamabandi for the year 1998-99.
19. Ex.D19 copy of order dated 24.11.2008.
20. Ex.DW7/A spot inspection report dated 18.3.2010.
21. Ex.DW7/B Tehsildar, Barara.

The trial Court on the basis of evidence brought on record rendered the finding on issues No.1 and 2 against the plaintiffs and in favour of the defendants. However, finding on issue no.4 with regard to injunction was recorded in favour of appellant-plaintiffs and against the defendants. The finding on issue no.7 was recorded against the plaintiffs by holding suit to be barred by law of limitation but in penultimate paragraph under issue no.7 gave opportunity to the party to approach the Civil Court for adjudication of the legality of the Wills, i.e., 3.4.2004 executed by late

Kanwar Raja Ram Singh and Will dated 23.12.2004 executed by Ajmer Kanwar, his wife and mother of plaintiff no.2. As indicated above, appeal and cross objections had been filed but the same were dismissed.

Mr. Prem Nath Aggarwal, Advocate assisted by Mr. Govind Chauhan, Advocate appearing on behalf of the appellants in support of the Memorandum of Appeal and as well as orally raised multi-fold arguments by laying challenge to the findings under issues no.1 and 7 rendered against the appellant-plaintiffs which are being noticed herein below:-

- i) The impugned judgments and decrees of the Courts below are not legally sustainable in the eyes of law as both the Courts below failed to appreciate the fact that appellant-plaintiff major Prithvi Singh filed a suit No.447 of 1981 for possession as absolute owner of the land measuring 45 kanals 12 marlas in village Adhoya District Ambala with all rights appurtenant thereto. In the aforementioned suit (Ex.D13), Pratha appeared and filed written statement dated 29.9.1982 (Ex.P-19), wherein, nature of the transaction being benami, was admitted resulting into decretal of the suit, vide judgment and decree dated 7.12.1982 (Ex.D14). The aforementioned judgment and decree was never assailed either by Pratha or by the defendants throughout.
- ii) The possession of the suit land throughout remained with the plaintiffs which had been proved through electric

connection and the findings arrived at by the Courts below on issue of injunction are liable to be upheld and the appeal preferred by the defendants, i.e., RSA No.3910 of 2014 be dismissed.

iii) Krishan Chander Singh/defendant No.1 murdered his wife Pratha and during the pendency of the suit executed following sale deeds:-

a) 23.5.2005 executed by Krishan Chander Singh in favour of Narinder Pal Kaur.

b) 27.5.2005 executed by Narinder Pal Kaur to Sat Pal Singh son of Hari Singh.

c) 21.6.2006 executed by Sat Pal Singh to Harbans Singh son of Gaurav Singh.

d) 6.2.2014 executed by Harbans Singh to Kushal Pal Singh son of Hari Singh (brother of Sat Pal Singh).

iv) The defendants had not taken the plea of non-maintainability of the suit as per the provisions of Order 2 Rule 2 CPC and therefore, cannot be permitted to raise this plea for the first time in the present appeal(s).

v) There is no limitation for claiming the title in the suit property, in view of the law laid down by Division Bench of this Court in **Ibrahim alias Dharam Vir Vs. Smt. Sharifan**

alias Shanti 1979 PLJ 469 and by the Supreme Court in **Daya Singh and another Vs. Gurdev Singh (dead) by LR's and others 2010(2) SCC 194**. In other words, he submitted that as per the provisions of Article 58 of the Limitation Act, right to sue /cause of action would only arise when there is a clear and unequivocal threat or infringe of a right. Mere adverse entry in the revenue record would not be reckoning period for the purpose of counting the limitation, thus, the findings of the Courts below on issue no.7 with regard to limitation are liable to be set aside.

vi) As per the ratio decidendi culled out by the Hon'ble Supreme Court in **V.Shankaranarayana Rao (Dead) by LR's and others Vs. Leelavathy (Dead) by LR's and others 2007 (3) RCR (Civil) 143; 2007(10) SCC 732**, wherein, while interpreting the provisions of Sections 3 and 4 of Benami Transactions (Prohibition) Act, 1988 (in short "1988 Act"), it was held that transactions of prior period would not be hit by provisions of 1988 Act, provided the burden of showing that a transfer was a benami transaction and purchase money came from a person other than the person in whose favour the property was transferred on purchase, much less on true character of the transaction is on the person who asserts the

right.

vii) Written statement dated 29.9.1982 of Pratha (Ex.P19) in the previously instituted suit accepting the transaction to be *benami* is the testimony of benami transaction and the aforementioned judgment and decree has never been assailed by the defendants.

viii) The police on enquiry found FIR No.6 registered under Sections 148, 149, 447, 427, 382 and 506 of IPC to be based upon false allegations and complaint filed by defendant no.1 on the same ground, much less summoning order was quashed by this Court, vide order dated 22.7.2010 passed in CRM-M-925 of 2009 titled as “Lt. Col. Prithivi Singh Chauhan and another Vs. The State of Haryana and another”, which has been sought to be placed on record by way of additional evidence as Annexure A-4.

ix) The civil suit filed by Krishan Chander Singh for permanent injunction restraining the defendants from interfering in the peaceful possession was dismissed as withdrawn by Krishan Chander Singh, on 4.2.2005.

x) Pratha during her life time (for almost 19 years) did not challenge the decree as she died on 18.02.2001.

xi) The Courts below have abdicated and committed perversity in not appreciating the provisions of Article 58 of the

Limitation Act.

xii) The actual possession of the land was never came to Pratha nor she ever cultivated or sold the crops produced by the standing trees.

xiii) Defendant no.1-husband of Pratha claimed the possession of the suit land in the year 2005, i.e. after 35 years of execution of document/sale deed dated 25.9.1970.

xiv) The suit was not for cancellation of the document as Article 58 pertains to claim of declaration and therefore, the Court below mis-construed suit to be barred under Article 56 of the Limitation Act.

xv) In the proceedings initiated under Section 145 of Cr.P.C, the Executive Magistrate Ambala, vide order dated 11.10.2010 found that the actual and factual possession was in favour of plaintiff no.2-Lt. Col. Prithivi Singh Chauhan.

xvi) The Courts below have given different tangent colour while declining the relief of declaration by holding that Kanwar Raja Ram Singh did not challenge the sale deed dated 25.9.1970 during his life time as he died on 6.12.2004.

xvii) The sale deed was not a real transaction as no consideration was passed, therefore, it would be immaterial to construe the pleadings *vis-a-vis* land having fallen in surplus pool or not.

xviii) Purchaser *pendent lite* cannot raise the plea of bonafide purchaser as the aforementioned sale deeds executed during the pendency of the suit were hit by the provisions of Section 52 of the Transfer of Property Act. In support of the aforementioned contention, placed reliance upon the judgments of the Hon'ble Supreme Court and this Court rendered in **Sanjay Verma Vs.Manik Roy and others 2007(1) RCR (Civil) 408** and **Amarjit Singh Vs. Bhag Singh 2002(1) RCR (Civil) 458** and urged this Court for decreeing the suit in toto.

Per contra, Mr. S.K.Pipat, learned Senior counsel assisted by Mr. Manoj Kumar Pundir, Advocate for respondent No.1 in RSA No.1102 of 2013 and for the appellants in RSA Nos.3159, 3195 and 3910 of 2014 submitted that it was a graceful act on behalf of the sister not to dispute the claim laid by plaintiff no.2 in the previously instituted suit with regard to land measuring 45 kanals 12 marlas situated in village Adhoya Hinduan. There was certain claim with regard to other land but not in respect of suit land, i.e., 88 kanals 15 marlas situated in village Kambas Tehsil Barara District Ambala. The said sale deed was executed by Kanwar Raja Ram Singh on account of his own free Will and volition as the vendee was none else but his daughter. There was almost equal distribution of the land amongst the siblings. The suit was barred by law of limitation as the plaintiffs could have challenged the sale deed in respect of suit land, i.e., 88

kanals in the previously instituted suit but no explanation has come forth in laying challenge only in the year 2005. Even the provisions of Order 2 Rule 2 CPC are also attracted. The provisions of Article 59 of the Limitation Act would apply instead of Article 58. It was unfortunate litigation amongst the brother and sister, who is dead and now being represented by her husband and children. The sale deed of 1970 was duly implemented and even possession had also been with the defendants, thus, the findings arrived at by both the Courts below are totally perverse, for, there was no reference to Ex.D2 and Ex.D3, jamabandis for the year 1978-79 and 1983-84, respectively, which was entered in the name of defendants. The possession has been shown in the name of defendants, much less mutation. The Will executed by Kanwar Raja Ram Singh had not been proved in accordance with the provisions of Section 63(c) of Indian Succession Act. If at all, it was a transfer with intention to avoid rigours of certain acts to be promulgated, the said sale deed could have been set aside by the vendor namely, Kanwar Raja Ram Singh but he remained silent for all the years till his last breath.

The mutation Ex.D7 with regard to suit land was entered in favour of Kanwar Raja Ram Singh and khasra girdawari on 9.5.2002 which was upheld by the revenue Court.

The statement of Gulab Singh, witness of the sale deed had rightly been discarded as it was meaningless and of no value, for, he was interested witness and supported the case of the plaintiffs.

In the previous suit, there was no such allegation made by plaintiff no.2 that sale deed was *benami* transaction and therefore, plea taken in the present suit for the first time had rightly been discarded. In fact, the land situated in village Adhoya Hinduan was agreed to be transferred by Smt.Pratha in favour of plaintiff no.2 so as to reimburse the sale consideration amount paid purported to be at the time of execution of the sale deed. There was no bar for Prthivi Singh to include the suit land being subject matter of the previous suit, i.e., 447 of 1981.

The findings of fact and law had been arrived at by the Courts below and therefore, there is no illegality and perversity, much less no substantial question of law arises for adjudication of the present appeal and thus, urged this Court for dismissal of the appeal and allowing the appeal bearing No.3910 of 2014, wherein, the Courts below have abdicated in granting the injunction in favour of the plaintiffs, for, the plaintiffs miserably failed to prove the conscious and physical possession of the suit land.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and case law cited at bar and of the view that appeal bearing No.1102 of 2013 is liable to be allowed, whereas, other appeals are liable to be dismissed. The reason is not one but many:-

It would be apt to reproduce Articles 58 and 59 of the

Limitation Act, ratio decidendi culled out in paragraph 8 of the judgment rendered by Division Bench of this Court in **Ibrahim alias Dharam Vir's case (supra)** and paragraph 12 of the plaint. The same read as under:-

Articles 58 and 59 of the Limitation Act:-

58. To obtain any other declaration.	Three years.	When the right to sue first accrues
59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years.	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

Para 8 of Ibrahim alias Dharam Vir:-

“8. It may be observed at the outset that the word 'first' occurring in article 58 of the Act is of no significance at all for deciding the issue of limitation so far as the facts of the case in hand are concerned as the main point that requires determination is whether mere entry of mutation in the name of the defendant would furnish a cause of action to the plaintiff to file a suit for declaration or not. There is no dispute that mutation was sanctioned in favour of the defendant after the death of Akbar and in case such an entry furnishes a cause of action, then certainly the suit would be

barred by limitation. Even Mr. Aggarwal very fairly conceded this proposition. But what was argued by him was that mere entry of mutation did not furnish any cause of action and in support of his contention he relied on a Division Bench judgment of this Court in Niamat Singh v. Darbari Singh etc., 1956 P.L.R. 461. In our view, the contention of the learned counsel has considerable force. The plaintiff continued to be in possession of the entire property even after the sanction of the mutations in the name of the defendant after the death of her father Akbar or her mother Smt. Nanhi or her uncle Bhiku. The defendant was never given any share in the rent, nor was she given any produce out of the land of her share. In this situation, no cloud was cast on the title of the plaintiff by mere entry of the mutation in the name of the defendant. Further, there is no proof on the record to show that before April, 1969, by any act or assertion of the defendant the right of the plaintiff was ever actually jeopardised. The defendant is occupying a house in the village. The assertion of the plaintiff is that it was given by him to her out of compassion, while the plea of the defendant is that she occupied it as of right. Be that as it may, the fact remains that so far as the agricultural land is concerned, the defendant after the sanction of the mutations never asserted

her right to her share in the land in dispute, nor did she ever get any rent or produce and that it was in the year 1969 that she tried to assert her right and interfere with the possession of the plaintiff. In this situation, mere entry of a mutation in the name of the defendant would not furnish any cause of action to the plaintiff. This view of ours finds full support from the judgment of the Division Bench in Niamat Singh's case. Thus, we do not agree with the learned Single Judge that the cause of action arose when the mutation was entered in the name of the defendant and consequently, reverse the finding on issue No. 4 and hold that the suit filed by the plaintiff within limitation.”

Para 12 of plaint:-

“That the defendants are bent upon taking undue advantage of the wrong entries in their favour in the revenue record regarding the ownership and possession on the basis of the same have started giving the threats to alienate the suit land and also to illegally interfere in the peaceful possession of the plaintiffs over the same which have cast a cloud on the rights of the plaintiffs. It is the plaintiffs who are the rightful owners and in possession of the land in question and the defendants have got no right, title or interest in the same. Under the circumstances the sale deed dated 25.9.1970 is liable to be

declared illegal, null and void, ineffective and not binding on the rights of the plaintiffs.”

On conjoint reading of the aforementioned, it is a fit case where the suit cannot be said to be hit by law of limitation, for, adverse entry in the revenue record would not give cause of action to party to challenge the same. It is only when threat is extended to the title.

To the pleadings in paragraph 12 of the plaint, the defendants stated as under:-

“12. That para no.12 of the plaint is wrong, false and incorrect. There can be no question of any such threat as alleged nor the plaintiffs have any right to attribute such false and malicious words against the defendants. It is vehemently denied that the sale deed dated 25.9.1970 is liable to be declared as illegal, null and void document. As a matter of the fact, the same is legal, valid document and the plaintiffs have no right to challenge the same.”

The aforementioned averments made in the written statement are most evasive and vague. The provisions of Order 8 Rule 5 CPC envisage that where the stand taken in the written statement is vague and evasive, the pleadings in the corresponding paragraph of plaint are deemed to be admitted.

In the previously instituted suit, i.e., 447/1981 (Ex.D13) in para 3, it was asserted that defendants failed to reimburse the plaintiffs, thus, the

transaction was *benami*. To specific paragraph 3, Pratha did not deny the aforementioned pleadings. For the sake of brevity, paragraph 3 of the plaint and written statement read as under:-

Paragraph 3 of the plaint:-

“3. That the defendant failed to reimburse him and as such is reduced to the status of benamidar and the plaintiff has been continuing in possession thereof as real owner and has been using usufruct thereto as such, since its purchase.”

Para 3 of the written statement:-

“3. Para 3 of the plaint is correct and admitted.”

The ratio decidendi culled out by Division Bench of this Court in **Ibrahim alias Dharam Vir's case (supra)** in the same sense culled out by the Hon'ble Supreme Court in **Daya Singh' case(supra)** in paragraphs 18 and 19. The same read as under:-

“18. In this view of the matter, we do not find any ground to agree with the findings of the High Court that the suit was barred by time because of its filing after 18 years of entering into the compromise. The question of filing the suit before the right accrued to them by compromise could not arise until and unless infringement of that right was noticed by one of the parties. The High Court in the impugned judgment, in our view, had fallen in grave error in holding that the suit was

barred by time and had ignored to appreciate that the rights of the appellants to have the revenue record accrued first arose in 1990 when the appellants came to know about the wrong entry and the respondents failed to join the appellants in getting it corrected. In our view, the High Court was not justified in holding that mere existence of a wrong entry in the revenue records does not, in law, give rise to a cause of action within the meaning of [Article 58](#) of the Act. No other point was urged before us by the learned counsel for the parties.

19. In view of our discussions made herein above, the impugned judgment of the High Court on the question that the suit was barred by limitation cannot be sustained. Therefore, the judgment of the High Court is set aside and the matter may be remitted back to the High Court for decision on merits. The High Court is requested to dispose of the second appeal at an early date preferably within six months from the date of supply of a copy of this order to it.”

In my view, the Courts below have abdicated in non-suiting the appellant-plaintiffs by rendering the findings on issue no.7 against the plaintiffs and the findings are not sustainable and hereby set aside.

On coming to question of transaction being benami or otherwise, many litigation arose after promulgation of Benami Transaction

Act, 1988. The Hon'ble Supreme Court in **Mithlesh Kumari Vs. Premi Bihari Khare JT 1989(1) SC 275**, held that Section 4(1) of the 1988 Act would apply to the suit filed even prior to the coming into force of the Act. The aforementioned decision was referred to larger Bench of this Court in **R.Rajagopal Reddy (D) by LRs and others Vs. State of Tamil Nadu 1995(1) RRR 353**, wherein, it was held that provisions of the Act would apply prospectively, i.e. sale deeds affected in this case prior to promulgation of the Act, thus, would not hit by the provisions of 1988 Act . In various other judgments, i.e., in **Binapani Paul Vs. Pratima Ghosh and others 2007(6) SCC 100**, the Hon'ble Supreme Court laid down the provisions to be a guide for determining the nature of following circumstances:-

- “(1) the source from which the purchase money came;*
- (2) the nature and possession of the property, after the purchase;*
- (3) motive, if any, for giving the transaction a benami colour;*
- (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;*
- (5) the custody of the title deeds after the sale;*
- (6) conduct of parties concerned in dealing with the property after the sale”*

In **V. Shankaranarayana Rao (D) by LRs' case (supra)**, the

Hon'ble Supreme Court while referring to all the law on the point of applicability of 1988 Act held as under:-

“11. Principle on the basis whereof determination of the question as to whether a transaction is a benami one or not depends upon a large number of factors. Some of them had been noticed by this Court in [Thakur Bhim Singh \(Dead\) By LRs and Another v. Thakur Kan Singh](#) [(1980) 3 SCC 72] in the following terms:

"18. The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus: (1) the burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction; (2) it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and (4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing

their action in bringing about the transaction and their subsequent conduct, etc."

The said principle has been reiterated by this Court in [Binapani Paul v. Pratima Ghosh & Ors.](#) [2007 (6) SCALE 398] In the aforementioned judgments, this Court has inter alia emphasised on the fact that the role and / or the motive on the part of the person who had advanced the amount of consideration plays an important role in determination of the nature of transaction. The High Court unfortunately had not considered the question from the said angle. The High Court while pronouncing the impugned judgment had also not considered the effect and purport of the requisite ingredients for arriving at a decision as to whether the transaction in question is benami or not.

12. The High Court did not deal with the question thoroughly. It had not taken into consideration the totality of the circumstances. We, therefore, are of the opinion that in the fitness of things, the impugned judgment should be set aside and matter remitted back to the High Court for consideration of the matter afresh which would meet the interest of justice. As the matter has to be remitted to the High Court, we have not considered the findings of the High Court in respect of other items of the property in regard where to different conclusions

have been arrived at by the courts below. We are sure, High Court would consider the same in the light of its findings on the principal issue.

13. For the reasons aforementioned, the impugned judgment is set aside. The appeal is allowed. The matter is remitted back to the High Court for consideration of the matter afresh. In the facts and circumstances of this case, however, there shall be no order as to costs.”

Since Pratha had not denied nature of transaction to be *benami* and sale deed of 1970 pertained to both parcels of land situated in different villages, the defendants did not rebut the aforementioned admission of Pratha by leading any direct or cogent evidence, thus, in my view, the Courts below have abdicated in not appreciating the aforementioned fact and applicability of law and therefore, the findings on issue no.1 are not sustainable and hereby set aside.

I am afraid the aforementioned argument qua applicability of Order 2 Rule 2 of CPC is not sustainable as the law on the applicability of aforementioned provisions is no longer *res integra*, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in paragraph 12 of **Dalip Singh Vs. Mehar Singh Rathee 2004(7) SCC 650** and in paragraph 21 of **Coffee Board Vs. M/s Ramesh Exports Pvt. Ltd. 2014(3) RCR (Civil) 104**. The same read as under:-

“ 12. Counsel for the appellant strenuously contended that the suit was barred under Order 23 Rule 1 CPC as Respondent 1 had withdrawn the suit filed by him for permanent injunction and filed the suit for specific performance without seeking permission of the court. According to him, since the second suit was filed without obtaining the leave of the court the same was barred under Order 23 Rule 1 CPC. We do not find any substance in this plea. The plea that the suit was barred under Order 23 Rule 1 CPC was not taken in the written statement and no issue was framed to that effect. This plea was raised for the first time before the first appellate court which was negatived. Plea that the suit was barred under Order 23 Rule 1 CPC was not taken before the High Court. Under the circumstances the appellant cannot be permitted to take this plea before us. Contention of the learned counsel for the appellant that the suit filed by Respondent 1 was barred under Order 2 Rule 2 CPC and the subsequent suit being barred was not taken by the appellant in his written statement filed in response to the notice of the suit nor was any issue framed on the point. The sine qua non for applicability of Order 2 Rule 2 CPC is that a person entitled to more than one relief in respect of the same cause of action has omitted to sue for some relief without the leave of the court. When an objection regarding

bar to the filing of the suit under Order 2 Rule 2 CPC is taken, it is essential for the court to know what exactly was the cause of action which was alleged in the previous suit in order that it might be in a position to appreciate whether the cause of action alleged in the second suit is identical with the one that was the subject-matter of the previous suit. As the plea had not been raised in the written statement and no issue framed on this point, no opportunity was provided to Respondent 1 to lead evidence to rebut the same. In the absence of pleadings and proof of identity of cause of action, the appellant could not be permitted to raise the plea of bar of Order 2 Rule 2 CPC. The High Court had gone into merits as well and held that the two suits filed by Respondent 1 were not based on the same cause of action. We need not examine this on merit as we have held that in the absence of pleadings or the issue regarding the bar of Order 2 Rule 2 CPC in filing the suit the appellant cannot be permitted to raise such a plea.”

“21. In the present factual matrix both the reliefs are being claimed separately in the two concerned suits. This scenario negates the principle of Order 2, Rule 2 in absence of any explanation as to why the respondent failed to claim the relief by way of a single suit when the cause of action was the same in the both. Therefore, we are of the opinion that the Trial

Court in its judgment dated March 17, 2005 correctly held that in light of O.S. No. 3150 of 1985 the present suit is barred under Order 2 Rule 2 of the Code.”

Though no specific issue with regard to applicability of provisions of Order 2 Rule 2 CPC has been raised but attempt has been made during the course of arguments that plaintiff no.2 in the earlier instituted suit no.447 of 1981 could have staked the claim with regard to suit land measuring 88 kanals odd marla situated in village Kambas and would not be maintainable. Thus, I deem it appropriate to grant the relief of declaration to the plaintiffs in the manner and mode as sought for.

As regards the possession, there is no substance in the plea of Mr. Pipat enabling this Court to form a different opinion than the one arrived at by the Courts below granting the relief of injunction in favour of the plaintiffs, for, no oral and documentary evidence had been referred to except jamabandis and mutations to establish the possession but on the contrary, in the proceedings initiated under Section 145 of Cr.P.C, the Executive Magistrate, vide order dated 11.10.2010 (Ex.P13) gave following verdict:-

“As the question of possession has been decided by the Court of Commissioner, Ambala Division, Ambala vide order dated 7.3.2007 by way of appeal of khasra girdawari in favour of Lt. Col. Prithvi Singh. Moreover, the DSP, Naraingarh has also concluded about the possession of Lt. Col. Prithvi Singh in the

enquiry on 14.4.2005. The electricity bills after January 15, 2010 is in the name of Prithvi Singh Chauhan (although not proved) indicates the electricity meter had been got installed by the Ist party. Whereas the failure of the 2nd party to come before this Court even after passing order under Section 145 (1) of Cr.P.C leads to conclusion that they do not have any proof about the factual possession in the land in question.

Upon the basis of the observations made above, the order under Section 145(6) is made that the Ist party namely Col. Prithvi Singh s/o Kanwar Raja Ram Singh r/o village Adhoya, Tehsil Barara District Ambala is in the actual possession of the land in question.

*Announced
Dated 11.10.2010*

*Executive Magistrate
Ambala”*

This Court cannot remain oblivious of the fact that criminal complaint and summoning order have been quashed by this Court, vide judgment dated 22.07.2010 passed in CRM-M-925 of 2009 (Annexure A4).

The relevant portion of the same reads thus:-

“As per complaint of respondent No.2, his wife had bequeathed property in his favour by virtue of a Will as being the owner of the land in dispute by way of sale deed dated 25.9.1970. A civil suit to challenge that Will was filed by mother of petitioner No.1 that the petitioners were owners in possession of the land

in dispute and the Will dated 25.9.1970 in favour of Smt Pratha was illegal, null and void and entries in the revenue record were wrong. The petitioners have claimed to be owners in possession of the land in dispute as being in continuous possession since the time of their forefathers. As per case of the petitioners, the stamp papers were purchased on 1.8.2008 whereas Smt.Pratha was murdered on 18.2.2001 which clearly shows that the Will was forged and fabricated. These material facts were concealed by respondent No.2 complainant in the complaint. Had these facts were in the knowledge of the trial Court, the petitioners would not have been summoned. Even as per report of the Assistant Collector IIInd Grade, Barara the land was inspected at the spot and petitioner No.1 was found to be in possession. There is other material on record which shows the possession of the petitioner over the land in dispute. Without taking into consideration all these facts, the trial Court has summoned the petitioners. Once the petitioners are owners in possession of the land in dispute, the question of theft does not arise and moreover the allegations in the FIR seem to be highly improbable as no prudent person would like to commit any such offence when long litigation is pending between the parties for last several years”

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(s) aforementioned.

As an upshot of my findings, the findings of the Courts below on issue Nos.1 and 7, i.e., limitation and declaration are hereby reversed. The suit of the appellant-plaintiffs, i.e., 436-CS of 2005 is hereby decreed in toto. Consequently, the appeal bearing No.1102 of 2013 is allowed, whereas, other appeals bearing No.3159, 3195 and 3910 of 2014 are dismissed. Decree sheet is ordered to be prepared accordingly.

(AMIT RAWAL)
JUDGE

July 06, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No