

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RSA-1296-1987 (O&M)
2024:PHHC:049626

RICHPAL AND OTHERS APPELLANTS

Vs.

RANJIT AND OTHERS RESPONDENTS

2. RSA-1297-1987 (O&M)
2024:PHHC:049627

RATI RAM AND OTHERS APPELLANTS

Vs.

RANJIT AND OTHERS RESPONDENTS

Reserved on: 21.03.2024
Pronounced on: 10.04.2024

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Argued By:-

Mr. M.L. Sarin, Sr. Advocate, with
Ms. Himani Sarin, Advocate, for the appellants.

Mr. Sudhanshu Makkar, Advocate, for the respondents.

DEEPAK GUPTA, J.

These two Regular Second Appeals have arisen out of the proceedings of the same suit. Suit for declaration (*registered as Civil Suit No.66 of 1980, instituted on 22.03.1979*) filed by plaintiffs was decreed by trial court on 6.11.1981. Two appeals emanated, one (*registered as CA No.4-13 of 1982/1986*) by some of the defendants; and the other (*registered as CA No.7-13/5-13 of 1982/1986*) by subsequent vendees from all the defendants.

Both appeals were dismissed by the first appellate court vide two separate

judgments both dated 21.10.1986 and hence these appeals.

2. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

Admitted Facts:

3. One Dhanna was owner of 142 Bighas 11 Biswas of land situated in village Kasni Kalan, Tehsil Loharu, District Bhiwani (Haryana) [*herein referred to as 'suit land' or 'land of Kasni Kalan'*]. Said Dhanna also owned 20 Bighas 5 Biswas of land besides half share in another 32 Bighas 6 Biswas of land situated in village Kalali, Tehsil Loharu, District Bhiwani (Haryana) [*hereinafter referred to as 'land of village Kalali'*]. On the death of Dhanna, he was succeeded by his three sons namely, Hazari, Hira and Sheo Chand, who inherited the land of both the villages in equal shares.

4. Plaintiffs of the suit Ranjit etc. [*Respondents N: 1 to 4 in RSA N: 1296 of 1987*] are the legal heirs of Hazari son of Dhanna. Defendants No.1 to 5 - Amar Singh etc. [*Appellants & performa respondent N: 5 in RSA N: 1296 of 1987*] are the legal heirs of Hira son of Dhanna; whereas defendants No.6 to 12 – Smt. Dhampa etc. [*Performa respondent N: 6 to 12 in RSA N: 1296 of 1987*] are the legal heirs of Sheo Chand son of Dhanna.

Case pleaded by the plaintiffs:

5.1 According to plaintiffs, their father Hazari son of Dhanna had started living in village Kasni Kalan and also started cultivating the land left by his father in this village. On the other hand, Hira and Sheo Chand i.e. predecessor of defendants No.1 to 5 and defendants No.6 to 12, respectively, started residing in village Kalali, who exclusively started cultivating the land left by their father in said village Kalali. Later, on the death of Hazari,

plaintiffs started cultivating the land left by their father in village Kasni Kalan; whereas on the death of Hira, his sons i.e. defendants No.1 to 5 started cultivating land left by their father in village Kalali. Sheo Chand continued irrigating his land in village Kalali.

5.2 It was pleaded further that on 06.06.1955, private partition (Ex.P1) of the ancestral land was effected between the plaintiffs on one hand and Sheo Chand on the other hand in the presence of Panchayat, in which it was settled that plaintiffs shall be exclusively owner in possession of the land situated in village Kasni Kalan, in which Sheo Chand or his legal heirs will have no right, title or interest. Sheo Chand accepted ₹400/- from the plaintiffs. Plaintiffs relinquished all their rights and interest in the land of village Kalali, which was under the ownership and possession of Sheo Chand. Similarly, another family partition was effected on 25.03.1957 (Ex.P2) between plaintiffs on one hand and defendants No.1 to 5 i.e. legal heirs of Hira on the other hand, whereby defendants No.1 to 5 accepted ₹600/- and relinquished all their rights in the land of village Kasni Kalan; whereas plaintiffs relinquished all their rights and interest in the property situated in village Kalali. It was pleaded that in this manner, plaintiffs became exclusive owners in possession of the suit land i.e. land situated in village Kasni Kalan; whereas, defendants became exclusive owners in possession of the land of village Kalali. It was pleaded further that though parties have been in exclusive possession of land accordingly, but inadvertently, the terms of family partition were not incorporated in the revenue record, in as much as, defendants continued to be shown as co-owners of the suit property situated in village Kasni Kalan and *vice versa*.

5.3 By contending to be in exclusive possession of the suit land for the last more than 12 years, plaintiffs also claimed to have become owners thereof by way of adverse possession.

5.4 As per plaintiffs, they asked the defendants to get the entries in the revenue record corrected as per the terms of the family partition, but they refused to do so and rather, started claiming ownership of the suit land of village Kasni Kalan during consolidation proceedings, which compelled the plaintiffs to file the present suit.

5.5 Plaintiffs prayed for a decree of declaration that they are exclusive owner in possession of the suit land of village Kasni Kalan; that the entries to the contrary in favour of the defendants are wrong, illegal and not bindings on the plaintiffs. Plaintiffs further prayed for decree of permanent injunction to restrain the defendants from interfering in their possession of the suit land on the basis of incorrect entries in the revenue record.

Stand of defendants:

6. Defendants contested the suit and in their written statement, denied the plaintiffs to be in exclusive possession over the suit land of village Kasni Kalan. They further denied that they or their predecessor ever entered into any family settlement with the plaintiffs, as claimed. They denied to have relinquished their rights in the suit property of village Kasni Kalan or that plaintiffs had become owners thereof by way of adverse possession. Some customary preliminary objections like locus standi, maintainability and limitation were also raised. Defendants prayed for dismissal of the suit.

Issues framed by court:

7. In rejoinder, plaintiffs reiterated their case. Parties went to trial for adjudication on the following issues:-

- “1. Whether a partition had taken place on 6.6.1955 between the plaintiffs and Sheo Chand (deceased) and if so, to what effect? OPP.
2. Whether a partition had taken place between the plaintiffs and defendants No.1 to 5 on 25.3.57 and if so, to what effect? OPP.
3. Whether the plaintiffs are in possession of the suit land? If so, in what capacity? OPP.
4. Whether the entries in the revenue record regarding the suit land in favour of the defendants are wrong, not binding on the rights of the plaintiffs and are liable to be set aside? OPD.
5. Whether the suit is against law and facts and is liable to be dismissed? OPD.
6. Whether the plaintiffs have no locus-standi or cause of action to file the present suit? OPD.
7. Whether the suit is not maintainable in the present form? OPD.
8. Whether the proper Court fee has not been paid by the plaintiffs? OPD.
9. Whether the suit is time barred? OPD.
10. Whether the defendants have knowingly violated the order of the Court and if so, to what effect? OPP.
11. Relief.”

8. Plaintiffs produced oral as well as documentary evidence to support their case. However, no evidence, either oral or documentary, was produced by the defendants and so, the same was closed vide Court order dated 30.10.1981.

Application under Order I Rule 10 CPC by Rati Ram etc.

9. On the adjourned date of 05.11.1981, Rati Ram etc. (*Appellants in RSA-1297-1987*) moved an application under Order 1 Rule 10 CPC to implead them as a party to the suit, by submitting that they had purchased 2/3rd share in the land of village Kasni Kalan (suit land) from the defendants of the case i.e. from respective legal heirs of Hira and Sheo Chand, by virtue of sale deeds dated 03.06.1980 and 25.08.1981. By holding that application has been moved to delay the disposal of the case and that applicants were aware about the pendency of the case, the said application was dismissed vide order dated 06.11.1981 (*available at page No.431 of trial Court record at DMS*) i.e., the same day, when suit was dismissed.

Findings of Trial court:

10. Ld. trial Court took issues No.1 to 4 together for discussion and on the basis of evidence held that plaintiffs were in exclusive possession of the suit land of village Kasni Kalan; that family partition deeds dated 06.06.1955 (Ex.P1) and dated 25.03.1957 (Ex.P2) were duly proved on record and by virtue thereof, plaintiffs had become exclusive owner of the suit land of village Kasni Kalan. As such, all these issues were decided in favour of the plaintiffs. Issues No. 5, 7, 9 and 10 were disposed of not pressed for; whereas, findings on issue No.6 & 8 went against the defendants. Consequent to all these findings, suit was decreed on 6.11.1981 by declaring the plaintiffs to be owners in possession of the suit land of village Kasni Kalan and that defendants do not have any right, title or interest therein. The judgment to this effect was followed by decree of the even date.

Appeals before First Appellate Court:

11.1 Against the aforesaid judgment and decree, two appeals were preferred. One of the appeals (*registered as CA No.4-13 of 1982/1986*) was preferred by defendants No.3 to 5 i.e. three of the sons of Hira son of Dhanna by impleading the plaintiffs as contesting respondents and remaining defendants as proforma respondents.

11.2 The second appeal (*registered as CA No.7-13/5-13 of 1982/1986*) was filed by Rati Ram etc. i.e. subsequent vendees from the original defendants by arraying all the parties to the suit i.e. plaintiffs as well as defendants as respondents to the appeal.

11.3 Rati Ram etc. also moved an application for leave to appeal, as they were aggrieved and affected parties by the impugned judgment of the trial Court. They moved yet another application for production of documents - mutations No.293 & 294, rejected by the Revenue Officer on 19.11.1960.

11.4 Ld. First Appellate Court, by way of two separate judgments, both dated 21.10.1986, dismissed both the appeals.

Present RSAs:

12.1 Now RSA No.1296 of 1987 has been filed by Richhpal etc. i.e. some of the legal heirs of defendants Hira son of Dhanna; whereas, RSA No.1297 of 1987 has been filed by the subsequent vendees Rati Ram etc.

12.2 In RSA No.1296 of 1987, the following substantial questions of law, as filed by the appellants, were taken on record on 15.05.2013:-

1. Whether the judgments and decrees of both Courts below are liable to be set aside on the ground that inadmissible evidence has been relied upon?

2. Whether both the Courts below have erred in relying upon the alleged partition deeds, Ex. P-1 and Ex. P-2, which being unregistered, are inadmissible in evidence?
3. Whether both the Courts below could have even relied upon the alleged private partition, which was neither got approved by the Revenue Authorities nor reflected in the Revenue Records?
4. Whether both the Courts below have erred in overlooking the vital fact that all the parties are not signatories to the alleged partition deed, Ex. P-1?
5. Whether the Courts below have erred in decreeing the suit of the plaintiff appellant without impleading the subsequent vendees of the land in dispute who purchased the land for valuable consideration?
6. Whether the finding of both courts below are liable to be set aside being based on conjectures and surmises and inadmissible evidence?

12.3 In RSA No.1297 of 1987, the following substantial questions of law, as filed by the appellants, were taken on record on 15.05.2013:-

1. Whether the Lower Appellate Court erred gravely in dismissing the appeal filed by the present appellants i.e. the subsequent vendees on hyper technical grounds?
2. Whether the Appellate Court acted erroneously in not treating the appeal by the subsequent vendees as an appeal against the order dated 06.11.1981 dismissing their under application Order 1 Rule 10 CPC as the decree was also passed on the same date?
3. Whether the Trial Court committed a grave error in dismissing the application filed by the present appellants i.e. the subsequent vendees under Order 1 Rule 10 CPC for being impleaded as parties to the suit since they had purchased the land in dispute for a valuable consideration of Rs. 94,000/-?
4. Whether both the Courts below have erred in decreeing the suit of the plaintiff respondent without impleading and hearing the subsequent vendees of the land in dispute?

5. Whether the judgments and decrees of both the Courts below are liable to be set aside, being based on mere conjectures, surmises and inadmissible evidence?

Contentions on behalf of appellants of both the appeals:

13.1 It is argued by Id. Senior Advocate appearing on behalf of the appellants that alleged partition deeds Ex.P1 & P2 are inadmissible in evidence, being unregistered documents. Ld. Senior counsel has drawn attention of this Court to the contents of both the documents Ex.P1 & P2 so as to contend that rights were purported to be created in favour of the plaintiffs by way of these documents *in praesenti* and that it is not a case of recognizing the antecedents right of the plaintiffs. Besides ₹400/- is alleged to have been paid in Ex.P1; whereas ₹600/- is alleged to have been paid in Ex.P2 and therefore, these documents evidencing transfer involving immoveable property of more than ₹100/-, *in praesenti* and not recording alleged earlier partition/ family settlement, were required to be compulsory registered and in the absence thereof, the documents could not be taken into consideration being inadmissible. To support the contention, Ld. senior counsel referred to a decision of Hon'ble Supreme Court rendered in *Siromani and another Vs. Hemkumar and others*, 1968 SC 1299; besides decisions of this Court rendered in *Sarimati Shanti Devi and another Vs. Jagdish Parshad and another*, 1986(1) PLR 26 and *Chander Shekhar and others Vs. Des Raj and others*, 1983 Rev. L.R. 103.

13.2 It is further contended by Id. Senior counsel that the alleged private partition, pertaining to the agricultural land, cannot be considered at all, as the same were neither approved by the revenue authorities nor were ever reflected in the revenue record. In support of this contention, Id. counsel

referred to a decision of this Court rendered in ***Suba Singh Vs. Mohinder Singh and others, 1983 PLJ 429***. It is also pointed out that mutations No.293 & 294 entered on the basis of the alleged partition deeds Ex.P1 & P2 were rejected by the revenue officers on 09.11.1960. These documents were sought to be produced in additional evidence before the First Appellant Court by the vendees-appellants, but the application was erroneously dismissed.

13.2 Still further, Id. Senior counsel has drawn attention towards the fact that Ex.P1 is signed only by Sheo Chand and Ranjit. The other sons of Hazari namely, Matu Ram, Ami Lal and Surja are not parties to this document and that it is not the case of any of the parties that Ranjit had signed the same on behalf of his minor brothers or as a Karta.

13.3 Further contention of Id. Senior counsel is that all the co-owners are assumed to be in joint possession of the entire joint land and that exclusive possession cannot be delivered except by partition and that even if plaintiffs are in exclusive possession of the suit land of village Kasni Kalan, the said possession is on behalf of all the co-sharers. Id. counsel has referred to a Full Bench decision of this Court rendered in ***Bhartu Vs. Ram Sarup*** and a decision rendered by Hon'ble Supreme Court in ***Pokhar (dead) by Lrs and others Vs. Ram Singh, JT 2001(10) SC110***.

13.4 In addition to above said common contentions pertaining to both the appeals, Id. Senior Counsel also contends on behalf of the appellants-Rati Ram etc. that their application under Order 1 Rule 10 CPC was wrongly rejected by the trial Court, as being the *transferee pendente lite*, they should have been impleaded as a party. By making reference to a decision of Hon'ble Supreme Court rendered in ***Thomson Press (India) Limited Vs. Nanak***

Builders and Investors Private Limited and others, (2013) 5 Supreme Court

Cases 397, it is contended that a transferee is required to be made a party, even if the transfer is in breach of injunction order and that rights of the transferee will of course be subject to the outcome of the litigation.

13.5 Ld. senior counsel contends that First Appellate Court wrongly held that appellants-Rati Ram etc. should have filed separate appeal against the order dated 06.11.1981, whereby their application under Order 1 Rule 10 CPC was dismissed, inasmuch as a person, not a party to the decree, can appeal with the leave of the Court, if he is prejudicially affected by the judgment. Reference in this regard is made to ***State of Punjab (now Haryana) & others Vs. Amar Singh and another, 1974 SC 994, Ram Janam Singh Vs. State of Uttar Pradesh and another, JT 1994(1) SC 187 and Hardevinder Singh Vs. Paramjit Singh and others, 2013 (9) SCC 261.***

13.6 Ld. senior counsel contends further that application moved by these appellants-subsequent vendees to produce mutations No.293 and 294 dated 19.11.1960 has also been wrongly rejected because these mutations were public documents being part of revenue record, the genuineness of which was beyond any doubt and these are relevant to decide the real issue and controversy. To support this contention, reference is made to a decision of Hon'ble Supreme Court rendered in ***Billa Jagan Mohan Reddy and another Vs. Billa Sanjeeva Reddy and others, 1994 (4) SCC 659*** and a decision of this Court rendered in ***Pirbhu Dayal & others Vs. Prem Dass Chela Kishan Lal and others, 1994 PLJ 713.***

13.7 With all the above submissions, Ld. senior counsel has prayed for setting aside the judgments of the Courts below; and to dismiss the suit filed by the plaintiffs-contesting respondents.

Contentions for contesting respondents - plaintiffs:

14.1 Refuting the aforesaid contentions, ld. counsel appearing for the respondents-plaintiffs contends that suit property had come to the share of the plaintiffs by way of family settlement evidenced from Ex.P1 & P2, which has been rightly relied upon by the Courts below. Ld. counsel contends that Ex.P1 & P2 are in respect of a family partition, which had already taken place and therefore, these documents did not require any registration. Ld. counsel refers to decisions of Hon'ble Supreme Court rendered in *Kale and others Vs. Deputy Director of Consolidation and others*, 1976 AIR (Supreme Court) 807, *Korukonda Chalapathi Rao and another Vs. Korukonda Annapurna Sampath Kumar*, 2021(4) RCR (Civil) 433 and *Ravinder Kaur Grewal and others Vs. Manjit Kaur and others*, 2020 (3) RCR (Civil) 393 and decisions of this Court rendered in *Tarlok Chand Vs. Vijay Kumar*, 1993(1) RRR 115 and *Paramjit Singh Vs. Lakhwinder Kaur and another*, 2022(2) PLR 22.

14.2 Still further, it is argued that application of subsequent vendees Rati Ram etc. was rightly rejected by the trial Court and that they being subsequent vendees, are bound by the outcome of the litigation, as the sale deeds in their favour are hit by the principle of *lis pendence* contained in Section 52 of the Transfer of Property Act. 1882.

14.3 Ld. counsel further submits that the High Court, in the Regular Second Appeal, cannot upset the findings of fact as recorded by the Courts below. Ld. counsel referred to a decision of Hon'ble Supreme Court rendered

in *Narayanan Rajendran and another Vs. Lekshmy Sarojini and others*,
2009(2) RCR (Civil) 286.

Prayer is made for dismissal of both the appeals.

15. I have considered submissions of both the parties and have appraised the record.

Analysis by this court:

A. Admissibility of Ex.P1 & Ex.P2 – purported family settlements –

Effect of Non-registration -

16. As noticed earlier that it is undisputed that on the death of Dhanna, his three sons Hazari, Hira and Sheo Chand inherited the land of two villages i.e., Kasni Kalan and Kalali in equal share. Plaintiffs, the children of Hazari, claim to be exclusive owner in possession of the land of village Kasni Kalan in view of the purported family partitions Ex.P1 & P2. Undisputedly, both these documents Ex.P1 & P2 are unregistered. By way of Ex.P1, Sheo Chand, predecessor-in-interest of defendants No.6 to 15, purported to have transferred his share in the land of village Kasni Kalan in favour of Ranjit son of Hazari, who in turn relinquished his rights in favour of Sheo Chand in respect of the land of village Kalali.

17. As rightly pointed out by ld. senior counsel for the appellants, the bare perusal of Ex.P1 would reveal that this document has been executed only between Ranjit son of Hazari on one hand; and Sheo Chand son of Dhanna on the other hand. The other sons of Hazari Ram i.e. plaintiffs No.2 to 4, namely, Matu Ram, Ami Lal and Surja are not the parties/signatories to this document. Still further, as per this document Ex.P1, Ranjit relinquished his right in the

land of village Kalali besides house property and also gave ₹400/- to Sheo Chand; and Sheo Chand relinquished his right in the land of Kasni Kalan in favour of Ranjit. There is no mention that Ranjit was acting as *karta* on behalf of his other brothers i.e. Matu Ram, Ami Lal and Surja. There is no mention as to whether the other sons of Hazari i.e. Matu Ram, Ami Lal and Surja were minors or major at that time. There is only reference that this decision is consented to by Matu Ram, Ami Lal and Surja, without there being any signatures of them.

18. Further, the most important point to be noted in the said document Ex.P1 is the recital to the effect that 'from now on' Ranjit will be owner of the land of village Kasni Kalan and Sheo Chand will be owner of the land of village Kalali. Document Ex.P1 also contains the statement of Sheo Chand to the effect that he has now no right in the land of village Kasni Kalan, as in lieu thereof he has received ₹400/- and has made Ranjit as owner of the land of village Kasni Kalan. Similarly, there is a statement of Ranjit, as per which, he will have no right in the land of village Kalali, as he has relinquished his right in the said land of Kalali in favour of his paternal uncle Sheo Chand. These recitals in Ex.P1, particularly the word '*ab se*' (from now on) will make it abundantly clear that family settlement was *in praesenti* and it was not a memorandum in respect of any previous arrangement.

19. Similarly, Ex.P2, the purported family partition dated 25.03.1957 is between plaintiffs on one hand i.e. sons of Hazari; and legal heirs of Hira i.e. defendants No.1 to 5 on the other hand. In this document also, it is mentioned that plaintiffs have relinquished their rights in the land of village Kalali; whereas defendants No.1 to 5 have relinquished their right in the land

of village Kasni Kalan in favour of Ranjit etc. i.e. sons of Hazari. This document also shows that Ranjit etc. paid an amount of ₹600/- to Amar Singh etc. in the presence of Panchayat in lieu of land of village Kasni Kalan. This document also specifically mentions the word '*Aaj*' i.e. today, clearly indicating that it is from the date of execution of this document that plaintiffs would be exclusive owner of land of village Kasni Kalan and defendants No.1 to 5 will be the exclusive owner of land of village Kalali.

20. Thus, both the documents Ex.P1 & P2 create the right in favour of plaintiffs in respect of the land of village Kasni Kalan in respect of respective shares of Sheo Chand and that of legal heirs of Hira *in praesenti*. These documents do not reflect that these were executed as a memorandum of family settlement in respect of some earlier disputes. Both the documents are unregistered.

21. In the case of *Kale and others (supra)*, Hon'ble Supreme Court explained the principles regarding necessity of registration of a family settlement. It was held as under:-

“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family.

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangements may be even oral in which case no registration is necessary,

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction

should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immoveable properties and therefore does not fall within the mischief of Section 17 (2) (*sic*) (Section 17 (1) (b) ?) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has not title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owners, then the antecedent title must be assured and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

11. The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of this Court as also those of the Privy Council and other High Courts.”

22 The above said principles explained by Hon’ble Supreme Court would make it quite clear that family settlement should be bona fide, so as to resolve family disputes and rival claims, by way of a fair and equitable division or allotment of properties between various members of the family.

23. Whether the documents Ex.P1 & P2 show fair and equitable division of allotment of properties between the parties. The answer to this question is a big NO. The land of village Kasni Kalan is 142 Bigha 11 Biswa, in which one son of Dhanna is getting exclusive right; whereas the land in village Kalali is 36 Bigha 8 Biswa, in which two sons of Dhanna (*through their respective descendants*) are getting the rights i.e. to the extent of 18

Bigha 4 Biswa each. Meaning thereby, if Ex.P1 and P2 are accepted, one son of Dhanna is getting 142 Bigha 11 Biswa of land of one village; whereas 2 other sons of Dhanna through their respective descendants are getting 18 Bigha 4 Biswa each only of the land in other village. By no stretch of imagination, the said settlement can be stated to be a fair and equitable division of allotment of the properties.

24. Assuming for the sake of arguments that Sheo Chand by way of Ex.P1; and legal heirs of Hira by way of Ex.P2 accepted ₹400/- and ₹600/- respectively in lieu of their excess share in the land of village Kasni Kalan, still Ex.P1 & P2 cannot be admitted in evidence for the simple reason that these documents creates rights *in praesenti* for the first time in the immovable property and therefore, both these documents required to be compulsorily registered.

25. Even in the case of ***Kale and others (supra)***, relied by Ld. counsel for the respondents, Hon'ble Supreme Court has clarified that registration would be necessary, if terms of family settlement are reduced into writing; and that distinction was required to be made between a document containing the term and recitals of the family arrangement made under the document; and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for the information of the Court for making necessary mutation and that in such a case, when the memorandum itself does not create or extinguish any rights in immovable property, the same will not be compulsorily registerable.

26. Similarly, in ***Korukonda Chalapathi Rao's case (supra)***, relied upon by Ld. counsel for the respondents, it has been held by Hon'ble Supreme

Court that when document does not purport to, by itself create, declare, assign, extinguish or limit right in properties and that such a family settlement document merely records past transaction, the same does not require compulsory registration and that the same is admissible. Similar position is explained by Hon'ble Supreme Court in the case of *Ravinder Kaur Grewal's case (supra)*.

27. However, in the present case, the documents Ex.P1 and P2 created rights for the first time in favour of the plaintiffs in respect of the shares of the Sheo Chand; and sons of Hira, so the documents required to be compulsorily registered.

28. In *Siromani vs. Hemkumar (supra)*, it has been clearly held by Hon'ble Supreme Court that when the document effects partition of the joint family properties of the value of more than ₹100/- by metes and bounds, registration is compulsory and in the absence of registration, it is inadmissible to prove title of any of the co-parceners to any of the property. In the case of *Sarimati Shanti Devi and another (supra)*, it has been held by this Court that when by virtue of the writing, a person was made the exclusive owner of the house, while he was divested of his rights in all other properties, that writing required compulsory registration.

Both the above cited authorities are squarely applicable to the facts of the present case.

29. Ld. trial Court as well as First Appellate Court clearly fell in error in admitting Ex.P1 & P2 in evidence by treating the same as the documents evidencing family partition. The observation of the First Appellate Court to the effect that Ex.P1 and P2 were reduced into writing regarding the

previous family settlement arrived between the parties and therefore, these did not require registration, is clearly the result of misreading of the documents, as it has been observed above that both Ex.P1 & P2 made it clear that the documents created rights *in praesenti*. As such, these were required to be compulsorily registered.

B. Private Partition – non-approval of Revenue Officer – Effect thereof -

30. Proceeding further, apart from the fact that documents Ex.P1 & P2 are inadmissible in evidence on account of these being unregistered documents, the alleged family partition was liable to be ignored for another reason.

31. Section 111 of the Punjab Land Revenue Act, 1887, provides for application to be moved before the revenue officer for partition of his share in the land by any joint owner. The subsequent provisions lay down the procedure to effect the partition. **Section 123 of the Punjab Land Revenue Act, 1887** is relevant in this case, as it provides about affirmation of partition privately effected. It reads as under: -

“123. Affirmation of partition privately affected: In any case in which a partition has been made without the intervention of a Revenue-officer, and party thereto may apply to a Revenue-officer for an order affirming the partition”.

32. It is only after the affirmation by the concerned Revenue Officer of the partition effected privately by the co sharers, that it is considered to have come into force. In the case of *Suba Singh (supra)*, it has been held by this Court that partition of the agricultural land outside the Court i.e., private partition becomes valid, only if same is brought to the notice of the revenue authorities and sanction is obtained and thereafter, Khata is divided, otherwise

co-sharers continued to be joint owners in the same Khata. It was held as under: -

“The partition of agricultural land is governed by section 111 onwards of the Punjab Land Revenue Act. A reading of this Chapter shows that even if agricultural land is stated to be partitioned outside the Court that partition becomes valid only if the same is brought to the notice of the revenue authorities and sanction is obtained and only thereafter the Khatas are divided. Other- wise, they continue to be joint owners in the same Khara.”

33. In the present case, plaintiffs nowhere pleaded that they had ever applied to the revenue officer for sanctioning of the mutation based on the alleged private partition effected amongst the parties by virtue of Ex.P1 and Ex.P2.

C. Additional Evidence under Order 41 Rule 27 CPC -

34. The subsequent vendees Rati Ram etc. had moved an application before the First Appellate Court under Order 41 rule 27 CPC to produce the copies of two mutations No.293 and 294, which were entered on the basis of two family partitions Ex.P1 & P2, but these were rejected on 19.11.1960. Unfortunately, the application was dismissed by the First Appellate Court by going into the technicalities of Order 41 Rule 27 CPC and without even bothering to see that these documents were public documents, which could not have been subsequently created and so, the authenticity thereof could not be doubted.

35. In *Pirbhu Dayal's case (supra)*, additional evidence was sought to be produced in second appeal during the course of arguments. The documents sought to be produced by way of additional evidence were certified copies of Jamabandis, certified copies of statement of tenancy rights and copies of two mutations qua the suit land. By holding that these

documents could not be procured or manipulated and that Court required the documents with a view to decide contentious issue between the parties, it was held by this court that non-filing of the same at the earliest in point of time or later, was wholly meaningless.

36. In present case, perusal of mutation No.293 would reveal that it pertains to the land of village Kasni Kalan, whereby 1/3rd share of Sheo Chand in the said land was sought to be mutated in favour of plaintiffs of the case i.e., Ranjit etc. sons of Hazari. Though the mutation was initially sanctioned by the Assistant Collector 2nd Grade, on 31.05.1959, but objections were raised by Sheo Chand and ultimately, vide order dated 09.11.1960, Assistant Collector First Grade, Camp at Hansi, rejected the mutation. Similarly, mutation No.294, in respect of share of legal heirs of Hazari in the land of village Kasni Kalan, sought to be transferred in favour of plaintiffs, was rejected on 09.11.1960.

37. The aforesaid documents i.e., mutation No.293 and 294 both dated 09.11.1960, would make it quite clear that the revenue authorities never approved the private partition purported to have been effected amongst the parties by way of Ex.P1 and Ex.P2. Even if these documents i.e. mutations No.293 & 294 are kept out of consideration and not taken into account, the Jamabandis, as available on record, in respect of the land of both the villages would clearly show that all the three lines of Dhanna are still shown to be co-owners in possession of the land of the two villages. Said factual position is disputed before this court. All these circumstances clearly indicate that private partition allegedly effected amongst the parties vide Ex.P1 & P2 was neither implemented nor was approved by the revenue authorities.

D. Rights of Co-sharers -

38. Simply because plaintiffs are recorded to be in exclusive possession of the suit land of village Kasni Kalan, would not make them exclusive owner over the said land. It has been made clear by a Full Bench of this Court in the case of *Bhartu (supra)* that possession of joint property by one co-owner, is in the eyes of law, possession of all, even if all but one are actually out of possession. The inter se rights and liabilities of the co-sharers as settled by the Division Bench of this Court in *Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram, AIR 1961 Punjab 528*, were duly approved in *Bhartu's case* by holding:

- (1) A co-owner has an interest in the whole property and also in every parcel of it.
- (2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.
- (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.
- (4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.
- (5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.
- (6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.
- (7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.”

The above said authority of the full bench of this court in the case of ***Bhartu (supra)*** was approved by Hon'ble Supreme Court in ***Pokhar (dead) by Lrs and others (supra)***.

39. Thus, looking from any angle, the findings of the Courts below on issue No.1 to 4 cannot be sustained. Finding on issues No.1 & 2 are reversed by holding that alleged partition dated 06.06.1955 (Ex.P1) and 25.05.1957 (Ex.P2) are not admissible in evidence. These documents cannot be taken into account so as to hold the private partition. It is further held that parties are co-sharers in possession of the suit land of village Kasni Kalan as well as of the land of village Kalali. On issue No.3, it is held that possession of the plaintiffs on the suit land of village Kasni Kalan is in the capacity of co-sharer and not as exclusive owner. Issue No.4 is decided in favour of the defendants by holding that the entries of the revenue record showing them to be co-sharers in the suit land, are correct.

E. Impleadment as party of Transferee *Pendente lite* -

40. Proceeding further, it has not been disputed before this Court that during pendency of the suit before the trial Court, all the defendants i.e., descendants of Hira as well as Sheo Chand had sold their respective shares in suit land of village Kasni Kalan i.e., their 2/3 share in the suit land in favour of appellants of RSA N: 1297-1987 i.e., Rati Ram etc. vide sale deeds dated 06.06.1980 and 25.08.1981. They had moved an application to be impleaded as party under Order 1 Rule 10 of the CPC on 05.11.1981 before the trial court, but the same was dismissed on 06.11.1981 and on the very same day, the suit was decreed. These appellants i.e. subsequent vendees did not get the opportunity to challenge the order dated 06.11.1981, whereby their application

to be impleaded as a party, was dismissed, by filing separate appeal and as such, the observation made by the First Appellate Court to the effect that these appellants should have filed an independent appeal against the order dated 06.11.1981, is without any merit.

41. The question is that whether Rati Ram etc. – transferee *pendente lite* should have been impleaded as a party to the suit? The scope of Order 1 Rule 10 CPC and that of Order 22 Rule 10 CPC was discussed by Hon’ble Supreme Court in ***Thomson Press (India) Limited vs. Nank Builders case (supra)***, wherein it was observed as under:

“54.....A simple reading of the above provision (*O.I R.10*) would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. What has troubled us is whether independent of Order I Rule 10 CPC the prayer for addition made by the appellant could be considered in the light of the above provisions and, if so, whether the appellant could be added as a party-defendant to the suit. Our answer is in the affirmative. It is true that the application which the appellant made was only under Order I Rule 10 CPC but the enabling provision of Order XXII Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by counsel for the respondents that Order XXII Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party-defendant. Such being the position all that is required to be examined is whether a transferee *pendente lite* could in a suit for specific performance be added as a party defendant and, if so, on what terms.

55. We are not on virgin ground in so far as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee *pendente lite* can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. ***In Khemchand Shanker Choudhary v. Vishnu Hari Patil (1983) 1 SCC 18***, this Court held that

“6. the position of a person on whom any interest has devolved on account of a transfer during the pendency of a suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding.....”

Any such heir, legatee or transferee cannot be turned away when she applies for being added as a party to the suit. The following passage in this regard is apposite:

“6... Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an official receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out.” (emphasis supplied)

56. To the same effect is the decision of this Court in *Amit Kumar Shaw v. Farida Khatoon (2005) 11 SCC 403* where this Court held that a transferor pendente lite may not even defend the title properly as he has no interest in the same or collude with the plaintiff in which case the interest of the purchaser pendente lite will be ignored. To avoid such situations the transferee pendente lite can be added as a party defendant to the case provided his interest is substantial and not just peripheral. This is particularly so where the transferee pendente lite acquires interest in the entire estate that forms the subject matter of the dispute. This Court observed:

“16... The doctrine of lis pendens applies only where the lis is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the Defendant is vitally interested in the litigation, where the transfer is of the entire interest of the Defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the Plaintiff. Hence, though the Plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case”

(emphasis supplied)

To the same effect is the decision of this Court in ***Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass (deceased) through his Chela Shiama Dass, (1976) 1 SCC 103.***”

42. Adverting to the facts of present case, the defendants lost interest in the litigation after transferring their rights in the suit property to Rati Ram etc., as is evident from the fact that no evidence whatsoever was produced by them to support their case or to controvert the case of plaintiffs. As observed by Hon’ble Supreme Court, transferor pendente lite may not even defend the title properly as he has no interest in the same or collude with the plaintiff, in which case the interest of the purchaser pendente lite will be ignored. To avoid such situations, the transferee pendente lite can be added as a party defendant to the case provided his interest is substantial and not just peripheral.

43. Therefore, once it had been brought to the notice of the court that applicants Rati Ram etc. had already purchased share of defendants in the suit property and they moved an application to be impleaded as a party, the court should have impleaded them as party to the suit, without going into the technicalities as to under which provision or at what stage, the application had been moved, so as to give them the opportunity to watch their interests, lest such transferee (Rati Ram etc in this case) suffered prejudice on account of the transferor losing interest in the litigation post transfer. Of course, they could not be allowed to take a stand, contrary to their transferor – defendants.

F. Right to file appeal by third party -

44. Moving ahead, even if Rati Ram etc. – appellants of RSA-1297-1987 were not allowed to be impleaded as a party to the suit, these subsequent vendees had the right to file the independent appeal with leave of the Court, as they are affected by the decision of this lis, in which they are not the party. Reliance in this regard can be placed on *State of Punjab (now Haryana) vs. Amar Singh (AIR 1974 SC 994)*, wherein it was held by Hon'ble Supreme Court as under:-

“The ordinary rule is that only a party to a suit adversely affected by the decree or any of his representatives-in- interest may file an appeal. Under such circumstances a person who is not a party may prefer an appeal with the leave of the appellate court "if he would be prejudicially affected by the judgment and if it would be binding on him as res-judicata under Explanation 6 to [Section 11](#).”

45. Similarly, in the case of *Ram Janam Singh (supra)*, it has been held by Hon'ble Supreme Court that a person, not a party to the lis, affected by a judgment of the High Court, can file an SLP or review.

46. In the present case, the appellants-Rati Ram etc. having purchased the rights of the defendants in the suit land during pendency of the suit, it is obvious that defendants i.e., descendants of Sheo Chand and Hira had lost interest in the litigation and it is probably because of this reason they did not take any interest in the litigation, once the case reached at the stage of defendants' evidence. Had the defendants taken the interest and had they simply produced in evidence mutation Nos. 293 and 294 rejected on 09.11.1960 by ACIG as has been referred earlier, the Court would have come to know that the family partitions relied upon by the plaintiffs, had never been approved by the revenue authorities and had been rather, specifically rejected.

47. Having regard to the aforesaid discussion, the appeal filed by Rati Ram etc. before the First Appellate Court is held to be maintainable and the order of appellate Court, dismissing the appeal only on the ground of maintainability, cannot be sustained.

G. Effect of the transfer *pendente lite* -

48. The next question is that as to how far the outcome of the litigation is binding on the transferees *pendente lite*. This aspect has also been discussed in ***Thomson Press (India) Limited vs. Nank Builders case (supra)***, wherein explaining the effect of the transfer *pendente lite* under Section 52 of the Transfer of Property Act, it has been held by Hon'ble Supreme Court that:

“49.....The legal position in this regard is also fairly well settled. A transfer *pendente lite* is not illegal ipso jure but remains subservient to the pending litigation. In ***Nagubai Ammal & Ors. v. B. Shama Rao & Ors. AIR 1956 SC 593***, this Court while interpreting [Section 52](#) of the Transfer of Property Act observed:

“...The words “so as to affect the rights of any other party thereto under any decree or order which may be made therein”, make it clear that the transfer

is good except to the extent that it might conflict with rights decreed under the decree or order. It is in this view that transfers pendente lite have been held to be valid and operative as between the parties thereto.”

50. To the same effect is the decision of this Court in [*Vinod Seth v. Devinder Bajaj* \(2010\) 8 SCC 1](#) where this Court held that [Section 52](#) does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the Court. The following passage in this regard is apposite:

“42. It is well settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. [Section 52](#) will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit.”

51. The decision of this Court in [*A. Nawab John & Ors. v. V.N. Subramanyam* \(2012\) 7 SCC 738](#) is a recent reminder of the principle of law enunciated in the earlier decisions. This Court [in that case](#) summed up the legal position thus:

“18The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject- matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.”

52. We may finally refer to the decision of this Court in [*Jayaram Mudaliar v. Ayyaswami and Ors.* \(1972\) 2 SCC 200](#) in which were extracted with approval observations made on the doctrine of lis pendens in “Commentaries of Laws of Scotland, by Bell”. This Court said:

“43.....Bell, in his commentaries on the Laws of Scotland said that it was grounded on the maxim: “*Pendente lite nihil innovandum*”. He observed:

It is a general rule which seems to have been recognised in all regular systems of jurisprudence, that during the pendency of an action, of which the object is to vest the property or obtain the possession of real estate, a

purchaser shall be held to take that estate as it stands in the person of the seller, and to be bound by the claims which shall ultimately be pronounced.”

53. There is, therefore, little room for any doubt that the transfer of the suit property *pendente lite* is not void *ab initio* and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.”

49. Thus, it is clear from the legal position as above that transfer *pendente lite* is neither illegal nor *void ab initio* but remain subservient to the rights eventually determined by the Court in pending litigation. As such, it is held that appellants-Rati Ram etc., had the right to file the appeal but subject to the condition that they will be bound by the final outcome of the decision of the case, as they had purchased the suit property to the extent of share of the defendants, during pendency of the suit.

H. Power of High Court to intervene -

50. Proceeding further, it is no doubt true that High Court has no jurisdiction to interfere with concurrent finding of fact arrived at by the Courts below, even if the High Court believed and satisfied that the Courts below committed an error in recording the finding, as has been held by Hon’ble Supreme Court in the case of *Narayanan Rajendran and another (supra)*.

51. However, in the present case, the question as to whether the family settlements Ex.P1 & P2 could have been admitted in evidence, is not a

pure question of fact; rather, it is certainly a mixed question of law and facts, as depending upon the contents of the family settlement, the effect of non-registration is required to be looked into and it has been found by this Court that as these documents created rights for the first time i.e., *in praesenti* in favour of the plaintiffs, therefore, the documents required registration. Similarly, the question as to whether the exclusive possession of the plaintiffs over the suit land could be taken as a result of implementation of the family partition; and the question as to whether the alleged family partition could have been considered by the Court in the absence of approval of the revenue authorities, are also the questions of law and as such, the contention of Id. counsel for the respondents to the effect that this Court cannot intervene in the findings, is rejected.

Conclusion/Result -

52. Consequent to the entire discussion above, both the appeals are hereby allowed. The judgment and decree dated 21.10.1986 passed by the First Appellate Court in *Civil Appeal No.4-13 of 1982/1986* titled '*Richhpal and others Vs. Ranjit and others*', dismissing the appeal against judgment and decree dated 06.11.1981 of the trial Court, whereby the suit of the plaintiffs Ranjit etc. was decreed, are hereby set aside. Resultantly, the suit of the plaintiffs Ranjit etc. is hereby dismissed.

53. As a result of dismissal of the said suit, it is held that plaintiffs have only 1/3rd share in the suit land of village Kasni Kalan and similarly, they have 1/3rd share in the land of village Kalali. Similarly, defendants i.e. descendants of Hira and Sheo Chand sons of Dhanna have 2/3rd share (1/3rd share each) in the land of both the villages. It is further held that as a result of

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Pending application(s), if any, stand disposed of.

(DEEPAK GUPTA)
JUDGE

Vivek

Yes

No