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

RSA No. 3015 of 2010(O&M)

Date of decision: 25.3.2019

Sushil Mehra and another …..Appellants

VERSUS

Kailash Mehra through LR and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate for the appellants.

Mr. Amit Jain, Advocate for respondent No.1.

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REKHA MITTAL, J.

The present appeal directs challenge against judgment and decree dated 27.07.2010 passed by the Additional District Judge, Ludhiana whereby appeal against judgment and decree dated 05.12.2006 passed by the Additional Civil Judge (Senior Division), Ludhiana (hereinafter referred to as the trial Court) was accepted; judgment and decree passed by the trial Court were set aside and suit filed by the respondent/plaintiff was decreed restraining the defendants including the appellants from interfering in plaintiff's possession over shop No.2 and 3, Mata Rani Road, Ludhiana and further interfering in smooth running of work there.

The present litigation is a family feud of Mehra family headed by Sh. Amar Chand (since deceased), resident of House No.28-B, Udham Singh Nagar, Ludhiana. Sh. Amar Chand had four sons namely Swatantar Kumar, Adarsh Kumar, Ashok Kumar and Vijay Kumar. He also had one daughter but she is not a privy to dispute between the brothers and their wives etc. Admittedly, a partnership firm was doing the business under the name and style of M/s National Radio & Electric Company in shops No.2 and 3, Mata Rani Road, opposite Municipal Corporation, Ludhiana. The said partnership was dissolved on 30.06.1989 vide dissolution deed Ex.P2/P13, though the contesting defendants including the appellants have sought to allege that the said dissolution deed is the result of fraud etc. or the accounts of the firm were not settled nor any payment was made to other partners of the firm by respondent/plaintiff Smt. Kailash Mehra. The respondent/plaintiff Smt. Kailash Mehra is wife of Sh. Swatantar Kumar son of Sh. Amar Chand. She has staked her claim to shops No.2 and 3 primarily on the basis of dissolution deed dated 30.06.1989 Ex.P2/P13.

The facts relevant for disposal of present appeal are that as per case set up by the respondent/plaintiff, partnership firm was dissolved on terms and conditions contained in dissolution deed dated 30.06.1989 on the basis whereof the respondent/plaintiff became exclusive owner in possession of the shops in question which formed assets of the partnership business. She became sole proprietor of the firm and other partners received their share after settlement of accounts. She took over as sole proprietor of the firm and has been continuing the business as such. She is in exclusive possession of the shops in question since 30.06.1989. The articles belonging to the plaintiff were lying inside the shops but she being a lady and her husband being diabetic, therefore, no effective business was being carried on in the shops. Taking advantage of ill-health of husband of the plaintiff, the defendants started threatening the plaintiff that they would not let her to run business in the shops or to carry on any business in the name of firm.

Defendant No.1 claimed himself to be owner of the suit shops with the submission that the shops were allotted to him by Municipal Corporation, Ludhiana. He paid entire sale consideration from his own resources and 'No Due Certificate' was issued by Municipal Corporation, Ludhiana vide letter No.170/10 dated 20.02.1990. He never divested himself of ownership rights of the shops. He raised preliminary objections that suit is not maintainable in the present form; plaintiff has no locus standi to file the suit and plaintiff is estopped by her own act and conduct from filing the suit. It has been seriously disputed that the firm was mutually dissolved vide dissolution deed dated 30.06.1989. There has been no settlement of accounts and nothing out of shares in assets of the partnership business has been given to the answering defendant.

Defendants No.2 and 4 (appellants herein) filed their separate written statement, in line, with the allegations raised in written statement by defendant No.1. However, defendants No.3 and 5 did not contest the suit and were proceeded against ex parte.

Respondent/plaintiff filed replication to the written statement filed by both the sets of defendants reiterating her version set up in the plaint and denied a family settlement having been arrived at between the parties and others on 19.11.1989.

The controversy between the parties led to framing of issues on 30.09.1997 and additional issues on 07.05.1999, reads thus:-

1. Whether defendant No.1 was allotted the shop by the M.C., in his individual capacity? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the plaintiff has no locus standi to file the suit? OPD
4. Whether the suit is barred under Section 69 as alleged? OPD
5. Whether the plaintiff is stopped by his act and conduct from filing of the present suit? OPD
6. Whether the suit is not properly valued for the purposes of Court fee and jurisdiction? OPD
7. Whether the suit is bad for non-joinder of necessary parties? OPD
8. Whether the firm was not dissolved vide partnership deed dated 30.6.1989?
9. Whether shops No.2 and 3 belonged to the partnership firm? OPP
10. Whether there was any legal and valid framing suit? If so its effect? OPD
11. Whether the defendant become owner of shop No.2? OPD
12. Relief

Additional Issues:-

1. Whether the parties entered into a family settlement dated 19.11.1989. If so its effect? OPD

2. Whether the deed of dissolution dated 30.6.1989 had been procured by fraud, misrepresentation and concealment? OPD

3. Whether the deed of dissolution dated 30.6.1989 had been superseded by the family settlement? OPD

To prove her case, plaintiff examined Tara Singh PW-1, Rajiv Sharma, Senior Tax Assistant, Income Tax Department, Ludhiana, Range-III PW-2, Satish Chander Verma, Manager, PNB, Mata Rani Road, Ludhiana PW-3 and Rajesh Kumar son and Special Attorney of Kailash Mehra appeared as PW4.

To rebut evidence of the plaintiff, Adarsh Kumar defendant No.1 examined himself and Ashok Kumar defendant No.4 also appeared in the witness box. Defendants further examined Subhash Chander, Sales Clerk, Zone-A, Municipal Corporation, Ludhiana DW-2, Rachhpal Singh, Registration Clerk, Sub Registrar Office, Ludhiana DW-3, Rakesh Kumar, P.A. Executive Legal –BSNL, Ludhiana DW-4, Smt. Bimla Kumari, Labour Inspector, Circle-I, Ludhiana DW-5, Vijay Singh, AJE, PSEB City Centre Division, Ludhiana DW-6, Bhagat Ram again marked as DW-6, Harbaksh Singh Mander DW-7, Ashok Kumar DW-9, Mrs. Sushil Mehra DW-10.

The plaintiff/respondent tendered into evidence copy of ejectment order Ex.P43, site plan attached thereto as Ex.P44, letters dated 06.11.2005 and 04.01.2001 Ex.P45 and P46 by way of rebuttal evidence.

The trial Court, first of all, took up issue No.9 and in the concluding para on the said issue has refused to rely upon document Ex.P13 to say that nothing has been produced by the plaintiff to show that any payment was made by the plaintiff to the defendants when document Ex.P13 was executed and as such Ex.P13 does not prove lawful possession of the plaintiff over shops No.2 and 3. The plaintiff is unable to show that shops No.2 and 3 belong to the partnership firm or the defendants have put their shares in the partnership firm, therefore, she is not entitle to injunction as prayed for.

Additional issues No.1 to 3 were taken up together and while deciding those issues, it has been held that although the plea of fraud, misrepresentation and concealment has not been proved by the defendants but the plaintiff is also unable to show that document Ex.P13 is for valuable consideration. The plaintiff is unable to rebut the document Ex.DX/1 dated 19.11.1989. Document Ex.DX/1 dated 19.11.1989, as such, rebuts claim of the plaintiff that she is in possession of shops No.2 and 3. Eventually, the suit was dismissed with the findings that the respondent/plaintiff is unable to show her possession over the suit property and is not entitle to injunction as prayed for.

As has been noticed hereinbefore, the first Appellate Court reversed the judgment and decree passed by the trial Court. The Appellate Court, in para 35, has held that in a suit for injunction right of the person to hold that property is ingrained therein. Further it was said that question of title is not directly involved. By relying upon dissolution deed dated 30.06.1989 and rejecting the family settlement dated 19.11.1989 for want of registration, it was held that neither fraud nor misrepresentation nor concealment has been proved on record. Once the dissolution deed has been accepted to be executed, the relevance of plaintiff's obligation to prove its due execution lost its shine and the onus shifted on the defendants to prove it otherwise.

Counsel for the appellants would argue that the Appellate Court committed gross error rather misdirected itself by relying upon dissolution deed dated 30.06.1989. It is argued with vehemence that Rajesh Kumar son of Smt. Kailash Mehra and power of attorney holder had no knowledge with regard to correctness, authenticity and contents of the dissolution deed as he is not a privy thereto. It is argued that the trial Court, on a detailed consideration of the facts elicited in cross examination of Rajesh Kumar, noticed in para 15 of the judgment, has rightly refused to rely upon dissolution deed which is without consideration, therefore, findings recorded by the Appellate Court cannot be allowed to sustain. In addition, it is argued that nothing has been proved by the respondent/plaintiff as to how the accounts were settled and what payment was made to partners of the firm in respect of value of assets or goodwill etc. According to counsel, an adverse inference is liable to be drawn against the respondent/plaintiff for her failure to produce the account books of the firm despite a categoric plea raised by the contesting defendants that accounts of the firm were not settled.

Counsel has also assailed findings of the Appellate Court ignoring the family settlement dated 19.11.1989 Ex.DX/1 despite the Appellate Court having made observations in opening lines of para 37 of the judgment that there can be no denying that there is a family settlement on record which impliedly suggest that dispute continued to simmer inter se the parties. It is further argued that even if family settlement is not taken into consideration for the purpose of transfer/relinquishment of rights in immovable property but the same can be considered for collateral purposes to ascertain nature of possession of the shops in question. For this purpose, reliance has been placed upon judgments of Hon'ble the Supreme Court **Bondar Singh and others Vs. Nihal Singh and others, (2003) 4 SCC 161; Bhaiya ramanuj Pratap Deo Vs. Lalu Maheshanuj Pratap Deo and others, (1981) 4 SCC 613** and **Satish Chand Makhan and others Vs. Govardhan Das Byas and others, (1984) 1 SCC 369.**

Another submission made by counsel is that in the replication filed in the year 1995, respondent/plaintiff raised the plea that shop No.2 is under tenancy of one Sh. Bhupinder Kumar but no month and year of creation of tenancy was mentioned. Subsequent thereto in the year 1996, an application for eviction was filed against said Bhupinder Kumar but till fag end of the trial, factum of pendency of eviction proceedings or decision thereof was kept as a guarded secret with an ulterior motive. It is further argued that eviction order passed in the said case was tendered into evidence by way of rebuttal evidence and perusal thereof would reveal that as per allegations of the respondent, tenancy was created on 31.12.1989 during pendency of the suit and the alleged tenant made payment of rent for one year upto 31.12.1990 but the eviction application was filed in the year 1996. It is vehemently argued that had it been true that shop No.2 was in possession of Kailash Mehra at the time of institution of suit on

11.12.1989 and Bhupinder Kumar was inducted as a tenant just 20 days after institution of the suit which was hotly contested by defendants No.1, 2 and 4, there was no possibility of creation of tenancy without executing a document. It is further argued that statement of Rajesh Kumar Attorney of the plaintiff in examination in chief is conspicuously silent about creation of tenancy in favour of Bhupinder Kumar or the manner in which shop No.2 is being used by said Bhupinder Kumar. He further argued that neither Bhupinder Kumar was examined as a witness through process of the Court nor any document has been produced on record to prove possession of said Bhupinder Kumar. It is further argued that with regard to eviction order passed way back in the year 2000, application for execution has been filed in the year 2013 wherein Ashok Kumar, husband of Sushil Mehra has filed objections and the same are pending adjudication after framing of issues. Counsel would further argue that the Appellate Court has not adverted to number of witnesses and series of documents produced by the appellants to counter case of the plaintiff and establish their plea that shop No.2 is in possession of Sh. Ashok Kumar as a tenant under Smt. Sushil Mehra who got the said shop in family settlement dated 19.11.1989.

The last submission made by counsel is that an adverse inference is liable to be drawn against the respondent/plaintiff for her failure to appear in the witness box without any tangible explanation. It is argued that as Smt. Kailash Mehra knew it fully well that she is a signatory to the family settlement dated 19.11.1989 which is also signed by her husband Sh. Swatantar Kumar (since deceased), she intentionally withheld herself from the witness box so that she can avoid cross examination both in regard to settlement of accounts of the firm and family settlement between four brothers which was also signed by their wives as well.

Counsel representing the respondent/plaintiff has supported the judgment and decree passed by the first Appellate Court. It is argued that plea of the appellants and their co-defendants that dissolution deed Ex.P2/P13 is the result of fraud, misrepresentation etc. has no legs to stand. Neither the appellants nor any other signatory to the dissolution deed, till date, has challenged validity of the dissolution deed either by way of counter claim or an independent suit, therefore, the Appellate Court has rightly rejected contention of the appellants in this regard and relied upon the dissolution deed, admittedly, signed by all the partners of M/s National Radio & Electric Company. It is further argued that the Appellate Court has rightly refused to rely upon the alleged family settlement for want of registration. According to counsel, the family settlement cannot be looked into for the purpose that possession of shop No.2 was given to Smt. Sushil Mehra by treating the factum of delivery of possession to be a collateral purpose. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court **Sita Ram Bhama Vs. Ramvatar Bhama, 2018(2) RCR (Civil) 741** and **Subraya M.N. Vs. Vittala M.N. and others, (2016) 8 SCC 705.** Further reference has been made to judgments of this Court **Hargursharan Singh Vs. Lt. Col. Hargobind Singh, 2017(2) RCR (Civil) 647** and **Ravinder Kaur and others Vs. Jagmohan Singh and others, 2004(4) RCR (Civil) 519.**

I have heard counsel for the parties, perused the paper-book and records.

The respondent/plaintiff has filed a simplicitor suit for injunction restraining the defendants including the appellants from interfering in smooth running of firm M/s National Radio & Electric Company in shops No.2 and 3 and possession of the aforesaid two shops situated at Mata Rani Road, Opposite Municipal Corporation, Ludhiana. Counsel for the parties have agreed that the appeal may be decided by examining only the question, who is in possession of the aforesaid two shops, earlier used by partnership firm that stands dissolved w.e.f. 30.06.1989.

This apart, Hon'ble the Supreme Court in **Gram Panchayat of Village Naulakha Vs. Ujagar Singh, 2000 (4) RCR (Civil) 749** has held in para 10, quoted thus:-

> "We may also add one other important reason which frequently arises under section 11 CPC. The earlier suit by the respondent against the Panchayat was only a suit for injunction and not one on title. No question of title was gone into nor decided. The said decision cannot, therefore, be binding on the question of title. See in this connection Sajjadanashin Sayed vs. Musa Dadabhai Ummer, [2000] 3 SCC 350, where this Court, on a detailed consideration of law in India and elsewhere held that even if, in an earlier suit for injunction, there is an incidental finding on title, the same will not be binding in a latter suit or proceedings where title is

directly in question, unless it is established that it was 'necessary' in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was founded or based on the finding on title. Even the mere framing of an issue on title may not be sufficient as pointed out in that case."

Keeping in view the above, this Court would dispose of the appeal by examining the issue from the point of view of possession of the shops in question.

Indisputably, the appellants have not denied the respondent/plaintiff to be in possession of shop No.3, though it has been stated that she is in possession of shop No.3 in view of family settlement dated 19.11.1989 marked as Ex.DX1. The defendants have not disputed entitlement of the respondent/plaintiff to retain possession of that shop unless she is dispossessed, in due course of law. In the given circumstances, the dispute in the present litigation basically pertains to shop No.2.

The respondent/plaintiff has claimed her possession of both the shops on the basis of dissolution deed dated 30.06.1989 Ex.P2/P13. Though the defendants have tried to wriggle out of the dissolution deed by raising a plea that the same is the result of fraud, misrepresentation etc. or accounts of the partnership firm were not settled amongst partners or they were not paid any amount with regard to sale of goodwill etc. but it remains a fact that neither the defendants could establish their plea that dissolution deed is the result of fraud, misrepresentation etc nor the dissolution deed has been challenged till date either in an independent proceedings or by way of counter claim in the present suit. In this view of the matter, dissolution deed cannot be discarded, as has been sought by the defendants/appellants. The relevant clause 6 of dissolution deed, in respect of the shops in question, reads as follows:-

> "That the continuing partner Mrs. Kailash Mehra wife of Sh. Satwantar Kumar has become exclusive owner in possession of shops number 2 and 3 Mata Rani Road, Ludhiana, which formed assets of the partnership business."

There cannot be dispute about settled position in law that the plaintiff has to stand on his own legs to become successful and cannot derive advantage of weakness of defence. The case set up by the respondent/plaintiff is that she is in possession of shops No.2 and 3 on the basis of dissolution deed. In para 4 of the plaint, it is averred that after the dissolution deed, defendants No.1 to 3 retired from the firm and the plaintiff took over as a sole proprietor of the firm and has been continuing the business as such. She is in exclusive possession of shops No.2 and 3 since 30.06.1989. The articles belonging to the plaintiff are lying inside the shops but she being a lady and her husband being ill with diabetes, therefore, no effective business is being carried on in the shops. The plaintiff had to look after her husband in the past few months when his condition has deteriorated. In view of the averments raised in para 4 of the plaint coupled with absence of any documentary evidence that any business was carried on in shops No.2 and 3 since 30.06.1989 till filing of the suit on 08.12.1989, it can safely be concluded that as a matter of fact, no business was carried by the respondent/plaintiff in the shops in question since 30.06.1989 till filing of the suit on 08.12.1989.

The suit was instituted on 08.12.1989 though registered on 11.12.1989. The trial Court appointed a local commission to visit the spot and make a report regarding the shops in question. Counsel for the respondent/plaintiff has not disputed that the contesting defendants raised no objection with regard to appointment of local commission. The local commission submitted report dated 13.12.1989 that when he reached the spot, he found that Ashok Kumar and Adarsh Kumar were attacked by some persons on which a lot of persons immediately collected; there was general commotion; the police reached at the spot and took both the parties to the police station. At that time, the shop in dispute was not open. The local commission visited the spot on 11.12.1989 at about 4.30 PM. As such, the local commission could not verify about possession of any party over the property in dispute and eventually the Court passed an order of status quo regarding possession as an interim measure.

The defendants in the written statement raised a plea that a wall was constructed between the two shops and shop No.2 is in possession of Smt. Sushil Mehra- defendant No.2 through her tenant. The respondent/plaintiff filed replication in the year 1995 and admitted the factum of existence of a wall between the aforesaid two shops. In the replication, a plea was raised in para 1, in reply to preliminary objections that the plaintiff had constructed the wall between the shops No.2 and 3 as per her own wish and will. One of the shops found to be in excess of the business needs was rented out to one Sh. Bhupinder Kumar son of Shri

Kaur Sain at the rate of Rs.1500/- per month who is in possession of the same. No date, month and year of creation of tenancy in favour of Bhupinder Kumar was mentioned in the replication. However, at the fag end of trial when the case was fixed for rebuttal evidence to be adduced by the plaintiff, she tendered into evidence copy of eviction order passed against said Bhupinder Kumar in eviction proceedings initiated in the year 1996 that culminated in order dated 30.10.2000. Perusal of the order Ex.P43 would reveal that as per plea of the respondent/plaintiff in the eviction proceedings, tenancy in favour of Bhupinder Kumar was created on 31.12.1989 and he paid rent just for a period of one year upto 31.12.1990 but the petition for eviction was filed in June 1996. Meaning thereby that Sh. Bhupinder Kumar was allegedly inducted as a tenant on 31.12.1989 just 20/25 days from the date of institution of the suit for injunction. The respondent/plaintiff has not produced any documentary evidence except the eviction order in respect of tenancy in favour of Bhupinder Kumar or payment of rent by said Bhupinder Kumar. This fact leads to a conclusive finding that even as per case of the respondent, she is not in actual possession of shop No.2 since 31.12.1989. At this stage, it is pertinent to note conduct of the respondent who kept the eviction proceedings as a guarded secret until the order Ex.P43 was tendered into evidence at the fag end of trial. No doubt, eviction proceedings were initiated against Bhupinder Kumar in June 1996 less than a year after the replication was filed but nothing has come on record as to the purpose for which Bhupinder Kumar had been using the shop in question much less proving any documents to establish possession of shop No.2 by said Bhupinder Kumar.

Bhupinder Kumar was not summoned through process of the Court to corroborate plea of the respondent/plaintiff in respect of his possession of shop No.2 being a tenant thereof. Not only this, respondent/plaintiff did not appear in the witness box to support her case.

One of the sons and Special Attorney of respondent/plaintiff namely Rajesh Kumar was examined. He tendered into evidence his duly sworn affidavit Ex.PW4 by way of examination in chief. Perusal of affidavit Ex.PW4 makes it apparent that there is not even a whisper with regard to shop No.2 being in possession of Bhupinder Kumar or creation of tenancy in favour of said Bhupinder Kumar since 31.12.1989. Rather he had stated in the concluding para of his affidavit that the plaintiff is the sole proprietor of her firm and is in possession of shops No.2 and 3. In terms of dissolution deed Ex.P13, the defendants are unnecessarily disputing possession of the plaintiff over shops No.2 and 3.

In his cross examination conducted on 18.03.2005, Rajesh Mehra had stated, reads thus:-

> "I do not know if Ashok Kumar is running business in shop No.2 Mata Rani Road under the name and style of M/s National Repair. Volunteered, I have rented out the shop No.2 to my tenant, so, I do not remember in what capacity, Ashok Kumar is there in shop No.2. On 31.12.1989, shop No.2 had been let out to Bhupinder Kumar."

From the aforesaid extract coupled with discussion made hereinbefore that there is no evidence on record proving possession of shop No.2 by Bhupinder Kumar, it can safely be inferred that neither the respondent was in possession of shop No.2 on the date of institution of suit nor had she inducted Bhupinder Kumar as a tenant in the shop on 31.12.1989 and for that reason the respondent/plaintiff could not produce any evidence with regard to Bhupinder Kumar doing business in shop No.2 as a tenant under her.

The defendants including the appellants have raised the plea that there was a family settlement between the four brothers namely Swatantar Kumar, Adarsh Kumar, Ashok Kumar and Vijay Mehra sons of late Sh. Amar Chand and the family settlement was also signed by wives of all the four brothers. The Appellate Court has discarded the family settlement primarily on the ground that the same is not a registered document, therefore, cannot be taken into consideration so far as creation of rights in immovable property.. Nevertheless, the Appellate Court in the opening lines of para 37 has held that there can be no denying a fact that there is a family settlement on record which impliedly suggest that dispute continued to simmer inter se the parties.

The respondent/plaintiff, in replication, has controverted the family settlement by pleading that her signatures were obtained on blank stamp papers and other papers on the plea that since the plaintiff has become exclusive owner in possession of the shops and property of the firm, papers may be signed so that 'No Due Certificate' may be obtained from the Municipal Corporation. It is further pleaded that family settlement is obtained by practicing fraud and is the result of misrepresentation.

Firstly, the respondent/plaintiff did not appear in the witness box to corroborate her version in regard to the circumstances under which her signatures were obtained on the paper used for recording family settlement. She has not denied signatures of her husband Sh. Swatantar Kumar on the said family settlement. The factum as to the circumstances under which she appended her signatures was to the personal knowledge of respondent/plaintiff Smt. Kailash Mehra. There is no tangible explanation with regard to failure of Smt. Kailash Mehra to appear in the witness box. An adverse inference is liable to be drawn for failure of Smt. Kailash Mehra to examine herself and to say something about her signatures, admittedly, available on the family settlement. It appears that since Smt. Kailash Mehra wanted to avoid wrath of cross examination at the hands of counsel of opposite party, she appointed her son as a Special Attorney and willfully kept herself away from the witness box. This fact alone is sufficient to falsify and belie contention of the respondent/plaintiff that her signatures were obtained in the circumstances pleaded by her. In view of the above, it can be held without any hitch that conduct of the respondent/plaintiff is not free from doubt, therefore, render her ineligible for grant of equitable and discretionary relief of injunction. The Appellate Court, as discussed hereinabefore, rejected the family settlement on the premise that the same is not a registered document. This Court would refrain from adverting in detail the terms and conditions of family settlement in view of that I would confine my decision only on the question of possession of shops in question but without deciding the question of title which the parties may get determined in independent proceedings. Counsel for the appellants has relied upon certain judgments to contend that even if the family settlement required registration but not registered, the same can be considered for collateral purpose.

One of the terms in para 7 of the family settlement Ex.DX1, reads as follows:-

> "It has also been mutually agreed that all the previous documents and deeds written in regard to the above matters and firms namely M/s National Radio & Electric Company and M/s National Electronics at Ludhiana stands automatically cancelled from today onward."

Counsel for the respondent/plaintiff has not advanced any argument if agreement with regard to cancellation of the previous documents and deeds in regard to the firms aforesaid needed registration compulsorily when examined in the light of provisions of Section 17 read with Section 49 of the Registration Act, 1908. As the respondent/plaintiff agreed for cancellation of all the documents/deeds in respect of firm namely M/s National Radio and Electric Company and dissolution deed Ex.P2 pertains to the said firm, the respondent/plaintiff cannot derive any advantage to her contention qua her possession of shop No.2 on the basis of dissolution deed dated 30.06.1989. The Appellate Court did not advert to aforesaid para 7 while dealing with admissibility or otherwise of family settlement Ex.DX1. In view of the aforesaid discussion, I have no hesitation to conclude that the respondent/plaintiff has miserably failed to establish that she is in possession of shop No.2, Mata Rani Road, Ludhiana. Both the Courts did not advert to various vital aspects of the matter for deciding the question of entitlement or otherwise of the respondent/plaintiff to injunction against interference in her alleged possession of shop No.2. In view of above, the respondent/plaintiff has miserably failed to prove that she is in possession of shop No.2 through Sh. Bhupinder Kumar or is entitle to discretionary and equitable relief of injunction qua the said shop. On the other hand, since there is no dispute between the parties qua plaintiff's possession of shop No.3, it appears that the said shop has also been included in the suit with some ulterior purpose to achieve. It is clarified that this Court has not gone into the question of ownership of aforesaid shops, any observations/findings recorded for deciding the issue of possession of shops in question would not cause prejudice to either of the parties in appropriate proceedings involving question of title.

Before parting with this order, it is pertinent to note that the appellants/defendants examined a number of witnesses and got produced series of documents wherein there is reference to shop No.2 and name of Ashok Kumar. The evidence adduced by the appellants pertains to the period subsequent to filing of the suit on 08.12.1989. The plea of the appellants is that Sushil Mehra came in possession of shop No.2 on the basis of family settlement dated 19.11.1989. Keeping in view the documentary evidence produced by the official witnesses as well as Sh. Ashok Kumar – defendant No.4 who is none else but husband of Smt. Sushil Mehra – defendant No.2 coupled with discussion made hereinbefore, evidence adduced by the contesting defendants also fortifies the aforesaid observations that the respondent/plaintiff was not in possession of shop No.2 at the time of institution of suit nor she is in constructive possession thereof since 31.12.1989 being in possession of Bhupinder Kumar as a tenant. As such, findings of the Appellate Court reversing the judgment and decree passed by the trial Court and decreeing suit of the respondent/plaintiff suffer from perversity and accordingly set aside.

In view of what has been discussed hereinbefore, the appeal is allowed. The judgment and decree passed by the first Appellate Court are set aside. The suit filed by the respondent/plaintiff for grant of permanent injunction is dismissed with costs throughout, in terms indicated hereinbefore.

MARCH 25, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no