

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

**RSA No.18 of 1996 (O&M) and
other connected matters
Date of Order: 17th January, 2019**

Surinder Singh Sibia

..Appellant

Versus

Smt. Jaswant Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Jindal, Sr. Advocate, with
Ms. Neha Anand Mahajan, Advocate and
Mr. Prateek Mahajan, Advocate,
Mr. Vijay Sharma, Advocate,
for the appellants (in RSA-18 and 619 of 1996)

Mr. Amarjit Markan, Advocate,
for the appellant.

Mr. Vikas Bahl, Sr. Advocate, with
Mr. Amandeep Singh, Advocate and
Mr. Priyanka Kansal, Advocate,
for respondent no.1(iii) (in RSA 619-1996)
for respondent no.3(in RSA 18 of 1996)

Mr. Ashish Aggarwal, Sr. Advocate, with
Mr. Mukul Aggarwal, Advocate,
for respondent no.2(ii)(iii)(v), 4 to 6
(in RSA No.18 of 1996)

Mr. Anupam Gupta, Sr. Advocate, with
Mr. Yogesh Goel, Advocate,
for the appellant (RSA NO.4868 of 2017)

Mr. H.S.Maan, Advocate, for
Mr. Rajinder Goyal, Advocate,
for the appellant (in RSA 5413-2017)

Mr. Sumeet Mahajan, Sr. Advocate, with
Mr. Amit Kohar, Advocate,
for the respondent

Mr. C.B.Goel, Advocate,
for the respondent (in RSA 619-1996)

Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. Ashish Soi, Advocate.

Mr. Chahat Aggarwal, Advocate, for
Ms. Reeta Kohli, Advocate,
for respondent no.236 (in RSA Nos.2651& 2652-2017)

Mr. J.S.Puri, Advocate,
for F.C.I.

Mr. M.K.Dogra, Advocate,
for respondent no.8(in COCP No.1853-2009)

Mr. B.B.S.Sobti, Advocate,
for respondent nos.2, 4, 5 and 6 (in RSA NO.18 of 1996)

Mr. A.S.Pannu, Advocate, for
Mr. Vikas Singh, Advocate,
for respondent no.9 (in RSA No.619-1996)

Mr. Bhupinder Banga, Advocate, for
Mr. Tushar Madaan, Advocate,
for respondent no.1(ix) (in RSA No.619 of 1996)
for respondent no.10 (in RSA No.18 of 1996)

ANIL KSHETARPAL, J.

By this judgment, Regular Second Appeal Nos.18 and 619 of 1996, 1665 of 1998, 462 of 2012, 5413, 2651, 2652, 3803, 4868 of 2017, Civil Writ Petition Nos.18170 of 2013, 26994 of 2014, 14492 of 2015 and COCP No.1853 of 2009 shall stand disposed of. All the cases are inter connected and counsel for the parties also agree that all the cases can conveniently be disposed of by a common judgment.

From the facts of the case, it is apparent that some litigants have unlimited energy and resources to fight court cases which may be one

of the reason for pile up of cases in the courts. This is one such classic case. Way back in the year 1997, a Division Bench of the High Court of Himachal Pradesh at Shimla had in an inter-se litigation between the warring parties had observed as under:-

“It is very unfortunate that the parties who are closely related as descendants of a common ancestor by name, Rattan Singh, have chose to spend their time in court of law or more than 4 decades. We are afraid that the litigation may go on for some more time but we proceed to discharge our duty in these matters on the materials placed before us.”

The above prediction of the Hon'ble Division Bench has come true. Even after the judgment passed by the High Court of Himachal Pradesh was upheld by the Hon'ble Supreme Court on 14.01.2003. Still parties are fighting litigation.

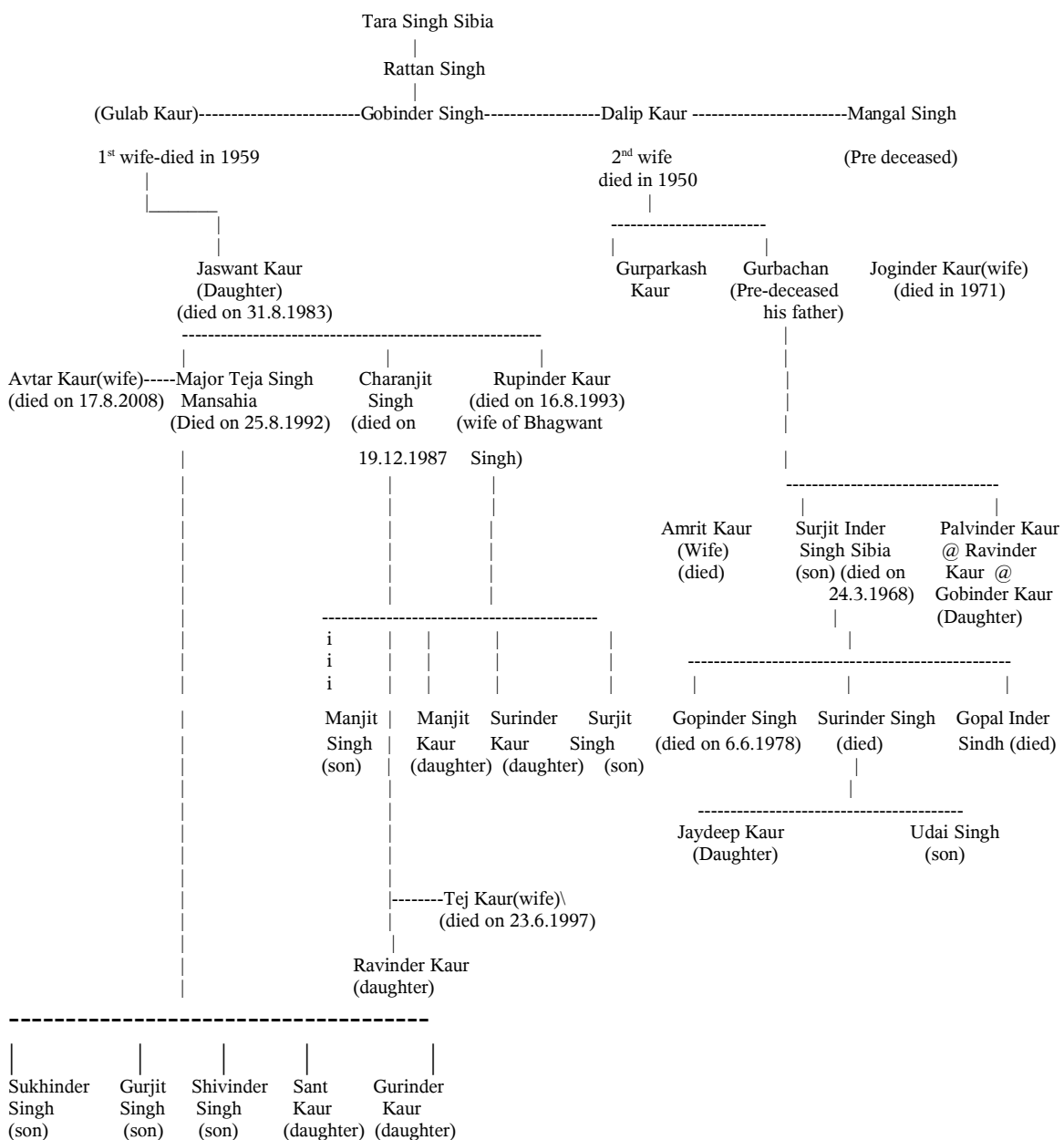
In the considered opinion of this court, following issues require determination:-

- (i) Whether a written compromise signed by the parties filed in the court along with the affidavits of all the signatories to the compromise and thereafter acted upon can be made basis by the Court to decide interse dispute or such compromise is to be rejected merely because after 8 years the one set of party has now changed his stance/stand?
- (ii) Whether it is permissible for the court to allow some of the parties to enter into a settlement in a suit for

partition of the property particularly when rights of non signatories parties are not adversely effected?

- (iii) Whether a previous judgment and decree passed by the court can be ignored on the ground that it is vague particularly when it is established that there was no dispute between the parties with regard to identification of the property in the previous round of litigation?
- (iv) Whether the judgment passed and confirmed upto Hon'ble Supreme Court would prevail if there is any direct conflict between the judgment passed by the Supreme Court as well as Civil Judge in a separate suits in between the same parties?
- (v) Whether a decree for recovery of “mesne profit” can be granted against co-sheare/co-owners without partition and identification of the property which comes to the share of each co-sharer/co-owner?
- (vi) Whether it is permissible to the party to the litigation to repeatedly raise the same points after having lost in previous round of litigation or bar of res-judicata would apply?
- (vii) What would be the date of institution of Ist suit in the facts of present case?
- (viii) Whether it is mandatory for an attesting witness to state in his testimony while appearing in the court that he attested the will on the directions of the testator?
- (ix) Whether first appellate court is required to re-appreciate

In order to understand inter-se relationship between the parties, it would be appropriate to extract a pedigree table:-



Late Sh. Gobinder Singh Sibia had 2 wives- Late Smt. Gulab Kaur and Late Smt. Dalip Kaur. A suit was filed dated 12.05.1956 by Gulab Kaur claiming maintenance @ Rs.1000/- per month or in the alternative suit for possession of ½ share of the property left by Sh. Gobinder Singh Sibia (date of death 15.12.1954). Details of various

properties as given in the decree are extracted as under:-

- “(A) 1800 bighas kham agricultural land along with garden, houses and kothis situated in village Ram Nagar Sibia District Sangrur deriving Rs.20,000/- per annum.
- (b) Agricultural land, houses, shops situated in the area of town Sangrur, fetching income above Rupees 10,000/- per annum.
- (c) Agricultural land about 700 bighas kham and a house situated in village Munshi Wala, District Sangrur fetching income of about 7,000/- per annum.
- (d) Whole of the village Khera Tehsil Jind, District Sangrur, comprising the area of about 12000 bighas along with garden whose yearly income is about 50,000/- per annum.
- (e) Agricultural land measuring about 400 bighas Kham along with along with a big Haveli situate in the area of village Ram Garh Sibia, District Ludhiana, bringing income as about 4000/- per annum.
- (f) Agricultural land measuring about 400 bighas in the area of village Fateh Garh Sibia in District Ludhiana income about 3000/- per annum.
- (g) Two kothis valuing about Rs.200000/- situate in District Simla.
- (h) 3 kothis at Patiala valuing about Rs.150000/- fetching income of about 100000/- per annum.

This suit was decreed by the Civil Court on 29.06.1964 and Gulab Kaur who had by that time died was declared entitled to $\frac{1}{2}$ share of estate left by late Sh. Gobinder Singh Sibia. After the decree was passed by the trial court, Gobinder Singh, Surinder Singh, Amrit Kaur filed a suit for permanent injunction on 19.10.1965 against Jaswant Kaur (daughter of Gulab Kaur and Gobinder Singh Sibia) and Palwinder Kaur @ Ravinder Kaur @ Gobinder Kaur their real aunt. Simultaneously, the judgment and decree dated 29.06.1964 was also challenged in an appeal. Appeal against the judgment and decree dated 29.06.1964 was accepted by the High Court vide judgment dated 12.03.1975. However, Hon'ble Supreme Court in an appeal filed by Jaswant Kaur i.e. Civil Appeal No.1360 of 1975 decided on 25.10.1976, (1977)1 SCC, 369, restored the judgment and decree passed by the learned trial court while setting aside the judgment of the High Court dated 12.03.1975. Thus, first round of litigation came to an end.

Civil Suit No.237 of 19.10.1965 filed for decree of permanent injunction by Gopinder Singh Sibia and others, was in the meantime contested. Some of the properties were included in the aforesaid litigation and decree for injunction dated 16.08.1976 was passed in the aforesaid case. The decree for permanent injunction was not further challenged.

Another suit was filed in Himachal Pradesh High Court being Civil Suit No.40 dated 13.06.1979. Surinder Singh, Gopalinder Singh and Amrit kaur heirs of Surjit Inder Singh Sibia filed a suit in Himachal Pradesh High Court. Gopinder Singh had by then died issueless on 06.06.1978. The correctness of judgment passed by the Hon'ble Supreme Court dated 26.10.1976 was also challenged. The prayer made in the suit was to declare the plaintiffs to be owners of the property mentioned in

Annexure 'B' which is extracted as under:-

“Annexure 'B'

DETAILS OF THE PROPERTY

- A. 191 bighas 6 biswas of agricultural land situated in
village Munshiwala, Distt. Patiala, Punjab, belonging
to and in possession of petitioner No.2.
- B. 53 Bighas 9 biswas of agricultural land situated in
village Ramnagar Sibian, Distt. Sangrur Punjab in
the ownership and possession of plaintiff No.3.
- C. 102 bighas 4 biswas of agricultural land situated in
Ramnagar Sibian Distt. Sangrur Punjab in the
ownership and possession of Plaintiff No.1.
- D. 1827 kanals 9 marlas of agricultural land situated in
village Khera Khambavati Distt Jind Haryana in the
ownership and possession of plaintiff No.3.
- E. 644 bighas 9 biswas of agricultural land in village
Khera Khambavatti Distt. Jind Haryana in the
ownership and possession of Plaintiff No.2.
- F. A house at Simla Known as 'Kennelworth' in the
ownership of plaintiff No.1.
- G. A house No.B-II-271 known as “Sibia Villa” situated
at Nabha Gate Sangrur bounded as under:-

North	South	East	West
Lane and Abadi	Fort Wall	Surjit Inder Singh	Main Road

- H. Kothis situated at Patiala known as “Sibia House”,

Patiala.”

Learned Single Judge partly decreed the suit with respect to properties described at Sr. Nos. D and F in Annexure 'B' (extracted above) and qua remaining properties, the suit was dismissed vide judgment and decree dated 03.12.1986.

In the appeal filed before the Division Bench, the suit filed by the plaintiffs qua property at Sr. No.'E' was also decreed and with the aforesaid modification the judgment of the learned Single Judge was upheld. Hon'ble Supreme Court in Civil Appeal No.325 of 1998 vide order dated 14.01.2003 upheld the judgment of the Division Bench of High Court of Himachal Pradesh.

On 30.10.1979, another suit was filed for partition with respect to property situated in Patiala. The suit was contested on various grounds including the decree passed on 29.06.1964, is vague and therefore, not executable. Both the courts have decreed the suit filed by the plaintiffs for partition and allotment of separate share by passing a preliminary decree. Since the appeals were admitted, therefore, various other litigations came to be filed. Thus a set of 13 different cases have come up for hearing together.

Certain other appeals have also been filed arising from the suits filed by the parties which shall be noticed in the later part of the judgment.

QUESTION NOS. (i) and (ii)

During the pendency of the suit, some of the parties to the litigation have entered into a settlement and filed a compromise deed on the file of this court dated 20.01.2008 i.e. RSA No.619 of 1996. It may be noted that this compromise deed is undisputedly signed by the parties except 4 persons, namely, Sukhinder @ Sukhwinder Singh son of Major

Teja Singh, Manjit Singh son and Surinder Kaur daughter of Rupinder Kaur and Manjit Kaur daughter of Surinder Kaur.

This compromise deed was placed on file through Civil Miscellaneous application No.485-C-2008. Along with the application, affidavits of all the signatories to the compromise deed were also filed. The application was listed on 23.01.2008 and following order was passed:-

“C.M.No.485-C of 2008

CM is allowed.

*Compromise deed which is signed by the
LRs of deceased Jaswant Kaur is taken on record.*

RSA No.18 of 1996(O&M)

*Ms. Sibia states that some of the LRs of
Jaswant Kaur are yet to be impleaded and for that she
seeks adjournment.*

Adjourned to 11.3.2008.

January 23, 2008

*(Sd/-Pritam Pal)
Judge”*

Sh. Vikas Mohan Gupta, Advocate, who was representing Jaswant Kaur and her heirs filed Civil Misc. application No.645-C-2008 along with affidavits of Smt. Avtar Kaur, S. Gurjit Singh, Shivinder Singh, Sant Kaur, Gurinder Kaur and Ravinder Kaur, legal heirs of Jaswant Kaur admitting the correctness of compromise arrived at. Another miscellaneous application was filed by counsel for the appellant along with affidavits of various appellants admitting the correctness of the aforesaid compromise. On 28.01.2008 in the presence of both the counsels, the application was allowed and affidavits were taken on record. Order dated 28.01.2008 is

extracted as under:-

“Present: Mr. VM Gupta, Advocate
Mr. Naveen Verma, Advocate

*CM is allowed
Affidavits are taken on record.*

*January 23, 2008
'dalbir'*

*(Sd/-Pritam Pal)
Judge”*

However, some how, the litigation with respect to signatories to the deed of compromise, was not disposed of and remained pending. It may be significant to note that the compromise deed is spread over 15 pages. Each one of the page is signed by all the parties to the compromise deed. Through this compromise, not only property situated in Patiala which was subject matter of dispute in one of the suit was included but various other properties involved in various other litigations which were pending in courts were also made part thereof. It was agreed that Party No.1 i.e. Gurjit Singh, Shivinder Singh sons of Teja Singh, Avtar Kaur wife of Teja Singh, Sant Kaur, Gurinder Kaur daughters of Teja Singh and Ravinder Kaur, hereinafter referred to Party No.1 have relinquished their rights in lieu of payment of Rs.3,43,75,000/- in favour of party no.2. It was also agreed that payment would be payable only to those persons who have signed and agreed to the compromise.

It is not in dispute before this court that payment of Rs.3,43,75,000/- has been paid by Party No.2 to Party No.1 through bank transactions.

In Appeal No.18 of 1996, objections were filed through Civil Misc. application No.11256-C-2016, wherein it was asserted that the compromise does not depict the correct position and compromise was only

with respect to property situated in Patiala and not with respect to property situated in villages- Ram Nagar Sibia and Munshiwala. The compromise is not lawful and has not been acted upon. It was further claimed that the compromise cannot be accepted being unregistered.

Another set of objections were filed by the persons who had not signed the compromise deed dated 04.11.2011 vide Civil Misc. application No.12614-CII-2011.

Elaborate arguments have been heard with respect to the jurisdiction of the court to decide the litigation in accordance with written compromise at least qua the parties who are signatories to the compromise and have accepted payment thereunder.

Learned counsel appearing for the objectors in C.M.No.11256-C-2016 has submitted that since the compromise deed is now being disputed, therefore, this court should not proceed to decide the appeal on the basis of compromise. He further submitted that once the compromise is now being disputed, it is mandatory for the court to hold detailed enquiry after granting opportunity to lead evidence as to whether the compromise as intended had been arrived at between the parties or not. He further submitted that under Order 23 Rule 3 of the Code of Civil Procedure the compromise arrived at between all the parties to the litigation can only be accepted by the Court and not between few of them. He referred to proviso to Order 23 Rule 3 of the Code of Civil Procedure as applicable to areas of the States of Punjab, Haryana and Union Territory of Chandigarh by amendment in the year 1937. He further submitted that in a suit for possession by way of partition, the compromise decree cannot be passed unless all the parties have resolved their dispute through compromise as it

would also effect the rights of non-signatories. He further submitted that the deed of compromise in the present case is not lawful. He further submitted that once objections have been filed then it is not possible to conclude that the compromise is with free consent.

This court has considered the submissions of learned counsel for the objectors and gone through the deed of compromise. At this stage, it would be appropriate to extract Order 23 Rule 3 of the Code of Civil Procedure as applicable in the States of Punjab, Haryana and Union Territory of Chandigarh. :-

**ORDER XXIII. WITHDRAWAL AND ADJUSTMENT
OF SUITS.**

(1)	XX	XX	XX
(2)	XX	XX	XX
(3)	XX	XX	XX
(4)	XX	XX	XX
(5)	XX	XX	XX

3. Compromise of suit

Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties] or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

Explanation-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule]

PUNJAB, HARYANA AND CHANDIGARH- Add the following proviso to the rule:

Provided that the hearing of a suit shall proceed and no adjournment shall be granted in it for the purposes of deciding whether there has been any adjustment or satisfaction unless the court for the reasons to be recorded in writing thinks fit to grant such adjournment and provided further that the judgment in the suit shall not be announced until the question of adjustment or satisfaction has been decided.

Provided further that when an application is made by all the parties to the suit either in writing or in open court through their counsel that they wish to compromise the suit, the Court may fix a date on which the parties or their counsel should appear and the compromise be recorded but shall proceed to hear those witnesses in the suit who are already in attendance, unless for any other reason to be recorded in writing, it considers it impossible or undesirable to do so. If upon the date fixed no compromise has been recorded, no further adjournment shall be granted for this purpose, unless the court, for reason to be recorded in writing, considers it highly probable that the suit will be compromise on or before the date to which the court purposes to adjourn the hearing.(21-7-1937).”

***Note:** These two provision(s) were added in the year 1937)*

On careful reading of the provisions of Order 23 Rule 3 of the Code of Civil Procedure, it is apparent that once it is proved to the satisfaction of the court that a suit have been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, the court shall order such agreement, compromise and satisfaction to be recorded, and shall pass a decree in accordance therewith. First proviso to Order 23 Rule 3 of the Code of Civil Procedure provides that if an agreement or a compromise is alleged by one party and denied by other, the court shall decide the question but no adjournment shall be granted for the

purpose of deciding the question unless the court for the reasons to be recorded thinks fit to grant such adjournment.

In the present case, the deed of compromise was signed by the parties who are all educated belonging to affluent families. All the parties have signed in fluent English and there is no averment in the objection petition that their consent was obtained under any undue influence or by misrepresentation. The compromise deed is also signed by two marginal witnesses who are practicing advocates. The compromise deed was filed in court along with the affidavits of all the signatories to the deed of compromise. Previous counsel for the objector, namely Sh. Vikas Mohan Gupta (V.M.Gupta) who represented Jaswant Kaur and his legal heirs had also filed an application to place on record affidavits of the persons represented by him in the appeal, admitting the correctness of the compromise deed. Further it is undisputed that the amount of Rs.3,45,75,000/- as undertaken in the compromise deed, has been paid. Therefore, the compromise deed has already been acted upon. Still further objections for the first time came to be filed in 2016 i.e. after a period of 8 years from the date the compromise deed was filed in the Court. As per the compromise deed, apart from the payment, no further steps were to be taken by either of the party. Through the compromise, one set of party i.e. Party No.1 had relinquished their rights in different properties as mentioned in the compromise deed in lieu of receipt of Rs.3,43,75,000/- in favour of persons of Party No.2. It is a different matter that decree in accordance with the compromise deed was not passed immediately which ought to have been passed.

No doubt, first proviso to Rule 3 of Order 23 of the Code of

Civil Procedure provides that the court shall decide the question about the compromise on the same day and no adjournment shall be granted but there is no absolute bar for grant of such adjournment. No doubt, adjournment is to be granted by recording reasons but the intention of the legislature has to be seen. The legislature intended that where there is a compromise/settlement between the parties the litigation should come to an end immediately. It is not the intention of the legislature that if an adjournment has been granted without recording reasons, the deed of compromise or settlement would lose its binding effect. Hence, the delay of more than 10 years in disposal of the appeal by the court cannot visit Party No.2 who has parted with Rs.3,43,75,000/- with adverse consequences. Non recording of reasons for an adjournment can at the most be irregularity which does not make the compromise per se invalid. Attention of the court has not been drawn to any subsequent development which makes the compromise inequitable or impossible on account of delay. Inaction on the part of the court cannot be made ground to deprive fruits of a valid settlement arrived at between the parties.

Now let's deal with the objections filed.

Basically the deed of settlement is objected to on 3 grounds:-

- (1) that the compromise deed does not depict the correct position as the settlement was only with respect to property situated at Patiala.
- (2) the compromise is not lawful and has not been acted upon.
- (3) the compromise is not registered, although, it is compulsorily registrable.

A reading of the deed of compromise, it is apparent that the parties after giving the entire history of the litigation while making reference to various litigations filed and pending before the courts, have thereafter dealt with each property in a separate paragraph. Property situated known as 'Sibia House' spread over 43 bighas and 9 biswas has been referred to by giving details of khasra numbers in which the land in dispute is comprised in paragraph 9. In paragraph 10, details of property situated in village Ram Nagar Sibian, Tehsil and District Sangrur, has been given with reference to the decree passed on 29.06.1964. Under paragraph 10, there are sub paras (a), (b), (c), (d) and (e) dealing with each parcel of land in the village separately. Apart from that khasra numbers of the land involved in each parcel has been clearly mentioned.

Similarly paragraph 11 deals with agricultural land measuring 700 bighas situated at village Munshiwala, Sub Tehsil Bhawanigarh, Tehsil and District Sangrur. Paragraph 11 is again divided into (a) and (b) and two parcels of land has been separately dealt with while making reference to khasra numbers. Paragraph 12 deals with the litigation between the parties, which was decided by the Himachal Pradesh High Court referred to above and it deals with the estate known as "Kennel Worth". Paragraph 13 deals with the payment to be paid. Details of payment to be made to each member of Party No.1 has been given. Paragraph 14 acknowledges that 2 members of Party No.2 namely Randeep Singh and Navdeep Kaur had already paid to Santokh Singh Rs.3,00,000/- in lieu of relinquishment of his entire rights in the land. Paragraph 15 provides that in case there is any intentional default or delay in the payments beyond reasonable time, the compromise shall automatically stand terminated unless a fresh schedule of

payment is filed in writing by the parties. It is not in dispute that the payment has been made within reasonable time. It is further provided that no further claim of any sort will survive upon payment of amount as per this compromise by Party No.2. Paragraph 15 of the compromise is important, therefore, extracted as under:-

“15. It is also agreed between the parties that in case of any intentional default or delay in the payments referred to above on the part of Party No.2, beyond a reasonable time, then this compromise shall automatically stand terminated unless a fresh schedule for payment is filed in writing between the Party No.1 and Party No.2 in the Hon'ble High Court. It is further agreed that no rights, title, interest of claim will remain with Party No.1 with respect to the properties described above and settled by this compromise. No any further claim of any sort whatsoever shall survive upon payment of the full amount as per this compromise by Party No.2. It is also agreed between the parties that S. Gurjit Singh of Party No.1 shall co-ordinate the implementation of this compromise on the part of all of the members of Party No.1 in the Courts/authorities as may be necessary and S. Surinder Singh shall ensure the same for Party No.2.”

It may be significant to note here that parties had even agreed that this deed of settlement shall be got filed in other pending litigations which are relating to the properties for which settlement has been arrived at

and litigation between the signatories would come to an end.

Learned counsel for the objector was given opportunity to explain how the deed of compromise does not depict the correct position or the objectors have never relinquished their share in other properties i.e. in villages Ram Nagar Sibia and village Munshiwala particularly when a separate paragraph along with sub paras have been dedicated to each village which is part of a written compromise, each page signed by all the parties. He tried to explain that in the affidavits which have been filed by the members of Party No.1 they have relinquished their rights only in respect to property situated in Patiala.

All the affidavits filed are similarly worded. Paragraph 1 of the affidavit of one of the members of Party No.1 is extracted as under:-

“1.That the parties has amicably settled the disputes. A written compromise deed dated 20.1.2008 has been read over, understood and signed by the parties. The deponent has no objection to this compromise being recorded and the appeal being decided in terms of the aforesaid compromise between the parties. Party No.1 (being legal representatives of Smt. Jaswant Kaur plaintiff) has relinquished their rights in respect of three kothies along with Ahata and land measuring 43 Bighas 9 Biswas situated at Patiala in favour of Udai Singh and Jayadeep Kaur of party No.2 being L.Rs of Amrit Kaur defendant on terms incorporated in the compromise.”

On careful reading of the paragraph of the affidavit under reference, it is to be noted that the deed of compromise and amicable

settlement between the parties is not being disputed, rather it has been written that the compromise deed has been read over, understood and signed by the parties. The argument of learned counsel that reference is to the relinquishment of share in the properties situated at Patiala city only is partially correct. It may be noted that these affidavits were filed in RSA No.18 of 1996, which was only with respect to division of the property situated at Patiala city. Hence, in the affidavit, a reference is to the property situated at Patiala has been given. Learned counsel for the objector could not point out as to how the compromise is not lawful.

The deed of compromise is a contract between the parties, which is filed in the court during the pendency of the litigation. Such compromise can be unlawful only as per the provisions of the Contract Act. In the present case, learned counsel failed to point out any provision of the Contract Act which makes the deed of settlement (contract) unlawful.

Next argument of learned counsel for the objector is that the compromise deed since deals with immovable property more than Rs.100/-, therefore, it is compulsorily registrable.

It may be noted that the enforceability of a decree passed unless registered, on the basis of a compromise is a question which would arise once a decree is passed. The deed of compromise even if dealing with the immovable property which subject matter of litigation does not require registration. On careful perusal of Sections 17(2)(vi) of the Registration Act, 1908 it is apparent that even a decree or order of the court made on a compromise and comprising of immovable property worth more than Rs.100/- is not required to be registered unless the decree passed on the basis of compromise also includes the property which is not subject matter

of the suit or proceedings. Hence, the deed of compromise is not required to be registered.

Next objection of the objector is that the compromise deed has not been acted upon. This is a factually incorrect contention of the objectors. Party No.2 was to pay Rs.3,43,75,000/- which has admittedly been paid. Party No.2 was not required to take any further step or take any action. Even as per Clause 15 of the compromise deed, which has been extracted above, the compromise would stand terminated only if the payment is not paid within reasonable time. Thus, the eventuality for termination of compromise between the parties as provided for has admittedly not arisen. Hence, the compromise deed cannot be said to have become unenforceable.

Next argument of learned senior counsel appearing for the objector that only all the parties to the litigation can entered into a settlement and not some of them also does not have substance.

In the considered view of this court, the language of Rule 3 of Order 23 of the Code of Civil Procedure rather lays down otherwise. The suit can be adjusted wholly or in part. Opportunity has been given to the parties to settle the dispute which is pending in the court in entirety or in part. Obviously this clearly means that the compromise can be between some of the parties to the litigation or a part of the dispute involved. On reading of the provision, it is apparent that there is no bar on the court to accept the compromise which has been arrived at between some of the contesting parties. This would also be in accordance with the public policy which encourages resolution of the dispute by mutual settlement. No doubt,

3rd proviso to Rule 3 of Order 23 of the Code of Civil Procedure as

applicable to the State of Punjab, Haryana and Union Territory of Chandigarh uses the words “all the parties” but however that proviso deals with the adjournment. It has been provided that if adjournment is being given the court shall proceed to hear those witnesses who are already in attendance. The words “all the parties” has not been used in the main provision of Rule 3 of Order 23 of the Code of Civil Procedure, therefore, proviso cannot be read in a manner to give a different meaning to the main provision.

Next arguments of learned counsel for the objector is to the effect that in a suit for partition, some of the parties cannot be allowed to enter into a settlement particularly when it effects the rights of remaining parties. The argument of learned counsel for the objector is attractive on first blush, however, on careful scrutiny does not stand to logic. The compromise between some of the parties no doubt should not effect the non-signatories and therefore, their rights would remain intact and unaffected. Counsel for the objector submitted that rights in the land comprised in specific khasra numbers has been relinquished by Party No.2 in favour of Party No.1 and therefore, the rights of non signatories would be effected.

On the other hand, learned counsel appearing for Party No.2 who is supporting the compromise has submitted that all the parties would become co-sharers and the compromise deed be read in a manner that it would not effect the rights of the non signatories. In view of the aforesaid contention of learned counsel, no further deliberation are required.

Next argument of learned counsel is with respect to effect that compromise deed is not result of free consent. However, on reading of the objection petition, it is apparent that it is nowhere pleaded by the objectors

that the compromise deed was not on account of free consent. Each page of the compromise deed is signed by all the signatories spread over 15 pages and the compromise deed is also signed by two advocates as marginal witnesses. Still further for a period of more than 8 years, no objection was ever raised by the signatories. Payment has also been made as per the compromise deed and received by members of Party No.1.

Next argument that there should be an enquiry by the court about correctness of the compromise deed before the court passes of decree based thereon, is also without substance.

Order 23 Rule 3 of the Code of Civil Procedure only provides that once a compromise deed is alleged by one party and denied by other party, the court shall decide the question. In a particular case, further enquiry, may be necessary but in the present case, this court finds that no further enquiry or investigation is required. The compromise deed is in writing, signed by the parties who are educated belonging to affluent families represented by senior counsels. It is not the allegation that compromise deed is either not signed or is result of misrepresentation. Further Party No.1 has already received the payment as agreed to under the deed of settlement/compromise deed. Hence, no further enquiry is required.

Mr. Sobti, learned counsel who appears for respondents no.2,4,5 and 6 in RSA No.18 of 1996, has submitted that the compromise is arrived at by the parties to put an end to the litigation. Since, through this compromise deed the litigation is not coming to an end, therefore, the compromise should not be accepted.

The Court has considered the submission, however, find no substance therein. The litigation qua the parties who have entered into deed

of settlement is coming to an end. Therefore, learned counsel is not correct in submitting that the litigation is not coming to an end. The courts are already over burdened and such compromise deed/settlement are in accordance with the public policy. Accordingly, Questions No.1 and 2 are answered in favour of Party No.2. The compromise deed shall form part of the decree to be issued by this Court.

QUESTION NO.(iii)

Learned senior counsel for the appellant has submitted that the decree passed in the first suit filed by Gulab Kaur, details of the property at Patiala was referred to only as 3 kothis and, therefore, plaintiff can in the present suit only claim relief qua the aforesaid 3 kothis situated at Patiala.

On the other hand, learned senior counsel appearing for the respondents has submitted while referring to plaint and written statement that a new case is sought to be set up by the learned senior counsel for the appellant. He drew attention of the court to paragraphs 3, 5, and 6 of the plaint, wherein plaintiff has sought partition and allotment of separate share of 3 kothis along with the land attached thereto which is part of the entire complex. He has further drawn attention of the court to the fact that in Patiala, it has been specifically pleaded that late Sh. Gobinder Singh Sibia had no other property. He submitted that the assertions made in the plaint have not been denied or disputed by the defendants-appellants. He further submitted that the entire complex which consist of separate constructed portions is one compact unit known as "Sibia House". He further submitted that even when the defendants-appellants filed suit in High Court of Himachal Pradesh, property was referred to as Property No. 'H' in the Annexure 'B' which has already been extracted by this Court. Before the

High Court of Himachal Pradesh no dispute in this regard was raised.

Once it is established that identification of the property was not even an issue between the parties before the courts below and from careful reading of the pleadings, it is established that the property located at Patiala referred to in the suit filed in the year 1956 was clearly understood between the parties, the defendants-appellants cannot be permitted to now raise a dispute on this aspect of the matter.

Learned counsel for the appellants was requested to explain if the 3 kothis and the land is separate. He referred to a lay out plan filed with the plaint Ex.PW3/A which proves that there are as many as 5 separate constructed portions in one complex. The complex in which all these separate constructions exist is one. It is the only property owned by late Sh. Gobinder Singh Sibia. Still further, if one looks at the lay out plan, which has been filed in this suit, as well as in the suit which was filed in the year 1956 by Gulab Kaur (although not exhibited), it is apparent that the property sought to be partitioned is same. Therefore, there is no force in the argument of learned counsel for the appellants that since the decree of 1964 which was affirmed by the Hon'ble Supreme Court on 25.10.1976 is binding between the parties and the suit filed for partition of the property cannot be dismissed on the ground that the description of the property in the previous judgment has not been elaborately given.

Question no.(iii) is answered accordingly.

QUESTION NO.(iv)

Learned counsel for the appellant submitted that late Sh. Gopinder Singh Sibia was not party to the litigation started in the year 1956 by Gulab Kaur. He submitted that the judgment of the trial court which has

been affirmed by the Hon'ble Supreme Court cannot bind Gopinder Singh Sibia. He further referred to the judgment passed by the Senior Subordinate Judge, Sangrur while deciding Civil Suit No.237 dated 19.10.1965, decided on 16.08.1976 wherein it has been found that the rights in the residential complex would not be affected by the judgment passed in Civil Suit No.67 of 1960, which has been affirmed by the Hon'ble Supreme Court in the year 1976.

Before this court deals with the contentions, it would be appropriate to note that Gopinder Singh Sibia, Surinder Singh, minor sons of Surjit Inder Singh Sibia and Amrit Kaur their mother had filed a suit for injunction against Jaswant Kaur and Palwinder Kaur in the civil court at Sangrur. Although, relief of only injunction was prayed for but the court framed the following issues:-

- “1. Whether Smt. Jaswant Kaur could not be the legal representative of Smt. Gulab Kaur in Civil Suit No.67 of 1960? If so, to what effect?*
- 2. Whether Smt. Surjit Kaur is the wife of Surjit Inder Singh and Gopinder Singh and Surrinder Singh plaintiffs are the sons of Surjit Inder Singh? OP*
- 3. Whether Amrit Kaur plaintiff is the owner in possession of 53 bighas 9 biswas of land in Ram Nagar as described in annexure A?OP*
- 4. Whether Surinder Singh, plaintiff is the owner in possession of 102 Bighas 4 biswas of land in Ram Nagar Sibia as described in Annexure B?OP*
- 5. Whether Gobinder Singh Plaintiff is not the owner of 91*

*bighas 6 biswas in village Munshiwala as described in
Annexure C?OP*

6. *Whether Surjit Kaur plaintiff is not the owner in
possession of 1927 kanals 9 marlas of land situated in
village Kherakhamba-bati as described in Annexure
D?OP*
7. *Whether Gopinder Singh is the owner and in possession
of 644 bighas 9 biswas of land in village
Kherakhambawali as described in Annexure e?OP*
8. *Whether Amrit Kaur and Gopinder Singh plaintiffs have
becomes the woners of 1827 kanals 9 marlas as
described in Annexure B and 644 bighas 9 biswas as
described in Annexure E?OP*
9. *Whether Surinder plaintiff is the owner of the house at
Simla known as 'Kannel Worth' as described in No.6 of
the head note of the plaint?OP*
10. *Whether Surrinder Singh plaintiff has become owner of
the house "Kannel Worth at Simla by adverse
possession?OP*
11. *Whether Kothi situated at Patiala and as mentioned in
No.7 of the heading of the plaint was given to gobinder
Singh by late His Highness Maharaja Adheraj of Patiala
on the condition that Gobinder Singh and his male
progeny shall have the right of residence and gobinder
Singh would not be entitled to alienate it, if so, what is
its effect?*

12. *Whether the description of the property in suit No.67 of 1960 was vague and highly indefinied, if so, with what effect?OP*
13. *Whether the decree passed in suit No.67 of 1960 is binding against the plaintiffs.*
14. *Whether decree passed in suit No.67 of 1960 has been satisfied, if so, with what effect?OP*
15. *Whether the suit is collusive and malafide?OP*
16. *Whether the transfers mentioned in paras Nos.11 to 15 of the plaint are in contravention of the provisions of Pepsu Tenancy Act? And if so, with what effect?OD*
17. *Whether the transactions mentioned in para no.11 to 13 of the plaint are sham and paper transactions?OD*
18. *Whether the transactions mentioned in paras Nos.11 to 15 of the plaint have been declared invalid by the authorities under Pepsu Tenancy Act and this court has no jurisdiction to entertain and decide the matter?OD*
19. *Whether transactions mentioned in para 11 to 15 of the plaint have been declared void by competent court and if so, with what effect?OD*
20. *Whether the suit property is ancestral in (not legible) of S. Gobinder Singh and as such he had no (no legible) to alienate the same?*
21. *Whether the plaintiffs are in possession of the suit land?OPP*
22. *Whether the plaint has not been properly verified?*

23. *Whether defendant no.1 was the owner of the property in dispute to the extent of ½ share as an heir on the death of Sardar Gobinder singh (i.e. 20.12.54)OI*
24. *Whether the plaintiff are estopped from filing the present suit by their own Acts and conduct?OD*
25. *Whether the court has no jurisdiction to try the suit in respect of land in Kherakjamba Wali and Simla?OD*
26. *Whether the suit is bad for non joinder of causes of action?OD*
27. *Whether the plaintiffs are entitled to the injunction prayed for?OP*
28. *Whether the alienations were made by Surjit Inder Singh during the pendency of previous suits No.12 of 1956/No.67 of 1960 is not binding on defendant No.1?OD*
29. *Whether the parties are governed by custom in matter of alienation and succession and what that custom is?OD*
30. *Relief.”*

The court decided Issues No.11 and 12 in favour of plaintiffs.

This judgment was not challenged in appeal. However, there is another round of litigation as after the decision of the civil court on 6.10.1976, another suit was filed before the High Court of Himachal Pradesh by Surinder Singh, Gopal Inder Singh and Amrit Kaur. Gopinder Singh had already died issueless on 06.06.1978. 2 of plaintiffs were same as were in the civil suit No.237 decided on 16.08.1976. In the suit before the High

Court of Himachal Pradesh which was numbered as 40/1979, plaintiffs claimed that the judgment and decree which has been affirmed upto Hon'ble the Supreme Court vide judgment dated 26.10.1976 is not binding to the extent the properties were covered by Civil Suit No.237 of 1976 decided on 16.08.1976.

Before the High Court of Himachal Pradesh litigation was hotly contested and as already noticed except properties referred to as 'D, E and F', the suit filed by the plaintiffs was dismissed. In the aforesaid suit, while giving details of the properties, kothis situated at Patiala was referred to as "Sibia House". Learned Single Judge who decided the suit vide judgment dated 03.12.1986 held that the property mentioned in Annexure 'B' at Sr. No.'H' was allotted to Gobinder Singh Sibia for his residence and that of his male progeny and, therefore, the plaintiffs in the suit before the High Court of Himachal Pradesh do not have any independent title. The relevant discussion of the learned Single Judge is in paragraph 26, which is extracted as under:-

"26. Property at item No.H of Annexure – B.

The testimony of PW2, Paramjit Singh proving Roznamcha Ex.P-1 establishes that property H had been granted by Maharaja Patiala to Gobinder Singh in the year 1934 for his residence and that of his male progeny. Plaintiffs No.1 and 2, being sons of Surjit Inder Singh are, therefore, basing their claim to this property in that capacity alone. In other words, these plaintiffs cannot be said to have any independent title in this property. Moreover, in any case, this property was granted to them

for residence only and it is not clear as to how they can claim to have become full owners thereof. Here also, the plaintiffs must fail as they are bound by the Supreme court judgment dated October 25, 1976 and cannot derive any benefit from the judgment Ex.P-8 in civil suit No.237. In fact, it was incumbent upon Surjit Inder Singh to have raised such pleas as were available to him in contesting the defendants' right to this property in civil suit No.67 and to that extent, the present plaintiffs must be held to be barred by the doctrine of resjudicata in claiming any right to this property.”

The aforesaid judgment passed by the learned Single Judge was affirmed with regard to property in Annexure 'B' at Sr. No.'H' was confirmed. As already noticed civil Appeal No. 325 of 1996 was also dismissed by the Supreme Court. Thus, the judgment passed by the learned Single Judge was affirmed except addition of one property described in Annexure 'B' at Sr. No.'E'.

Now this court has to examine which judgment has to prevail.

No doubt, the courts below have not dealt with the aforesaid issue in an appropriate manner. Learned Additional District Judge has held that the judgment, which has been passed by the Hon'ble Supreme Court on 25.0.1976, upholding the judgment of the trial court in the year 1974 being judgment of the superior court, the judgment passed by the Senior Subordinate Judge at Sangrur, decided on 16.08.1976 was merged in the same. The reasons given by the first appellate court is not very sound. The decree passed by the superior court merges only if there is an appeal against

the aforesaid judgment. However, in the aforesaid case, there was no appeal against the judgment dated 19.08.1976 passed in civil Suit No.237. However, the complex issue has to be get resolved. There is other litigation at High Court of Himachal Pradesh wherein with respect to the property at Patiala, the judgment passed in civil Suit No.235 dated 16.08.1976 has been held to be not applicable in view the Supreme Court judgment.

This court after analysing the judgments passed by the High Court of Himachal Pradesh confirmed by the Hon'ble Supreme court as well as judgment passed by Senior Subordinate Judge, Sangrur while deciding Civil Suit No.237 have come to a conclusion that since the entire property was owned or allotted to the common ancestor, namely, Gobinder Singh Sibia and plaintiffs or the defendants do not claim any independent title, hence, the judgment passed by the Hon'ble Supreme Court dated 25.10.1976 affirming the decree passed by the Senior Subordinate Judge in the year 1964 as also the judgment passed by the Hon'ble Supreme Court in Civil Appeal No.325 of 1998 decided on 14.02.2003 while affirming the judgment of the High Court of Himachal Pradesh in the litigations between the parties would prevail and defendants-appellants cannot claim benefit under the judgment in Civil Suit No.237 dated 16.08.1976 which is only in a suit for permanent injunction.

In fact, the parties to the litigation ought to have brought to the notice of the Hon'ble Supreme court the judgment dated 16.08.1976 passed by the Senior Subordinate Judge, Sangrur, to avoid any further litigation. Accordingly, this question is answered against the defendants-appellants.

QUESTION NO.(v)

Last argument of learned counsel is with regard to mesne profit

which has substance. In the Code of Civil Procedure, mesne profit has been defined in Sub-Section 12 of Section 2 of the Code of Civil Procedure, which is extracted as under:-

'Mesne profits' of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvements made by the person, in wrongful possession".

In the present case, the courts below have decreed mesne profit with regard to the rent received by Surinder Singh, defendant no.2 from Punjab State Warehousing Corporation with respect to an open platforms constructed for storing foodgrains in the area of village Ram Nagar Sibia.

It is apparent from the record that the property situated in village Ram Nagar Sibia has not been partitioned till date. The plinths/platforms which have been got constructed by Surinder Singh after spending the amount from his own pocket. In the present case partition proceedings have not been finalized. Still further, it is clearly provided in Sub Section (2) of Section 12 that mesne profit shall not include profits due to improvements made by the person in wrongful possession. Even if Surinder Singh is presumed to be in wrongful possession, although he is not, still improvements have been made by Surinder Singh and therefore the decree for mesne profit could not be granted by the courts below particularly when it is not in dispute that Surinder Singh alone had made improvements.

A co-sharer can not be held to be in unauthorised possession

and hence he is not liable to pay mesne profit. Mesne Profits are granted under Order 20 Rule 12 of the Code of Civil Procedure. In the considered opinion of this court, since the mesne profits have been defined in Sub-Section 12 of Section 2 of the Code of Civil Procedure, the Civil Court only has jurisdiction to award mesne profit only if such amount falls within the definition of mesne profit. Otherwise, the suit filed by the plaintiffs could only be decreed for damages under the common law. In the present case, no damages under common law have been claimed. Accordingly, the decree for mesne profit is set aside, whereas remaining judgment and decree is upheld.

Defendant-Mohan Lal has filed another appeal against the concurrent findings of fact.

Mr. Anupam Gupta, learned senior counsel appearing for Mohan Lal has made the following submissions:-

- (i) That the purchase of property during the pendency of the suit does not make the sale/alienation void but it is only subservient to the result of litigation.
- (ii) That the suit filed by Gulab Kaur cannot be said to have been instituted on 12.05.1956 as Gulab Kaur initially had filed a suit on the basis of customary law claiming life interest of a issueless widow which was subsequently amended and on enforcement of the Hindu Succession Act her share enlarged into absolute ownership.

As regards first submission there is hardly any dispute as the sale during the pendency of the litigation is not void or illegal. The alienation so made is only subservient to the result of the pending suits.

The second contention is being dealt with under Question No. (vii).

QUESTION NO.(vi)

Learned senior counsel appearing for the appellants also submitted that late Sh. Gobinder Singh had in fact gifted the property situated at Patiala to Surjit Inder Singh Sibia before his death. Thereafter Surjit Inder singh had gifted the property to Gopinder Singh, his son on January 28, 1958. In the courts below, defendants-appellants have taken a stand that the property was allotted to late Sh. Gobinder Singh Sibia by the then Maharaja of the State for residence and for residence of the male progeny. Further in previous litigation/suit at Shimla, this aspect has already been examined and hence cannot be permitted to be re-agitated.

Learned senior counsel while drawing attention of the court to the order passed by the Hon'ble Supreme Court on 14.01.2003 has submitted that the Hon'ble Supreme Court had granted him permission to raise points in the partition suit. Therefore, the findings of the court in the decree which had been passed in Civil Suit No.67 of 1960, decided in the year 1964 as also the judgment and decree passed by the High Court of Himachal Pradesh would not operate as resjudicata.

In the considered view of this court, the argument of learned senior counsel is erroneous. Operative part of the order passed by the Hon'ble Supreme Court dated 14.01.2003 is extracted as under:-

“Shri C.S.Vaidyanathan, learned senior counsel appearing on behalf of the appellants urged that the properties in dispute in Suit No.67 of 1960 being other than the properties involved in Suit No.40 of 1979, the

High Court committed error in holding that the decree passed by this Court is binding. We do not find any merit in the submission. In paragraph 1 of the plaint in Civil Suit No.40 of 1979, the appellants stated thus: "That the predecessor-in-interest of the present defendant had filed a Civil Suit No.67 of 1960 against Sardar Surjit Inder singh of Sangrur, the predecessor-in-interest of the plaintiffs in the court of Senior Sub-Judge, Sangrur (Punjab) for declaration of her half share in certain properties including the properties in the present suit." This paragraph unmistakably admits that the properties involved in the Civil Suit No.40 of 1979 were the same as the properties in dispute in the earlier Civil Suit No.67 of 1960 filed by the predecessor-in-interest of the defendant. Further, nowhere in the plaint, it has been asserted or any evidence led to that effect that the properties in Suit No.67 of 1960 were different from the properties involved in Civil Suit No.40 of 1979 filed by the appellants. The trial court, as well as the High court, both have recorded a finding that except in regard to the properties mentioned at Sl. Nos.'D'. 'E' and 'F', the properties involved in the suit are the same as involved in Civil Suit No.67 of 1960. This being a finding of fact, is not liable to be interfered with. We find no merit in the appeal. It is accordingly, dismissed. There shall be no order as to costs.

After the judgment was dictated, learned senior counsel appearing for the appellants urged that liberty may be given to the appellants herein to raise the questions involved, in this appeal in the partition suit. We do not express any opinion on this matter. It is open to the appellants to raise such questions as are permissible under the law.”

On careful reading of the aforesaid order, it is apparent that the Hon'ble Supreme Court had dismissed the appeal. After the judgment was dictated, a request was made but the court did not express any opinion. It was only observed that it is open to the appellants to raise such questions as are permissible under law. Such observations cannot be read to mean that the permission has been granted to the party who has lost upto Supreme Court to once again agitate the questions which have already been decided by the Supreme Court and have become final.

Learned counsel for the appellant further submitted that the application filed by his clients before the Division Bench seeking permission to amend, was rejected and, therefore, issue of transfer of the property in favour of predecessor of his clients was not examined by the court.

This Court has considered the submission, however, find no merit therein.

Once Division Bench of the Himachal Pradesh High Court has dealt with, the issue with regard to transfer of the property before the suit in 1956 came to be filed and rejected the contention after specifically dealing with the same, the plaintiff now at this stage, cannot be allowed to

re-agitate the aforesaid point. Reference in this regard can be made to paragraph 14 as well as 17 of the judgment passed by the Division Bench of High Court of Himachal Pradesh, which are extracted as under:-

“14. Yet another contention is advanced by learned counsel for the appellants. The items marked as B & C in the plaint were subject matter of a suit No.168/53 filed by Surjit Inder Singh against his grand father Gobinder Singh. That suit was for injunction restraining the defendant therein from interfering with the possession of the plaintiff. There was a compromise between the parties thereto. The compromise is marked As Ext.P/41. As per the said compromise Gobinder Singh acknowledged the right of Surjit Inder Singh his grand son in the said items. Thus, as per the compromise decree Surjit Inder Singh was found to be the owner of those two items. According to the learned counsel that decree declared the right of Surjit Inder Singh and the decree in C.S.No.66/60 will not affect his rights as the two items did not form part of the estate of Gobinder Singh. According to learned counsel, the suit filed by Gulab Kaur and continued by Jaswant Kaur related only to the estate of Gobinder Singh and whatever decree was passed therein was confined only to such estate. We are unable to accept this contention. There is a fallacy in this contention. When a decree is passed in C.C. No.67/60, it is not merely in the abstract with reference

to an estate of Gobinder Singh but it is a decree with reference to a specific in items mentioned in the decree. These two items were admittedly part of the said items in that suit. Hence, when that decree declares the right of the plaintiffs to half share of those items and also entitles her to joint possession of those items it cannot be defeated by saying that the decree related only to Gobinder Singh's estate and these two items did not form part of such estate. Surjit Inder Singh should have put-forward that contention in c.S.No.67/60 and got a finding thereon. As he had omitted in that suit to put-forward that contention, it is not open to him or to his successor in interest to raise that contention in the present proceedings.”

17. We have no hesitation to agree with the said proposition as it is well settled. Hence, in this case was hold that the it is not open to the plaintiff to contend that the two items of properties did not form part of the estate of Gobinder Singh and therefore, the decree is not binding on them.”

In view thereof, once the High Court of Himachal Pradesh itself has held that the parties cannot be permitted to once again agitate the issue, therefore, now in this litigation also, on the basis of same analogy, this court cannot permit the appellant to raise this contention particularly when the judgment by the Division bench of the Himachal Pradesh High Court has already been affirmed by the Hon'ble Supreme Court in civil Suit No.325 of

1998, decided on 14.01.2003.

RSA No.2651, 2652, 3803, 4868 and 5413 of 2017

Defendants are in the regular second appeals against concurrent findings of fact arrived at by the courts below. RSA 2652 of 2017 has been filed by defendants no.1 to 5. In this case, plaintiffs had filed a suit claiming succession to the share of late Smt. Jaswant Kaur on the basis of a registered Will executed by her dated 21.01.1980. Defendants no.1 to 5 are not claiming any succession in the estate of Jaswant kaur. However, learned senior counsel appearing for the appellants has submitted that the present suit was barred under Order 2 Rule 2 and under Section 12 CPC. He has further submitted that since property situated in Patiala is already subject matter of a previous suit, therefore, since remaining property which is subject matter of suit is not located at Patiala, therefore, the courts at Patiala did not had territorial jurisdiction. He further submitted that objection has been taken in paragraphs 5 to 9 that the decree passed in the year 1964 is vague. Further relief of partition of the agricultural land is not maintainable in view of Section 158 of the Punjab Land Revenue Act. He further submitted that the property at Patiala which is known as Sibia House was in fact gifted to Gopinder Singh and therefore, the decree of 1964 has no effect as Gopinder Singh was not party to the aforesaid litigation. He further submitted that the proper parties have not been added/impleaded and therefore the suit is liable to be dismissed on the ground of mis-joinder of parties. He further submitted that the suit filed by the plaintiffs for mesne profit could not be decreed as the property has never been partitioned between the co-owners/co-sharers.

On the other hand learned counsel for the respondents while

drawing attention of the court to the paragraph of the plaint where cause of action pleaded in the present suit, has submitted that cause of action to file the present suit arose when Jaswant Kaur died. He submitted that the present suit from which this appeal has been filed is to resolve inter-se dispute between the legal heirs of Jaswant Kaur. Hence the suit is neither barred under Order 2 Rule 2 CPC nor under Section 12 of CPC. He further submitted that this suit was filed because the previous suit filed with regard to partition of the property situated in Patiala had been dismissed for non-prosecution, which of course, was later on restored. He submitted that once a part of the property in question in the civil suit is situated/located within territorial jurisdiction of one particular court, the court has the territorial jurisdiction even if the other properties are located outside the territorial jurisdiction of that Court. He further drawn attention of the court to the fact that no objection in this regard was taken and this question was not subject matter of any issue before the courts below. He further submitted that the issue with regard to the decree being vague or un-executable with reference to property situated in Patiala, which is known as “Sibia House” has already been finally decided and therefore, cannot be again agitated. He further submitted that partition of the agricultural land has not been sought for. He further submitted that it was claimed in the written statement that Gopinder Singh had in fact been gifted the property by Gopinder Singh before filing of the first suit by Gulab Kaur on 12.05.1956. He further submitted that the issue with regard to property situated in Patiala has already been settled not only by the Supreme Court in the year 1976 but by subsequent judgment by the Himachal Pradesh High Court where this issue was specifically contested and decided against the

defendants i.e. legal heirs of Surjit Inder Singh which has also been upheld by the Hon'ble Supreme Court in a Civil Appeal No.325 of 1998 decided on 14.01.2003. He further submitted that all the proper parties have been impleaded. He further submitted that once at village Ram Nagar Sibia, defendants are in possession of the property and they have constructed open godowns by constructing plinth/platform for storing foodgrains. Therefore, the rent which is being received by the defendants has to be given to the plaintiffs to the extent of ½ share being share of Jaswant Kaur.

As regards first argument, it is apparent that in the present suit, plaintiffs have pleaded a cause of action which arose after the death of Jaswant Kaur. Such cause of action was not available when previous litigation was filed. Basically the present suit is for resolving the dispute inter-se between the legal heirs of Jaswant Kaur on the basis of registered Will dated 25.01.1980 which was not the cause of action in the previous suits. Hence, bar under Section 12 or under Order 2 Rule 2 CPC would not be attracted.

Objection to the territorial jurisdiction, is liable to be rejected on 2 grounds:-

- (i) there was no issue before the courts below.
- (ii) Section 18 of the Code of Civil Procedure clearly provides that where the immovable properties located within the territorial jurisdiction of different courts is sought to be got decided, a suit can be filed at any place within the local limits of whose jurisdiction any immovable property or portion thereof is situated. One of the property is situated in Patiala, therefore, the suit is

maintainable.

As regards identity of the property situated in Patiala and to the extent thereof, the matter has already been resolved by this court in the previous part of the judgment while dealing with RSA No.18 of 1998, therefore, for the reasons discussed above, there is no force in the submission of learned senior counsel for the appellants.

As regards partition of the agricultural land and bar to the jurisdiction of the civil court, it may be noted that both the courts below have not granted the relief of partition of the agricultural land. Parties have been left to resort to their remedies for partition of the agricultural land before the authorities constituted under the Punjab Land Revenue Act, 1887.

The litigation before the Himachal Pradesh High Court has already decided the aforesaid issue and therefore, operates as resjudicata against the defendants as predecessor-in-interest of the defendants were party to the aforesaid litigation. In one of the appeals Sandeep Singh is appellant and is signatory to the compromise deed.

QUESTION NO.(vii)

As regards next issue on which learned counsel has addressed elaborate arguments. It may be noticed that Gulab Kaur when filed the suit she had made two alternative prayers. One was for grant of decree for maintenance at the rate of Rs.1000/- per month and second was for passing a decree for possession of half share of the property. Thus, later on Smt. Gulab Kaur gave up her right to claim maintenance and proceed with the suit which was filed for half share of the property. In such circumstances, the suit cannot be said to have instituted on the day the amendment was

allowed because the original suit itself was for half share in the immovable property. Attention of the Court has not been drawn to any document which supports the contention of learned senior counsel for the appellant.

In view thereof, there is hardly any scope for interference.

RSA No.462 of 2012 (Shivinder Singh vs. Mohan Lal and others)

Respondent-plaintiff Mohan Lal is a purchaser of land from Palwinder Kaur alias Ravinder Kaur alias Gobinder Kaur vide sale deed dated 05.12.1967. Surjit Inder Singh had sold property to Palwinder Kaur on 19.05.1956. This sale in favour of Palwinder Kaur was during the pendency of first suit filed by Gulab Kaur on 12.05.1956. The sale in favour of Palwinder Kaur vendor of plaintiff-respondent is governed by rule of lis pendence. Sale deeds/alienations during the pendency of a suit are subservient to the result of the pending litigation. Lengthy arguments have been addressed by learned counsel for the parties. Mohan Lal plaintiff-respondent had only sought decree for permanent injunction restraining the defendants from alienating any part of agricultural land measuring 35 bighas 18 biswas puktha which was subject matter of property purchased by him from Palwidner Kaur and have also prayed for injunction against other party from interfering in his lawful, peaceful and continuous possession.

As regards relief of permanent injunction, restraining the other co-shares from selling the land comprised in khasra numbers which have been sold to him is not maintainable as Mohan Lal has stepped into the shoes of Palwinder kaur who in turns stepped into the shoes of Surjit Inder Singh. Property is joint as held by the Hon'ble Supreme Court and Gulab Kaur has been held entitled to half share of the property. Any sale or alienation made by a co-sharer even if with respect to land comprised in

specific khasra numbers would ultimately be sale of an undivided share from the joint property. The rights of Mohan Lal are subject to rule of lis pendence in first suit filed by Gulab Kaur decided by the Hon'ble Supreme Court in the year 1976.

As regards next relief which has been prayed by Mohan Lal, respondent-plaintiff, it may be noted that once a co-sharers has put his subsequent vendee in possession of the property may be of undivided share, the vendee is entitled to protect his possession subject to partition. Hence While the appeal filed by the appellant-defendant is disposed of in the manner indicated above. It may be noted that the application for additional evidence has been filed by the defendant-appellant for permission to produce in additional evidence copies of judgment passed by the trial court and the first appellate court in a separate suit filed between the parties. It may be noted that the aforesaid judgments which are sought to be produced in additional evidence are subject matter of separate appeal before this court and being decided in this bunch only. Hence while dismissing the application the effect of the judgments passed by the courts have been noted, however, the aforesaid judgments do not advance the case of the appellant.

QUESTION NO.(viii)

Dispute in the present set of appeals is mainly revolving upon the registered Will executed by Smt. Jaswant Kaur dated 21.01.1980.

Both the courts have upheld the Will after recording a finding that execution of the Will has been proved on examining attesting witness Inder Singh as PW13, Sub-Registrar Baldev Singh, who registered the Will has been examined as PW5. Apart from that signatures of Smt. Jaswant

Kaur have been proved through examination of Handwriting and Finger Print Expert PW11.

Learned senior counsel appearing for the appellant in RSA No.3803 of 2017, has submitted that the Will is not proved to have been executed in accordance with Section 63(c) of the Indian Succession Act and also not proved in the court in accordance with Section 68 of the Evidence Act. While elaborating learned senior counsel submitted that attestation of the Will has been proved but the witness Inder Singh has not stated that he had signed and attested the Will on the directions of the testator. In support of his submission, he relied upon judgment passed in RSA No.5252 of 2012 (Kanwaljeet Kaur vs. Joginder Singh Badwal (deceased through Lrs) and others, decided on 13.12.2016 by a Coordinate Bench which was also followed in RSA NO.5041 of 2011 (Sadhu Singh (deceased through Lrs v. Gurdeep Singh and others), decided on 01.03.2018. Both these judgments in turn rely upon judgment of the Hon'ble Supreme Court in Janki Narayan Bhoir vs. Narayan Namdeo Kadam, 2003(2) SCC, 91. This court has carefully read the judgments passed, wherein no doubt while relying upon the judgment passed by the Hon'ble Supreme Court in Janki Narayan Bhoir (supra), the court has held that the witness must depose in his testimony before the court while proving the Will that he attested the Will on the directions of the testator. With due respect to the learned brother, the Hon'ble Supreme court while interpreting Section 63 of the Succession Act and Section 68 of the Evidence Act does not as a ratio decidendi lay down, the attesting witness must in his testimony while appearing as witness in the court state that he attested the Will on the directions of the testator.

However, before deliberating on the aforesaid aspect, it would be appropriate to notice Section 63 of the Indian Succession Act, 1925 and Section 68 of the Evidence Act, 1872 which are extracted as under:-

Indian Succession Act, 1925

63. Execution of unprivileged wills.-Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules:-- (a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction. (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will. (c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

The Evidence Act, 1872

**68. Proof of execution of document required by law
to be attested:-**

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence :

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

On careful reading of Section 63(c) of the Succession Act, it is apparent that Section 63(c) can be divided into 3 parts. First part deals with attestation of the testament by 2 or more witnesses, each of whom has seen testator signed or affixed his mark to the Will; (ii) or has seen some other persons signed the Will in the presence and by directions of the testator: (iii) or has received from the testator a personal acknowledgement of his signature or mark or the signatures of such person and each of the witness shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time and no particular form of attestation shall be necessary.

Thus, from careful reading of part (ii), it is apparent that

whenever the testament is signed by some other person and not by the testator, it is mandatory that some other person has signed the testament in the presence and by the directions of the testator. The word “directions” has not been used in any other part. The word “by the directions” cannot be read along with first part also. Even otherwise, once a witness has been called/invited to come and attest the testament, the direction/request to attest the Will is implicit. On careful reading of Section 63(c), there is no manner of doubt that part (i) of the provision which have been segregated above does not provide for or uses the word “by the direction” of the testator. In fact, by the direction of the testator has been used only in an eventuality when testator has not signed or put his mark on the Will but someone else on his behalf has signed the Will. In such circumstances, it is necessary to prove that the testament was signed in the presence and by direction of the testator. This court has also carefully read the judgment passed by the Hon'ble Supreme Court in the case of Janki Narayan Bhoir(supra). The Hon'ble Supreme Court was interpreting provisions of Section 68 of the Evidence Act in a situation when only one attesting witness has been examined. It was held that if only one attesting witness has been examined, he has to prove attestation of the Will by both the witnesses. In other words, one attesting witness who has been examined is required to testify that the testator signed in the presence of both the witnesses and attesting witness signed in the presence of the testator.

In view of the requirement of the statutory provisions as dilated upon, this court is of the view that the judgments passed in the aforesaid 2 appeals are per incuriam.

Learned senior counsel has further submitted that second

attesting witness Parminder Singh has not been examined in evidence. He has also submitted that Harbhajan Singh, the scribe has also not been examined. He further submitted that Manjit Singh one of the propounder has appeared but failed to answer most of the questions put to him in the cross-examination. He further submitted that Inder Singh, the attesting witness examined was employee of the beneficiary i.e. Teja Singh Mansahia (beneficiary under the Will) son of Jaswant Kaur. Hence, he submitted that such witness cannot be relied upon to prove execution of the testament. He further submitted that the signatures of the testator and attesting witnesses were not obtained before the Sub-Registrar and in fact these were obtained before the Registration Clerk employed in the office of Sub-Registrar. He further submitted that in the Will details of the property have been given, although, testator was not accompanied by any educated person. He has further drawn attention of the court to Ex.D27/A, Ex.D27/B, Ex.D27/C, Ex.D27/D, Ex.D27/E, Ex.D27/F, Ex.D27/K and Ex.D27/O to submit that Smt. Jaswant Kaur was not keeping good health and therefore, the Will is surrounded by suspicious circumstances.

In this regard, it may be noticed that second attesting witness Parminder Singh had died on 16.04.1982, death certificate is Ex.P37/A. Thus, Parminder Singh could not be examined by propounder as he had died before the evidence was led.

With regard to statement of Manjit Singh, it may be noted that he is no doubt a propounder/beneficiary of the Will, however, he is not attesting witness, therefore, testimony of Manjit Singh, failing to answer certain questions in the cross-examination about the testament or concerning previous testamentary documents does not advance the case of

the defendants-appellants.

As regards non-examination of Harbans Singh, the scribe, it may be noted that Harbans Singh had been won over, however, it is proved that the testator-Jaswant Kaur had signed in his register.

Next submission of learned counsel that the testator and attesting witness has not signed in the presence of Sub-Registrar.

It may be noted that registration of the Will is not mandatory. Still further execution and attestation of the Will by the testator and two attesting witnesses is separate than the act of getting the same registered. Some time there can be a gap of few days in between the execution and attestation of the Will by the attesting witnesses and registration of the Will. Thus, the registration of the Will is a separate independent act which is only optional. Still further, attention of this court has not been drawn to any provision which mandates that testator and the attesting witness must sign or put their thumb mark on the endorsement at the time of registration in the presence of the registering authority. The office of Sub-Registrar is one unit and other officers/officials posted therein help the registering authority to perform his functions. In such circumstances, even if the signatures/thumb impressions at the time of registration of the Will had been taken before the registration clerk, they would be deemed to have been taken at the time of registration. There is no evidence that when the registering authority registered the Will and put his signatures, he had not receive acknowledgment from the testator and other attesting witnesses present at the time of registration about the correctness of their signatures/thumb impressions.

Next argument of learned counsel that Jaswant Kaur being

illiterate could not have provided details of the property owned by her in the Will and she was not accompanied by any one else, is also without substance.

Jaswant Kaur had been litigating in various courts since 1956. Parties had twice travelled upto the Hon'ble Supreme Court and most of the time, litigation remained pending in more than one court. In such situation, it cannot be expected that Jaswant Kaur was not knowing details of the property owned by her. The testament, which is Ex.PW12/I is written on 8 pages and each page has been signed as well as thumb marked by Jaswant Kaur. The Will is scribed in Gurmukhi language (Punjabi) and Smt. Jaswant Kaur had also signed the testament in Gurmukhi language. She remained alive for a period of 3 years after execution of the Will. Therefore, reference of the learned counsel on various affidavits/attorney referred to by learned counsel for the appellants that she is unable to appear and depose before the court does not advance his case. The validity of the Will is to be examined with reference to the status of the parties and their expected exposure to the world. In the present case, Jaswant Kaur had previously also executed two testaments i.e. in the year 1977 and 1978. Still further the testament has not been executed in favour of stranger but in favour of her son and other heirs. It may be noted that late Smt. Jaswant Kaur, testator had bequeathed the property in favour of his two sons, daughter, grand children from the sons and some of the grand children from the daughter. Hence, the testament cannot be said to be unnatural. Some difference in the share granted to each of the heir cannot be treated with suspicion.

Last argument of learned counsel with regard to correctness of

the Will that Inder Singh was employee of Teja Singh and therefore, his evidence cannot be relied upon is also to be noticed and rejected.

Inder Singh has stated that he is now 82 years old and when he migrated from West Pakistan he came to Patiala and late Smt. Jaswant Kaur gave him permission to reside in Mansahia house. He has stated that he resided there about 4 years whereafter Jaswant Kaur shifted to other house along with his son Major Teja Singh. He has stated that he along with his family also shifted from that house two years thereafter to Triveni Chowk, Patiala. He stated that he kept on continuously visiting Smt. Jaswant Kaur. In view of such long association, Jaswant Kaur had obvious faith in Inder Singh, who was also almost of same age as of late Smt. Jaswant Kaur. Still further, Inder Singh is not a beneficiary under the Will. He has stated that registering authority (sub-Registrar) read the Will loudly so that late Smt. Jaswant Kaur may hear the same. He has further stated that Jaswant Kaur was having good physical and mental health at the time of execution of the Will and the Will was executed without any pressure or coercion. It may be noted that Inder Singh has also stated that Jaswant Kaur had another son Charanjit Singh and one daughter Rupinder Kaur but both have died.

It may further be noted that Harbans Singh, scribe of the Will had appeared as a witness to prove the execution of the Will in the previous litigation in between the parties and his statement is Ex.P33/A on the record of the suit. Harbans Singh had not only stated that the testament was scribed by him at the instance of Jaswant Kaur but he has also proved the entry in his register with respect to the testament executed by Jaswant Kaur at Sr. No.1313, wherein also Jaswant Kaur had signed as well as thumb marked the register. Harbans Singh has also stated that Jaswant Kaur was in

her senses and not under any pressure.

Learned senior counsel for the appellants has submitted that during the pendency of the previous litigation, Jaswant Kaur, testator had died and Teja Singh and others had filed an application for their impleadment as legal heirs on the basis of registered Will dated 20.01.1980. Another application was filed by Charanjit Singh and others for impleading them as natural heirs and disputed the genuineness of the Will set up by Teja Singh. Learned trial court framed issues and after granting opportunity to the parties to lead evidence, passed a detailed order on 29.04.1986 while recording a finding that the Will has been duly proved. Against the aforesaid order dated 29.04.1986, four revision petitions i.e. Civil Revision Nos.1577 to 1580 of 1986 which were allowed and question about the genuineness and the validity of the Will was left open.

This court or the courts below have not relied upon the order passed by the civil court dated 29.04.986. Execution of the Will by the testator, attestation of the Will by the attesting witness and registration of the Will and thumb impressions and signatures of the testator and attesting witnesses at the time of registration have been proved independently in this suit. The evidence of Harbans Singh has been referred to only as a corroborative evidence. In such circumstances, this court does not find any error in the findings of fact arrived at by the courts below while upholding the registered Will.

RSA No.1665 of 1998

Sandeep Singh has filed the regular second appeal against the concurrent findings of fact arrived at by the courts below. He is a purchaser

of undivided share in the property through sale deeds Ex.D1 and Ex.D2 on the record. He has become co-sharer. No co-sharer can arrogate himself exclusive ownership in any part of the land except the partition.

QUESTION NO.(ix)

First appellate court is last Court of fact and law. As per Section 96 read with Order 41 of the Code of Civil Procedure, first appellate court is required to re-appreciate the evidence and after critical analysis/appraisal of the reasons given by the trial court give its own verdict.

For achieving that objective, the first appellate court is expected to cull out its own points/issues which require determination. It has been felt that the first appellate courts are not adhering to such mandate of law.

Civil Writ Petition No.14492 of 2015

This writ petition has been filed by Mohan Lal, purchaser of a part of property out of joint property. He has prayed for quashing of the orders dated 28.03.2011, 21.11.2011 and 27.08.2014 passed by the Assistant Collector Ist Grade, Sangrur, Collector Sangrur and Divisional Commissioner, Sangrur, respectively.

Dispute in the present case is with respect to sanctioning of mutation. The mutation of the land is to be governed by the judgment to be passed by the Civil Court ultimately deciding the rights of the parties.

Mohan Lal claims that he has purchased some land from Palvinder Kaur @ Ravinder Kaur @ Gobinder Kaur vide sale deed dated 05.12.1967, whereas Palvinder Kaur @ Ravinder Kaur @ Gobinder Kaur has purchased the property i.e. 61 bighas and 2 biswas from her brother

Surjit Inder Singh vide sale deed dated 14.09.1956. Once the civil suit has been decided, the petitioner would be at liberty to make an application for partition as well as sanction of the mutation. It would be significant to note that petitioner Mohan Lal would be considered to have purchased a share in the undivided property even if he has been put into possession of the specified portion of the land by his vendor, the same shall be subject to partition.

Learned Divisional Commissioner has held that the sale in favour of Mohan Lal was declared null and void by the civil court. This is misreading of the judgment passed by the civil court. Mohan Lal is a purchaser of undivided share in the joint khewat and the sale deed in his favour is subject to the decision of the civil court and partition of the property. Therefore, the order passed by the Civil Court is to be read in the context it has been delivered.

In view of what has been recorded above, the present writ petition is disposed of.

Civil Writ Petition No.18170 of 2013
Civil Writ Petition No.26994 of 2014

In these writ petitions, orders passed by the authorities constituted under the Punjab Land Revenue Act, 1887 for partition of the agricultural land dated 12.10.2012, 09.05.2013 and 02.09.2013 have been challenged.

Primary challenge to the orders passed is on the ground that a purchaser of undivided share is required to seek partition of entire land situated in a revenue estate. It may be significant to note that partition proceedings have been initiated by Surinder Kaur wife of late Harbhajan

Singh. She is purchaser of an undivided share in a specified khewat/khata. Contention of the petitioners is that she should file a petition seeking partition of land comprised in those khewats/khatas in which she is not co-sharer.

Partition of agricultural land is regulated by provisions of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the Act of 1887). Chapter IX. The concept of co-owner/co-sharer is always with reference to a khewat/khata. Khewat/Khata is a unit of ownership for a chunk of land, which is joint between the parties. As per the provisions of the Punjab Land Records Manual, Records of Rights, which are called jamabandi is prepared. Khewat/Khata has direct relation to ownership whereas Khatauni number assigned has reference to the person in possession. In one khewat there can be more than one khatonies. A person who is purchaser of undivided share in a particular khewat/khata, becomes co-sharer only in that khewat/khata and not in other khewats/khatas in which his or her vendor may be owner.

As noted above, khewat is an independent unit. The land comprised in other khewats have no co-relation qua joint ownership even if the vendor or vendee are seller or purchaser in or more particular khewats. In different khewat, there can be different co-owners or same. It may be possible for the court to club or entertain a joint application for partition, if co-owners in more than one khewat which have been clubbed together are same. However, joining of land comprised in various khewats where co-owners/co-sharers in various khewats are different, would not be proper. The revenue authorities have also refused to stay the proceedings in the partition application on the ground of dispute with reference to title of the

property.

Since, the title dispute has already been decided, therefore, the revenue authorities are expected to now expeditiously decide the application for partition positively within one year from the date of receipt of the judgment.

With the aforesaid observations, both the writ petitions are dismissed.

C.M.No.10805-C-2018 in RSA No.462 of 2012

The application is dismissed in view of the reasons recorded in the judgment.

C.M.No.12646-C-2018 in RSA No.462 of 2012

Application is allowed.

Reply to the application for additional evidence filed on behalf of respondent no.1 is taken on record.

C.M.No.12871-C-2018 in RSA No.462 of 2012

Application is allowed.

Annexure R-1 is taken on record.

C.M.No.9424-C-2017 in RSA No.3803 of 2017

Prayer in this application is for condonation of delay of 16 days in filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 16 days in filing the appeal is condoned.

Application is allowed.

C.M.No.6614-C-2009 in RSA No.18 of 1996

Objections to the compromise deed by the legal heirs of respondent no.10 are taken on record.

CONCLUSIONS:-

Regular Second Appeal No.18 of 1996
Regular Second Appeal No.619 of 1996

Both the regular second appeals are partly allowed in terms of the deed of compromise arrived at by the signatories. The compromise deed shall form part of the decree. However, this decree would operate only qua the parties to the compromise.

With respect to non-signatories or the parties who have not signed the compromise deed, appeals are dismissed.

Regular Second Appeal No.1665 of 1998
Regular Second Appeal No.462 of 2012

Both the regular second appeals are disposed of in terms of the discussion.

Sandeep Singh has filed Regular Second Appeal No.1665 of 1998. He is a purchaser of undivided share in the property. He is also signatory to the deed of compromise. Hence, the compromise deed would also form part of the decree in RSA No.1665 of 1998 also.

Regular Second Appeal No.2651 of 2017
Regular Second Appeal No.2652 of 2017
Regular Second Appeal No.3803 of 2017
Regular Second Appeal No.4868 of 2017
Regular Second Appeal No.5413 of 2017

The judgments and decrees passed by the courts below are upheld except decree for recovery of certain amount as mesne profit, which is set aside.

Civil Writ Petition No.18170 of 2013
Civil Writ Petition No.26994 of 2014

Both the writ petitions are dismissed.

Civil Writ Petition No.14492 of 2015

Writ Petition stands disposed of.

COCF No.1853 of 2009

Dismissed as not pressed.

17th January, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No