



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RSA-865-1992
Reserved on: 09.02.2024
Date of decision: 02.05.2024

PARKASH DEV (DECEASED) THROUGH LRS.

..Appellant

Versus

SATISH KUMAR AND OTHERS

..Respondents

2. RSA-1085-1992

JAGDISH CHANDER AND ANR.

..Appellants

Versus

BHIM SAIN AND ORS.

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L. Sarin, Sr. Advocate
with Ms. Hemani Sarin, Advocate
for the appellant in RSA-865-1992.

Mr. Mohit Garg, Advocate
for respondent No.1 in RSA-865-1992
for respondent No.3 in RSA-1085-1992.

Mr. Yogesh Swaroop, Advocate
for respondent No.1.

Mr. Balkar Singh, Advocate
for respondent No.2 to 4.

ANIL KSHETARPAL, J.

1. **Brief facts of the case:-**

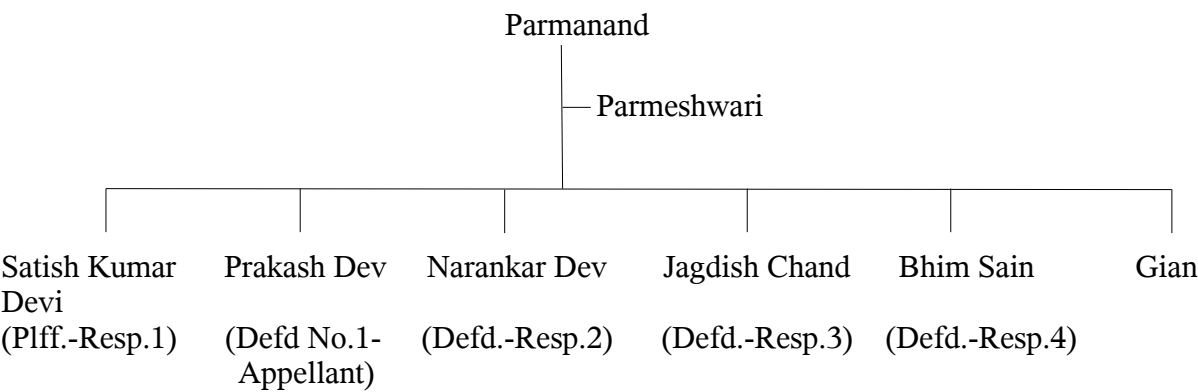
1.1 With the consent of the learned counsel representing the parties
two connected regular second appeals separately filed by defendant No.1 to
3 shall stand disposed of by this common judgment.

1.2 In order to comprehend the controversy involved in the present



case, the relevant facts in brief are required to be noticed.

1.3 In order to understand the relationship between the parties, a pedigree table is illustrated hereinafter:-



1.4 In the year 1950, all the family members specified in the pedigree table constituted a partnership firm namely M/s Prakash Dev and Brothers and established a fuel station at Bhiwani Stand, Rohtak. On 16.03.1951, two separate firms namely M/s Prakash Dev and Brothers and M/s Jagdish & Satish Brothers were constituted. On 23.02.1955, partnership of firm M/s Prakash Dev and Brothers was re-constituted as Sh. Narankar Dev who was earlier a minor attained majority on 10.02.1955. All the seven family members, including Sh. Satish, who was a minor were partners. On 01.04.1957, Sh. Parmanand and Smt. Prakash Devi/Prakash Bai withdrew/retired from the partnership firm M/s Parkash Dev & Brothers and the remaining partners reconstituted the firm with the same name. Thereafter, the firm namely M/s Jagdish and Satish brothers was also reconstituted on 14.05.1959. Four brothers were carrying on business in partnership since 01.04.1957, and Sh. Satish on becoming a major was admitted to partnership.

1.5 On 08.09.1956, plot No.6 measuring approximately 1 bigha and 6 biswas was auctioned by the rehabilitation department. Sh. Jagdish Chander with highest bid of Rs.20,100/- was declared a successful bidder.



He deposited Rs.2,010/- being 10% of the total price. In order to pay the balance amount, verified claims of Sh. Jagdish Chander, Sh. Narankar Dev, Sh. Satish and Smt. Parmeshwari Devi were adjusted on 31.03.1958. The expression ‘verified claims’ denotes the amount of compensation payable to displaced persons who had to migrate to India on partition of the Country while leaving their properties in the area which forms part of Pakistan. As per findings of fact arrived at by the Courts below, partnership firm M/s Prakash Dev and Brothers was dissolved on 31.03.1958 and there is no challenge to its correctness in these appeals. On 10.09.1958, the possession of the plot in dispute was delivered to the family. In the year 1960, first building plan for carrying out construction on some part of the plot was sanctioned. On 26.12.1969, the rehabilitation authorities issued the sale certificate while specifying the area of the plots allotted to each of the four brothers in the following manner:-

<i>“Jagdish Chander</i>	<i>: 8459</i>
<i>Narankar Dev</i>	<i>: 4855</i>
<i>Parkash Dev</i>	<i>: 4363</i>
<i>Satish Kumar</i>	<i>: 2423</i>
<i>TOTAL</i>	<i>: 20,100”</i>

1.6 In the revenue record, all four brothers are recorded as owners of the plot each with plots of specific size. However, Sh. Bhim Sain's name is missing as he never contributed to the purchase of the property.

1.7 In additional evidence, a copy of the judgment and decree passed by the Court on 15.04.1972 was produced before the First Appellate Court. A careful perusal of the aforesaid judgment proves that all the family members including the female members acknowledged the division of the property by virtue of family settlement dated 07.09.1971. Along with this judgment Appendix ‘B’ was attached, which was made a part of the plaint.



In appendix 'B', share of each member of the family was specified and all the joint properties located at various cities including Rohtak, Delhi, Meerut, Jhajjar were divided. In this division, Sh. Bhim Sain was also allocated some other properties which were not part of the suit property. As per assessment orders of income tax for the year 1971-1972, it is evident that Sh. Prakash Devi and Sh. Bhim Sain were partners in the following four firms:-

- i. M/s Jagdish and Satish Brothers, Meerut.
- ii. M/s Prakash Chand and Brothers, Bahadurgarh.
- iii. M/s Prakash Chand and Brothers, Mandi.
- iv. M/s Prakash Chand and Brothers (Petrol Pump), Rohtak.

1.8 It was also noted that there was a capital account of Rs.1,08,000/- of the five partners. Similarly, Ex.D-24 is an order passed by the competent authority under the Income Tax Act, 1961, by the competent authority noticing that M/s Jagdish and Satish Brothers, Meerut was reconstituted with Sh. Prakash Dev and Sh. Bhim Sain. Remaining brothers Sh. Narankar Dev, Sh. Satish and Sh. Jagdish retired from the firm. On perusal of Ex.D-26, it becomes evident that Sh. Naveen son of Sh. Prakash Dev and Sh. Vinay Kumar son of Sh. Bhim Sain joined the firm M/s Jagdish and Satish Brothers, Meerut, with effect from 01.04.1972.

1.9 Before the First Appellate Court, Sh. Ramakant, an official working in the office of Settlement Commissioner, Delhi was examined. He deposed that after payment of Rs.2,010/- by Sh. Jagdish Chander in the open auction, the verified claims of Sh. Jagdish Chander, Sh. Narankar Dev, Sh. Satish Kumar (minor) and Sh. Prakash Dev were adjusted to pay the price of land.



1.10 Sh. Satish Kumar filed the present suit seeking partition of land and the buildings comprised in plot No. 6 against Sh. Prakash Dev, Sh. Narankar Dev and Sh. Jagdish Chander. It was alleged that the plaintiff and defendant No. 1 to 3 have raised construction on the property in question, which is joint between the parties. On an application, Sh. Bhim Sain was impleaded as defendant. Thereafter, the plaint was amended while asserting that though defendant No. 4 has been added as a party, but he has no share. Defendant No. 1 Sh. Prakash Dev while contesting the suit claimed that the suit land had already been partitioned and the members of the family have constructed their respective portions. The fuel station and one shop were constructed by Sh. Prakash Dev. The other shop and building (alleged to be a school building) were constructed by Sh. Jagdish Chander and Sh. Satish Kumar. A service station was constructed by Sh. Narankar Dev. Three separate residential houses were constructed by Sh. Jagdish Chander, Sh. Satish Kumar and Sh. Narankar Dev each. Defendants No. 2 and 3 filed the joint written statement admitting that the firm M/s Prakash Dev and Brothers was established in the year 1950 consisting of seven partners including father and mother and five brothers. However, the parents retired in the year 1955-1956, and all the brothers were partners in the petrol pump being run by M/s Prakash Dev and Brothers. The shops, petrol pump and residential buildings were built from the joint funds of the family but the land underneath was owned by the plaintiff and defendants No.1 to 3. Sh. Bhim Sain while filing the separate written statement claimed that Sh. Jagdish Chander made a bid for the plot in dispute for and on behalf of M/s Prakash Dev and Brothers, in which all the parties to the suit were partners. The payment was made out of the firm's account and all the five brothers were co-owners of the suit land in equal share. For payment of the auction



price, the verified claims of plaintiff and defendant No.1 and 2 were submitted and the remaining payment was paid out of joint funds. Sh. Jagdish Chander had associated plaintiff and defendant No.1 and 2 for purchase of the land in question according to the value of their claims. The trial Court passed a decree while determining the share of the parties as under:-

<i>“Satish Kumar, plaintiff-respondent 1</i>	<i>- 45/192</i>
<i>Prakash Dev, defendant-appellant</i>	<i>- 34/192</i>
<i>Narankar Dev, defendant-respondent 2</i>	<i>- 45/192</i>
<i>Jagdish Chand, defendant-respondent 3</i>	<i>- 34/192</i>
<i>Bhim Sain, defendant-respondent 4</i>	<i>- 34/192”</i>

1.11 Two first appeals were filed, which were dismissed on 08.01.1995.

2. **Reasons recorded by the Courts below:-**

i. Sh. Jagdish Chander while appearing as a witness in the first appeals had admitted the genuineness of the voucher dated 16.07.1955, which was submitted to the firm for withdrawing Rs.2,010/-. Thus, it is proved that Rs.2,010/- was debited to the accounts of M/s Prakash Dev & Brothers. Consequently, it is proved that Sh. Jagdish Chander purchased the property in the open auction held on 14.07.1955 on behalf of the firm M/s Prakash Dev & Brothers.

ii. Perusal of Ex.D-9, a partnership deed dated 23.02.1955 proves that all the five brothers including their parents were partners and vide Ex.D-6, partnership deed dated 01.04.1957, it is proved that after the parents retired, all five brothers were partners of the partnership



firm M/s Prakash Dev & Brothers.

iii. Perusal of notice sent on behalf of the firm under Section 80 of the 'CPC' on 05.01.1970, proves that the property belonged to the firm.

iv. In CWP-290-1968, Sh. Jagdish Chander admitted that the plot was purchased by the firm. Same was the position of affidavit filed by Sh. Jagdish Chander in support of the writ petition.

v. From perusal of the plaint Ex.D-13 dated 10.02.1970/12.06.1971, it is proved that the property belonged to the firm.

vi. Similar is the position of plaint Ex.DA filed on 01.10.1966, supported by affidavit of Sh. Jagdish Ex.DB.

vii. In the replication Ex.DC, similar was the position.

viii. There is another written statement filed on behalf of M/s Prakash Dev & Brothers in the suit filed by Sh. Krishan and others, admitting that the property belongs to partnership firm.

ix. Even if Sh. Bhim Sain was not a partner in the reconstituted firm still his share in immovable property would remain intact.

x. From perusal of the partnership deeds of M/s Jagdish & Satish Brothers Ex.P-7/D-10, it is proved that the property belonged to the partnership firm.

3. Analysis of the reasons recorded by the Courts below:-

3.1 First of all, this Bench proceeds to analyse the reasons recorded



by the Courts below while decreeing the suit.

3.2 Factually, reason No.1 is correct, but there is no evidence to prove that the suit property i.e. Plot No.6 was made a part and parcel of the property of the partnership firm M/s Parkash Dev & Brothers or M/s Jagdish & Satish Brothers. Mere withdrawal of Rs.2,010/- from the account of partnership firm would not be sufficient to prove that the property belonged to the partnership firm M/s Parkash Dev & Brothers. The partnership firm was constituted in the year 1955. All the five brothers including their parents were partners in the two firms namely M/s Prakash Chand and Brothers and M/s Jagdish and Satish Brothers. However, there is no evidence to prove that during the existence or dissolution of the partnership firm, there was any specific recital regarding the suit property. As per the concurrent findings of fact arrived at by the Courts below, remaining brothers walked out of these partnership firms except Sh. Prakash Dev and Sh. Bhim Sain. In the year 1969, conveyance deed was issued by the government while allotting plots of specific size to each of the four brothers namely Sh. Jagdish Chander, Sh. Prakash Dev, Sh. Narankar Dev and Sh. Satish Kumar. These four brothers had contributed in purchase of the property while allowing adjustment of their respective verified claims towards payment of price of the plot.

3.3 The 2nd, 3rd, 4th 5th & 6th reasons assigned by the Court are required to be analysed from a different perspective. Immovable property can be made part of the partnership firm by way of a capital contribution. There is no evidence to this effect. Hence, the casual assertions of Sh. Jagdish Chander in the writ/suit to the effect that the property was purchased by him on behalf of the firm would not be sufficient to prove that the property was brought into the fold of partnership firm unless the aforesaid



admission is corroborated by the list of properties reflected in the statement of assets and liabilities of the firm. In this case, no material to this effect has been produced. The Courts below have also overlooked that in the year 1958, the partnership firm consisting of all five brothers came to an end, and thereafter, only two brothers namely Sh. Prakash Dev and Sh. Bhim Sain constituted new firm with the same name. It is evident from the evidence available on the file that in M/s Prakash Dev and Brothers and M/s Jagdish & Satish Brothers, only two brothers namely Sh. Prakash Dev and Sh. Bhim Sain continued. If the property vested in M/s Prakash Dev and Brothers, the same would have been either divided at that time or would have been taken over by the new firm. After 1958, there is also no material to prove that all five brothers continued to be partners in M/s Prakash Dev and Brothers. There is no occasion for the Courts below to assume that the property vested in all the five brothers despite dissolution of the firm in the year 1958. Moreover, it is well settled that admission of the party is required to be categorical and crystal clear. The pleadings of Sh. Jagdish Chander in the suit filed in the year 1971 would not bind other brothers. Similarly, the notice issued under Section 80 of the Code of Civil Procedure, 1908 (in short 'CPC') would also not bind other brothers. Similar is the position with regard to assertion made in the copy of the writ petition filed under the signatures of Sh. Jagdish Chander in the High Court.

3.4 The First Appellate Court has also overlooked that the partnership firm namely M/s Prakash Dev and Brothers, was never recorded as owner either in the revenue record or in any other official document. Perusal of the conveyance deed executed in the year 1969 proves that the plots of specific size out of bigger plot No.6 were allotted to only four brothers, which was never challenged or questioned by Sh. Bhim Sain or



any other brother during all this while. At that point in time, Sh. Parmanand, was also alive. If Sh. Bhim Sain had any grievance, he would have immediately contacted his father complaining about his exclusion. Moreover, the conveyance deed was executed in accordance with the respective contribution of four brothers except Sh. Bhim Sain. There is no serious dispute that Sh. Bhim Sain settled in Meerut and Delhi. The fuel station run by Sh. M/s Prakash Dev and Brothers was on a small portion of plot No.6. From the evidence, it is evident that there were as many as three residential houses in the bigger plot. There is no evidence that the amount spent on the construction of these three houses was from the account of the partnership firm.

3.5 While recording reason No.9, the Courts below have contradicted. Sh. Bhim Sain continued to be a partner along with Sh. Prakash Dev upto 1970-1971. Moreover, it is evident from Ex.D-26 that Sh. Naveen and Sh. Vinay Kumar, the children of Sh. Prakash Dev and Sh. Bhim Sain, respectively became partners in partnership firm M/s Jagdish & Satish Brothers, Meerut, which appears to be a separate partnership firms. Hence, the Court erred in holding that even if Sh. Bhim Sain was not a partner in the reconstituted firm, his share in the immovable property would remain intact, particularly when there is no evidence to this effect.

4. Analysis of submissions of learned counsel for respondents and Discussion:-

4.1 Now, the Court proceeds to analyse the arguments put forth by the learned counsel for the parties.

4.2 On opportunity given by the Court, the learned counsel representing the respondent has filed his two different notes of submissions. First note was submitted while referring to the facts of the case and the



findings of the trial Court and First Appellate Court in various paragraphs. Thereafter, on another opportunity, the learned counsel representing the respondent has filed a written note of his submissions while referring to Ex.PA, the provisional transfer certificate of the plot in question and paragraph No.25, 26, 27 of the judgment of the First Appellate Court. Ex.PA is the certificate of provisional transfer of urban agriculture plot No.6, Rohtak. It has been noticed that the total price is adjustable towards the verified claim of Sh. Jagdish Chander, Sh. Narankar Dev, Sh. Satish Kumar and Smt. Parmeshwari Devi.

4.3 The partnership deed Ex.P-9 dated 23.02.1955 proves that all five brothers and parents were partners in Sh. Jagdish & Satish Brothers as well as M/s Prakash Dev and Brothers. Subsequently, the parents retired from both the partnership firms as will be evident from perusal of Ex.P-8 (partnership deed dated 01.04.1957).

4.4 However, that was only a provisional transfer certificate. Ultimately, a certificate of sale under Rule 90(15) was issued in favour of Sh. Jagdish Chander, Sh. Narankar Dev, Sh. Prakash Dev and Sh. Satish Kumar in the year 1969. Moreover, there is overwhelming evidence to the effect that verified claims of only four brothers were adjusted while adjusting the total payable amount. These four brothers contributed towards the amount in the following manner:-

<i>“1. Jagdish Chander S/o Parma Nand</i>	<i>: 8459/-</i>
<i>2. Narankar Dev S/o Parma Nand</i>	<i>: 4855/-</i>
<i>3. Parkash Dev S/o Parma Nand</i>	<i>: 4363/-</i>
<i>4. Satish Kumar S/o Parma Nand”</i>	<i>: 2423/-</i>
	<i>20100/-</i>

4.5 Moreover, it has come on record from the statement of Sh Ramakant, Clerk from the office of Settlement Commissioner, Delhi, that



verified claim of Smt. Parmeshwari Devi amounting to Rs.10,820/- was adjusted against properties No.B/137 and No.B/138, Sarai Rohilla, Delhi. It is categorically stated by the official that the verified claim of Smt. Parmeshwari Devi was not adjusted towards property No.6, Rohtak. In these circumstances, there is no substance in the submission of the learned counsel representing the respondent.

4.6 The second submission of the learned counsel representing the respondent is with reference to para 25 of the First Appellate Court's judgment, which in turn refers to sanction of the building plans Ex.DW4/A, Ex.DW4/1, Ex.DH, Ex.DI, Ex.DJ and Ex.DK and Ex.D4/A. It clearly shows that only some portion of the property was sought to be constructed. The building plan was submitted by the firm, which shows construction of the fuel station, office, store and certain shops was carried out by the partnership firm. However, it is evident that significant portion of the plot was kept vacant and no construction was reflected. The second document relied upon by the learned counsel is Ex.DW4/A, which in fact is a receipt of Rs.2,010/- issued at the time of auction of the property, whereas, the Courts below erred in assuming that it is a site plan. Ex.DH, Ex.DI and Ex.DK are copies of house tax assessment register by the municipal committee. These documents are not the documents of ownership. Moreover, it is not clear whether this house tax assessment is with respect to the entire property or only with regard to only a part thereof. 'Ex.DH' is with respect to a house constructed on Hisar Road. Ex.DI is also with respect to a house located on Hisar Road. Ex.DJ is with respect to a petrol pump, whereas, Ex.DK is again with respect to a house. These documents do not prove that the entire property belongs to the partnership firm. Even if the argument of the learned counsel representing the respondent is accepted, the firm M/s Prakash Dev



and Brothers consisted of two partners namely Sh. Prakash Dev and Sh. Bhim Sain. In these circumstances, the arguments of the learned counsel representing the respondent has no substance.

4.7 The next argument of the learned counsel representing the respondent is with reference to findings of the First Appellate Court in para 26, which in turn refers to Ex.D-30 and Ex.D-31. The First Appellate Court has failed to appreciate these two documents in the proper perspective. Appendix 'B', which was attached with the judgment is extracted as under:-

"1) Shri Parma Nand defendant No.1

(i) One shop plot measuring 233 yards (square) in purani Anaj Mandi, Rohtak.

(ii) 1/2 share of a plot in Rajdhani House Building, Co-op Society limited, Delhi standing in name of Jagdish Chand.

(iii) One residential house No.X/365, in Tirha Behram Khan Daryaganj, Delhi.

2) Shri Parkash Dev defendant No.2

(i) 1/2 share in quarter No.5 Model Town, Rohtak.

(ii) 1/2 share in residential plot measuring 400 square yards in the New Multani Nagar, Shakurbasti, Delhi.

(iii) 1/5 share of the shop plots 7 and 8 Kesar Ganj, Meerut.

3) Shri Jagdish Chander defendant No.3

(i) 1/2 share in shop No.55 in Anaj Mandi, Bahadurgarh, Tehsil Jhajjar, District Rohtak.

(ii) 1/2 share in pump site comprising of Kiosk, residential building, shops and the vacant land plus the Ramp village Kalanaur, Tehsil and District Rohtak.

(iii) 1/4th share in the plot in the New Rajdhani House Building Co.op Society Limited, Delhi standing in his own name, and measuring 500 square years.

4) Shri Bhim Sain defendant No.4

(i) A double storey House in Patel Nagar, Meerutt City,

(ii) 1/2 share in plot in the New Raj Dhani House building Co-op society limited, Delhi measuring 500 yards which stands in his name.

(iii) 1/5th share of shop No. 7 and 8 Kaiserganj, Meerut City.

5) Shri Narankar Deva plaintiff.

(i) Built up Godown No.20, in the New Anaj Mandi, Rohtak.

(ii) The vacant plot of land lying in rear of the aforesaid built up Godown No.20 in the Nai Anaj Mandi, Rohtak.

(iii) One small shop on the Malgodam Road, Rohtak.

(iv) 1/5th share in shop plot No.7 and 8 in Kaiserganj,



Meerut City.

6) Satesh Kumar Defendant No.5.

(i) Shop No.6 in Kaiserganj, Meerut City.

(ii) One shop situated in Tirha Behram Khan, Darya Ganj, Ward No.11 presently occupied by Shri Vir Bhan Delhi.

(iii) 1/2 share in plot of 500 yards situated in the New Raj Dhani House Building Co-op, Society Limited, Delhi Jointly with defendant No.4 Bhem Sain.

(iv) Residential Land measuring 1520 square yards in Mauza Kutana, Hissar Road, Rohtak.

(v) 1/5th share in shop plots 7 and 8 in Kaiserganj, Meerutt City.

7) Shri Mati Gian Devi defendant No.6.

One residential plot measuring 200 square yards in the New Multani Nagar, Shakurbasti Delhi.

(8) Shri Mati Kamla Rani defendant No.7

(i) 1/2 share in shop No.55 Anaj Mandi Bahadurgarh, Tehsil Jhajjar, District, Rohtak.

(ii) 1/2 share in pump site Kiosk residential houses and shops alongwith vacant land attached to the said pump in village Kalanaur, Tehsil and District Rohtak.

(iii) 1/4th share in a residential plot in the New Raj Dhani House Building Co-op Society Limited Delhi.

(iv) 1/5th share in shop plots 7 and 8 in Kaisergan Meerutt.

9) Shrimati Pushpa Rani defendant No.8

(i) 1/2 share in quarter No.5 of the Model Town Rohtak.

(ii) 1/2 share in the plot measuring 400 sq. yards in the New Multani Nagar, Delhi.”

4.8 From the perusal of the detailed judgment, it is nowhere proved that plot No.6 was kept joint between the parties. In the year 1969, the final certificate of allotment was issued in favour of four brothers allotting them a specific portions in a bigger plot. On 07.11.1971, through a family settlement, the various other properties were partitioned amongst the family members. If plot No.6 was also the joint property, the same would have also been included in the suit for partition of the joint properties because significantly large number of properties located in Rohtak, Jhajjar, Meerut, Delhi were included. Plot No.6 was the main property. There was no occasion to exclude the same while filing the suit for partition in the year 1971, particularly when all the properties of the families were being



distributed. At that time, Sh. Parmanand was alive. It is not the case of the plaintiff that the aforesaid property was kept joint, whereas, remaining various other properties were divided.

4.9 The next argument of the learned counsel is with reference to para 27, which has already been examined by this Court in detail.

4.10 At this stage, it is important to analyse the stand of defendant No.4, Sh. Bhim Sain. He has stated that Sh. Jagdish Chander submitted the highest bid for the plot on behalf of the firm and the payment was also made out of the firm account, which is factually incorrect because there is overwhelming evidence to prove that the price was paid after adjusting the verified claims of four brothers namely Sh. Jagdish Chander, Sh. Narankar Dev, Sh. Prakash Dev and Sh. Satish Kumar in the following manner:-

<i>“Jagdish Chander</i>	<i>: 8459</i>
<i>Narankar Dev</i>	<i>: 4855</i>
<i>Parkash Dev</i>	<i>: 4363</i>
<i>Satish Kumar</i>	<i>: 2423</i>
<i>TOTAL</i>	<i>: 20,100”</i>

4.11 In para 2, the defendant No.4 has stated that the payment was made out of joint funds, which is also not correct. He has led no evidence to prove this assertion. He has also stated that the parties to the suit are owners in possession of the property in equal shares but failed to substantiate the same. It is his case that the property belongs to partnership firm namely M/s Prakash Dev and Brothers, who are running a fuel station. It may be noted that on the day, the suit was filed, only Sh. Prakash Dev and Sh. Bhim Sain along with their children, were partners. It is not his case that only the existing partners are owners of the property excluding remaining brothers. Thus, the stand of defendant No.4 in para 5 of the written statement is contrary to para 3 of the written statement.

4.12 Moreover, Sh. Prakash Dev or Sh. Bhim Sain have not



produced the balance sheet of the firm M/s Prakash Dev and Brothers in order to prove that the suit property at any point of time vested in the partnership firm.

4.13 The deposition of DW-1 Sh. Bhim Sain is full of contradictions. In examination-in-chief, he states that the firm after paying the amount had purchased the verified claims of his brothers including that of their mother Smt. Parmeshwari Devi. In the cross-examination, he admits that out of his own verified claim, not a single rupee was adjusted towards the purchase of this property. Thereafter, he states that the constitution of the partnership firm after 16.06.1965, changed in the year 1975. In the year 1975, five brothers were not partners, whereas, there were four partners namely Sh. Prakash Dev, Sh. Naveen Kumar, Sh. Vinay Kumar and Sh. Bhim Sain. In the later part of his deposition, he states that all the five brothers are owners of the suit property and the partnership firm has no connection with the suit property while contracting from his previous stand. He further states that the verified claims were purchased from the open market but he does not remember the names of the persons from whom the verified claims were purchased. He states that department issued the sale certificate to him in the year 1958 but it was issued in the name of four brothers. He never objected to the same. The cross-examination of the witness was deferred. He was again cross-examined on 16.02.1987. He again stated that five brothers are the owners of the property and that the partnership firm has no connection. However, in the next sentence, he states that the property belongs to the partnership firm. He further states that in the year 1975, the three brothers separated from partnership firm and when the dissolution took place in the year 1975, the assets and liabilities were also distributed and dissolution deed was also written. However, the dissolution deed has not been



produced. Thereafter, he claims that the property underneath the petrol pump came to his share along with Sh. Parkash Dev, whereas, remaining three brothers became owners of the land on which service station had been constructed and thereafter, the partition was complete. He denied the suggestion that this land was never partitioned. While further explaining, he stated that his name was not included in the sale deed because four brothers used to accompany their father and he never accompanied. From the aforesaid statement, it is evident that Sh. Bhim Sain has taken a contradictory stand during his cross-examination, hence, he is not a reliable witness. In the later part, he denies that the dissolution deed was written in the year 1970. Both the Courts below have overlooked this part of his statement. He further admits that in the year 1975, Hindu Undivided Family came to an end and business was divided/separated amongst the family members, however, he states that property was never distributed. He further states that in the year 1972, by virtue of civil Court decree only property of Hindu Undivided Family was distributed, thereafter, in the year 1972, some part of the property was divided, whereas, remaining was left as it is.

4.14 Moreover, from the reading of plaint, Ex.D-13, dated 10.02.1970/12.06.1971, in civil suit titled as “Prakash Dev and others Vs. Central Government” filed by Sh. Jagdish Chander, it is not proved that he had given the bid on behalf of the firm.

4.15 The deposition of Sh. Bhim Sain with respect to document Ex.DW4/B is also incorrect because Ex.DW4/B is a statement showing the shares and the amount of capital subscribed by each shareholder in the firm namely M/s Prakash Dev and others. Sh Satish Kumar and Sh. Narankar Dev have contributed Rs.25,444/-, whereas, Sh. Bhim Sain, Sh. Jagdish Chander and Sh. Prakash Dev contributed Rs.19,224/- each. This statement



does not show that the suit property belongs to the partnership firm.

4.16 The Court below have also erred while observing that even if Sh. Bhim Sain was not a partner in the reconstituted firm, still his share in the immovable property would remain intact. If the property belonged to the firm M/s Parkash Dev & Brothers then on its dissolution and reconstitution, the new partnership firm would have continued to be the owner in absence of a specific provision in the dissolution deed to the contrary.

4.17 In rebuttal evidence, Sh. Satish Kumar-plaintiff has appeared as PW-1. In the very first line of his cross-examination, he states that the partnership firm had purchased the plot by paying the amount. Thereafter, he states that he has been filing the wealth tax return. In the wealth tax return filed 3-4 years ago, the disputed property was shown as his own property as per his share. This property was not reflected as the property of the partnership firm. He states that in the balance sheet, the property is shown as firm's property, which was filed in the income tax department and he can produce the same. Thereafter, he states that in the year 1969, Sh. Jagdish Chander was delivered the sale deed but he looked at the aforesaid sale certificate, only when he filed an application for amendment of the plaint. He has also stated that the shares of each brother were incorrectly stated in the plaint. Thus, the plaintiff disowned his own plaint filed by him in the suit. Hence, the deposition of the plaintiff is not worthy of reliance.

4.18 There is no evidence that reconstituted partnership firm after 31.03.1958 took over the immovable property. Moreover, perusal of order dated 16.03.1972, shows that the firm M/s Jagdish & Satish Brothers was reconstituted with Sh. Prakash Dev and Sh. Bhim Sain as its partners.

4.19 It is proved on the record that a petrol pump, various shops,



sewing school, service station, and three separate houses of Sh. Jagdish Chander, Sh. Satish and Sh. Narankar Dev are constructed on the property in dispute. The petrol pump and shop have been constructed by Sh. Prakash Dev. Other shops and sewing school have been constructed by Sh. Jagdish Chander and Sh. Satish together. The service station exclusively belongs to Sh. Narankar Dev. Three separate houses have been constructed by Sh. Jagdish Chander, Sh Satish and Sh. Narankar Dev. Although, it is the plaintiffs' case that the houses were also constructed from the accounts of the firm, however, no documentary evidence in this regard has been led. Ex.D-29 is a registration certificate of M/s Prakash Dev and Brothers, Rohtak. It is proved that Sh. Prakash Dev, Sh. Bhim Sain, Sh. Naveen Kumar and Sh. Vinay Kumar are the partners. There is also no documentary evidence to prove that while dissolving the firm M/s Prakash Dev and Brothers on 31.03.1958, either the reconstituted firm took over the property or the entire plot No.6 was kept as joint between the brothers.

5. **Decision:-**

5.1 Keeping in view the aforesaid discussion, both the appeals are allowed. The judgments passed by both the Courts below are not sustainable, hence, set aside. The suit filed by the plaintiff stands dismissed.

5.2 All the pending miscellaneous applications, if any, are also disposed of.

May 02nd, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No