2025:PHHC:103094

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3579 of 2000 (O&M)
Reserved on : 08.05.2025
Date of Decision : 07.08.2025

Jasbir Singh (deceased) through LRs

… Appellant

Versus

Mohinder Singh (deceased) through LRs

…Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Argued by: Mr. Kuldeep Baniwal, Advocate,
for the appellant(s).

Mr. Mandeep Singh Bedi, Sr. Adovcate with
Mr. Abhishek Thakur, Advocate,
for the respondent(s).

PANKAJ JAIN, J.

The plaintiff is in second appeal.

2. The plaintiff filed suit seeking decree of declaration to the effect that he is entitled to be admitted as partner in the partnership business of M/s Harnam Singh Mohinder Singh and M/s H.M. Autos, Mandi Gurdaspur with effect from 01.04.1988. He further sought decree of mandatory injunction seeking direction to the defendant to execute fresh partnership deed qua the said two firms as per the terms of the agreement dated 14.01.1988 treating the plaintiff as partner, in both firms. In the alternative, the plaintiff sought rendition of accounts in respect of firm M/s Harnam Singh Mohinder Singh Indian Oil Dealers, Mandi, Gurdaspur from the date of death of Harnam Singh i.e. 23.03.1988 till date.

3. As per the plaintiff, the defendant, his brother and their father namely Harnam Singh were partners in the business working under the name and style of M/s Harnam Singh Mohinder Singh Indian Oil Dealers, Mandi, Gurdaspur. Harnam Singh died on 23.03.1988. Another firm working under the name and style of M/s H.M. Autos, Mandi Gurdaspur is dealing in sale of spare parts and other accessories. In the said firm, Narinder Singh son of the defendant is partner having ½ share. On the death of Harnam Singh, partnership concern M/s Harnam Singh Mohinder Singh came to an end. The plaintiff claimed that prior thereto on 14.01.1988, the defendant entered into an agreement with the plaintiff regarding M/s Harnam Singh Mohinder Singh and M/s H.M. Autos agreeing to admit the plaintiff as partner in respect of ½ share in the said firms with effect from 01.04.1988. It was agreed by way of agreement that old partnership deeds pertaining to M/s Harnam Singh Mohinder Singh and M/s H.M. Autos shall be cancelled and fresh partnership deeds will be executed between the plaintiff and the defendant and that the plaintiff shall be deemed to be partner in the account books with effect from 01.04.1988.

3.1. The plaintiff alleged that despite having approached the defendant repeatedly, he is not being granted the status of partner in the said firms. It was further claimed that the plaintiff being one of the legal representatives of deceased partner Harnam Singh, is entitled to seek rendition of accounts with effect from the date of death of Harnam Singh.

4. The suit filed by the plaintiff was resisted by the defendant. Objection was raised regarding maintainability of the suit. It was claimed that as per partnership deed dated 01.04.1982, the entire assets and liabilities of the firm devolved upon the defendant alone after death of Harnam Singh. The defendant relied upon the covenants contained in clause 13, 14 and 15 of the partnership

deed and claimed that none of the successors of late Harnam Singh has a right to be a partner in the partnership firm. The defendant denied execution of agreement dated 14.01.1988 and further claimed that even if the execution thereof is proved, the same cannot be enforced in view of the provisions contained under Section 14 of the Specific Relief Act. Right of the plaintiff to claim rendition of accounts was also denied. Defendant asserted that there exists no fiduciary relationship between the parties, hence plaintiff has no right to seek accounts from the defendant.

5. On the basis of the pleadings of the parties, following issues were framed : -

> 1. *Whether the plaintiff is entitled to the declaration as prayed for? OPP*
>
> 2. *Whether the suit is not maintainable in the present form? OPD*
>
> 3. *Whether the suit is barred under the provisions of Specific Relief Act? OPD*
>
> 4. *Whether the suit is bad for non-joinder of necessary parties?*
>
> 5. *Whether the plaintiff is entitled to the rendition of accounts? If so to what extent? OPP*
>
> 6. *Whether the plaintiff is stopped in filing the suit by his act and conduct? OPD*
>
> 7. *Relief.*

6. While deciding issues No.1 and 5, the Court of first instance found that agreement Ex.P1 having been signed by the plaintiff, defendant and their father, the same cannot be given status of family settlement. It has been held that agreement Ex.P1 was executed between the parties to the suit without any consideration and was, thus, hit by Section 25 of the Indian Contracts Act and was, thus, not admissible in evidence being an unregistered document. The Court

of first instance further held that agreement being contingent contract within the meaning of Section 31 of the Contract Act, enforcement thereof was dependent upon the cancellation of the partnership deed Ex.D1. The same having never been cancelled, the contract was not enforceable. Relying upon clause 15 of the partnership deed it has been held that there is restrain on admitting the legal representative of Harnam Singh except with the consent of Sardar Mohinder Singh. The said clause being in force, plaintiff cannot seek introduction in partnership. The Court held that partners are fully entitled to enter into contract agreeing that after the death of one of the partners, the other partner can carry on the business of the firm and such agreement is valid contract under Section 37 of the Partnership Act. Answering issue No.5, the Court of first instance held that once the plaintiff has been held not entitled to be admitted to the partnership firm, he has no right to claim rendition of accounts. The Court, accordingly, dismissed the suit filed by the plaintiff.

7. The aforesaid findings stand affirmed by the lower Appellate Court.

8. Counsel for the appellant-plaintiff has assailed the findings recorded by the Courts below. He submits that execution of agreement Ex.P1 stands fully proved. It stands proved that during his life time, father Harnam Singh and two brothers entered into agreement whereby the plaintiff was to be entered as partner with effect from 01.04.1988. Consideration for admitting the plaintiff as partner was specified i.e. 1/2 share of plot under petrol pump. Accordingly, the plaintiff is entitled to get decree of declaration. However, the Courts below erred in denying the right of the plaintiff relying upon Section 25 of the Indian Contract Act. Counsel for the appellant relies upon the ratio of law laid down by Supreme Court in ***The Commissioner of Wealth Tax, Mysore** v. **Vijayaba, Dowger***

Maharani Saheb, Bhavnagar and others, 1979 AIR (Supreme Court) 982 and ***Ripudaman Singh*** *v.* ***Tikka Maheshwar Chand; 2021 (3) RCR (Civil) 428.***

9. *Per contra*, Ld. Senior counsel for the respondent-defendant submits that bare perusal of the agreement would reveal that the plaintiff as well as defendant both have been granted 1/2 share in the plot in praesenti. It has been contended that since the execution of the agreement amounts to transfer of a land having value of more than Rs.100/-, the said agreement is not admissible in evidence and cannot be read to bestow any right upon the plaintiff. Reliance is being placed upon the ratio of law laid down by Supreme Court in ***Bhoop Singh*** *v.* ***Ram Singh Major 1996 (1) PLR 559***. It has been further contended that the agreement being without consideration is void and has been rightly rejected by the Courts below.

10. Having heard learned Counsel for the parties, and after going through records of the case, this court finds that the following issues arise for the determination by this court:

1. *Whether courts rightly invoked clause 13 to 15 of the partnership deed. Exhibit D1 treating the present case to be a case of succession of Harnam Singh one of the partners in the partnership firm?*
2. *Is agreement dated 14th of January 1988, Exhibit P1 void for want of consideration and cannot be read in evidence and relied upon for want of registration?*
3. *What is the effect of agreement dated 14.01.1988 Ex.P1?*

11. Execution of agreement Exhibit P1, stands admitted by the defendant while appearing as DW1. Relying upon the admission made by defendant, both the courts below concurrently found that execution of the agreement stands proved. The answer to the afore-stated issues lies in perusal of

agreement dated 14.01.1988 Exhibit P1, the translated version of which is being reproduced hereunder: -

> *"Translation of an Ex.PI*
> *Agreement Stamp = 3/- Rupees (2+1), Page 2*
>
> *We, Mohinder Singh s/o Harnam Singh s/o late Surmukh Singh (First Party) arnd Jasbir Singh s/o Harnam Singh s/o Surmukh Singh (Second Party) resident of Mandi Gurdaspur, Tehsil & Distt. Gurdaspur. We make mutual agreement that we will remain bound to below-mentioned terms and conditions:*
> *1. That the first party one Firm M/s Harnam Singh, Mohinder Singh Indian Oil Dealer, is sharer of 70 % share in Mandi Gurdaspur and their father S. Harnam Singh s/o late Surmukh Singh is owner of 30% share in this Firm. S. Harnam Singh is personally owner of below the land of this Firm, which is measuring about 4 Kanals. There is one room, one store and three rooms in service station, platform, sand and one tube-well, which is/are held jointly by both parties, including machinery and other resources in building of this Firm. There is one more Firm H.M Autos, in which Mohinder Singh and his son Narinderjit Singh is also sharers. This Firm will also come in joint account like remaining conditions, in which the second party will be owner of ½ share.*
> *2. It has been decided with the consent of previous owners of this Firm, whose details are mentioned above, that after 1/1/1988, the aforementioned parties (Mohinder Singh and Jasbir Singh) will be owners of immovable properties of abovementioned both Firms in equal shares. Under this, the area of the land will come in share and possession of both parties under partnership through family partition. Further, this land will be ownership of both of them.*
> *3. That the second party will be owner of ½ share of entire immovable property w.e.f 1/1/88 and after cancelling the old partnership deed of this business, the new partnership will be prepared till 31.03.88. But, practically, the involvement of second party in income and expenditure will be effective after 5 years i.e.*

from 01.01.1993. Prior to that, the second party mentioned above shall be equal sharer in rights of abovementioned property and the partnership-deed as sharer of abovementioned Firm. But, only the external liabilities in which there is a loan of Rs 1,50,000/- of Punjab and Sind Bank, Gurdaspur in the name/limit of this Firm will be paid by the first party. After 5 years i.e. on 1/1/1993, the opposite party after making payment of ½ share of current capital i.e. after making payment of share of purchase price of machinery parts, petrol, diesel and mobil-oil (sic), including other saleable items of Firm H.M Autos, will become partners of its income. After making payment of ½ share of total investment to the second party in enhancement of movable-immovable properties after 1/1/1988, there will be right to make equality.

4. However, the second party come in action/practically come in action in business after 5 years with the mutual-agreement of both parties, but the name of second party will be included in the returns of income-tax and sale-tax of that as well as the information sent to the company. The entire income generated by the Firm, where it will go to the first party (sic), in the same time the first party will also pay the income tax, sale-tax etc., including all expenditures.

5. Fortunately, if Firm H.M Autos gets the agency of Bajaj Scooter or gets the opportunity to get similar type of agency, the second party will be included in it by making payment of ½ share of total investment in that. The first party will have no objection to that. The first party cannot include some other external partner, which will also be applicable on second party.

6. According to this agreement, with implementation of partnership, the entire area of house of first party, which is situated near 'Godowns' of F.C.I, as well as the personal shop of second party and the entire area of house adjacent to that will come under personal ownership while (...illegible text..) during family partition, in which other brothers will have no interference.

<u>The abovementioned writing (agreement) is prepared with the consent of S. Harnam Singh and both parties will not be entitled to</u>

get the immovable property of father other than the abovementioned property. If the second party does some other business related to these Firms, then the second party will have right to take the income of it during abovementioned 5 years of time, but after 5 years, the involvement of that business too will be done in Firm in equal shares. But, in that event, the first party will be included in that income too by giving ½ share of total investment. Both partners can give their give their share only to their legal heirs. In the event of dispute, both parties can take decision by getting appointed the mediator.

8. That before scribing the new partnership-deed, the first partnership-deed will be cancelled, which will bear signatures of all (...illegible text...) partners. Further, in such manner, the balance-sheet going to be filed before the Income-Tax and Sale Tax will be filed w.e.f 01.04.88, in which the complete party will be sharer of complete capital.

9. That none of the parties will make any changes in building without permission of second party.

10. If the first party, according to Para No.3, does not deposit the loan of bank after 5 years, then whatever the amount of that loan, it will be considered that the loan is taken from that Firm in personal capacity and the depositor of amount to that Firm will have to pay 18 % annual, including the interest of bank, to that Firm. In such manner, after 5 years, the first party will be solely responsible for any kind of other liability of abovementioned Firm and second party will have no concern with that.

11. In case of any kind of incident/accident, raid or Challan' in complex of petrol pump during grace period/extended period of 5 years, only first party will be responsible for these kind of reasons during this period.

In the event of non-compliance of any abovementioned terms and conditions by any of the parties, these can be got complied from the court as well. 14.01.1988.

Sd/- Mohinder Singh afore-said (First Party) (In English)

Sd/- Jasbir Singh afore-said (Second Party) (In English)

Sd/-
(Thumb Impression)
Harnam Singh (father of both the parties)

Witness
Narinderjit Singh s/o Mohinder Singh r/o Mandi Gurdaspur
Sd/- Narinder Singh (In English)"

Witness_________
Avtar Singh s/o Late Raj Singh (illegible text), Gurdaspur
Sd/- Avtar Singh

12. Apparently, the courts below erred and misread agreement dated 14th January 1988. From the bare reading of the agreement dated 14th January 1988, it is evident that the same was executed during the lifetime of Harnam Singh, who died on 23rd of March 1988. The agreement beers thumb impressions of Harnam Singh and there is a specific covenant to the extent that agreement has been executed with the consent of Harnam Singh. Thus, it is a case of introduction of a new partner with the consent of both existing partners, and retirement of old partner Harnam Singh, and not a case of succession of Harnam Singh as misconstrued by the courts below. Clause 10 of the partnership deed Ex.D1 provides for transfer of share by a partner. As per the said clause, the transfer of share by partner has to be consented by the other partner. As per the agreement dated 14th January 1988, Harnam Singh retired and the plaintiff was introduced as a new partner with the consent of defendant - the other partner. The same is permissible under Sections 31 and32 of the Partnership Act, 1932. This court, thus, finds that the courts below committed mistake in non-suiting the plaintiff relying upon clause 13 to 15 of the partnership deed, misconstruing it to be a case of succession of Harnam Singh, whereas in fact, it is a case of introduction of new partner with the consent of the existing partners of the firm.

13. The agreement Ex.P1 specifies the share of new partner. The same has been signed not only by Mohinder Singh but also by his son, Narinder Singh, who is partner in the second firm, namely M/s H. M. Autos. The agreement specifies the assets and liabilities of the partners Mohinder Singh and Jasbir Singh in both firm. It specifies date from which plaintiff Jasbir Singh shall be entitled to share out of the income of the business of partnership firms. Execution of fresh partnership deeds was to be executed with effect from April 01, 1988, as a fresh balance sheet was to be filed with inception of new financial year with effect from 1st April, 1988. Thus, the agreement in fact is a partnership deed for all intents and purposes. Cancellation of the earlier partnership deed was merely a ministerial act and not a contingency on which induction of plaintiff as partner in the firms was dependent as held by the trial court. For want of such ministerial act when the parties have already defined their rights and liabilities in the partnership firm, the plaintiff cannot be said to be a stranger to partnership.

14. Coming to the issue of agreement Exhibit P1 being without consideration, Section 25 of the Indian contract act provides as under:

> ***"25. Agreement without consideration void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.—****An agreement made without consideration is void, unless—*
>
> *(1) it is expressed in writing and registered under the law for the time being in force for registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless*
>
> *(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless*

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I attest to the accuracy and
integrity of this judgment/order

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent to the promisor was freely given.

Illustrations

(a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(c) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

> *(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.*
>
> *The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.*"

15. Section 3 of the Act is the interpretation clause, clause (d) thereof defines consideration as under:

> *"(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;"*

Parties to the present *lis* are real brothers. In a partnership firm, father and one son were partners while the other son was a stranger. By agreement dated 14th of January 1988, father consented to bequeath his immovable property i.e. land being used by partnership firm, in favour of both the sons to the extent of ½ share each. In lieu thereof, the son who is existing partner i.e. defendant Mohinder Singh consents to induct the other brother-the plaintiff as partner in firm. By the same agreement, both brothers also consented that they shall have no right in the rest of the property left by father Harnam Singh. The agreement is thus in the nature of family arrangement as well as an agreement that amounts to distribution of the property of a retiring partner among the existing and newly inducted partners. The issue of parties to the agreement agreeing or promising to abstain from doing something in family arrangements has been dealt by Supreme Court in the case of ***CWT v. Her Highness Vijayaba, (1979) 2 SCC 213*** observing as under:

> *"4. Mr Ahuja appearing in support of the appeal contended that by the letter dated May 14, 1953 no debt was created as the*

undertaking given by the assessee to her son agreeing to pay the deficit in respect of Rs 50,00,000 on his elder brother's failure to pay any portion of the sum was an agreement without consideration and hence under Section 25 of the Contract Act it was void and was not saved by any of the exceptions mentioned therein. He, therefore, contended that it was not an enforceable liability on any of the valuation dates and could not be deducted from the valuation of the assessee's wealth. In our opinion the argument is not sound. Taking the totality of the facts as found by the Tribunal and mentioned in the impugned judgment of the High Court it was a case of family settlement or family arrangement which is binding on the parties concerned. The assessee agreed to purchase peace for the family, and to pay to her son the amount which fell short of Rs 50,00,000 if her elder son did not pay any portion thereof. It is well established that such a consideration is a good consideration which brings about an enforceable agreement between the parties. Section 25 of the Contract Act does not hit this."

16. Similar issue was dealt by Calcutta High Court in ***Lalit Mohun Dutta v. Basudeb Dutta and another, 1976 AIR Calcutta 430***, observing as under:-

"xxxx xxxx xxxx

8. The next point requiring consideration is whether this agreement is a valid and enforceable contract under the Indian Contract Act 1872. To the general rule that agreement without consideration is void, there are some exceptions as provided in S. 25 of the said Act. The relevant provisions we are concerned with are:—

> *"Section 25. An agreement made without consideration is void unless—*
>
> *(1) It is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other, or unless*

*(2) *****

*(3) *****

9. Under the Indian Registration Act, 1908 there is no provision for registration of an agreement simpliciter though there are various provisions for registration of other documents. Mr. Ghose contended that if it was intended that the "documents" in sub-s. (1) of S. 25 of the Contract Act would include only agreement then the provision would be redundant, for if the agreements were to be registered under the Indian Registration Act this provision would be a superfluity.

10. It, however, appears to me that Indian Contract Act is a special enactment providing specifically for contracts and matters incidental thereto. In S. 10 of the said Act it is provided that all agreements would be contract if they are made by free consent of parties competent to contract and made for lawful consideration and with a lawful object and are not expressly declared to be void. To this, there is a further provision which is to the following effect "Nothing herein contained shall effect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses or any law relating to the registration of documents". The word 'documents' obviously include and are confined to agreements and any special provision in respect thereto by any other Act has been specifically preserved. In the same sense it has been used in S. 25, so that, if under any law such a document is required to be registered its provision would not be affected by anything contained in S. 25. In this view of the matter, the agreements simpliciter, in my opinion, are not required to be registered under the law for the time being in force, for registration such agreements but even so such documents are enforceable in law. The plaintiff accordingly is entitled to a decree on the basis of these agreements, the execution or validity of which otherwise has not been disputed before this Court.

xxxx *xxxx* *xxxx"*

17. The issue related to requirement of registration of agreements whereby partners relinquish their individual interest in movable as well as immovable assets of partnership in favour of new partners by deed of relinquishment is also no more *res-integra*. The same has been answered as under in ***CIT v. Juggilal Kamalapat, 1966 SCC OnLine SC 179***:

> *"xxxx xxxx xxxx*
>
> *10. A Full Bench of the Lahore High Court in Ajudhia Pershad Ram Pershad v. Sham Sunder [ILR 28 Lab 417] held that the interest in a partnership of a partner is to be regarded as movable property when it is sought to be dealt with under Order 21 Rule 49 of the Civil Procedure Code, notwithstanding that at the time when it is charged or sold, the partnership assets include immovable property.*
>
> *11. The Deed of Relinquishment, in this case, was in respect of the individual interest of the three Singhania Brothers in the assets of the partnership firm in favour of the Kamla Town Trust, and consequently, did not require registration, even though the assets of the partnership firm included immovable property, and was valid without registration. As a result of this deed, all the assets of the partnership vested in the new partners of the firm.*
>
> *12. In the alternative, we think that, even if it had been accepted that this deed of relinquishment required registration, that would not lead to the conclusion that the partnership seeking registration was not valid and had not come into existence in law. The deed of relinquishment could, at best, be held to be invalid insofar as it affected the immovable properties included in the assets of the firm; but to the extent that it purported to transfer movable assets of the firm, the document would remain valid. The deed could clearly be divided into two separate parts, one relating to immovable properties, and the other to movable assets; and the part of the deed dealing with movable assets could not be held invalid for want of registration. A deed of relinquishment is in the nature of a deed of gift, where the various properties dealt with are always separable,*

and the invalidity of the deed of gift in respect of one item cannot affect its validity in respect of another. This view was expressed by the Madras High Court in Perumal Ammal v. Perumal Naicker [ILR 44 Mad 196] . A deed of relinquishment, or a deed of gift, differs from a deed of partition in which it is not possible to hold that the partition is valid in respect of some properties and not in respect of others, because rights of persons being partitioned are adjusted with reference to the properties subject to partition as a whole. In the case before us, therefore, the deed of relinquishment was valid at least in respect of movable properties, and the partnership seeking registration, thus, became owner of all the movable assets of the partnership in addition to having contributed a sum of Rs 50,000 as capital investment in it. The Kamla Town Trust and Jhabbarmal Saraf constituted the partnership under a deed of partnership, which was properly executed, and in these circumstances, the partnership that came into existence was clearly valid in law. There is, therefore, no force in this appeal and it is dismissed with costs."

18. In the present case, partnership firm of Harnam Singh and Mohinder Singh was utilising land owned by Harnam Singh for its business. With execution of agreement Ex.P1, Harnam Singh and Mohinder Singh, both consented to enter plaintiff Jasbir Singh in the partnership firm. Mohinder Singh agreed to induction of Jasbir Singh. Harnam Singh, not only agreed to transfer of share in the partnership firm in favour of Jasbir Singh, but also agreed to transfer his rights in immovable property in favour of the continuing partners in the firm *viz:* Mohinder Singh and Jasbir Singh.

19. In view of above, this court finds that the findings recorded by the courts below regarding validity of agreement Exhibit P1 and the objection raised by counsel for the respondent *qua* it's non-registration cannot be sustained.

20. There is another reason for which judgement passed by the courts below cannot be sustained. Assuming that agreement Exhibit P1 was not in existence, even in such situation, the partnership firm comprising of two partners, Harnam Singh and Mohinder Singh stood dissolved on the death of Harnam Singh as per the mandate of Section 42 of the Partnership Act, 1932, Section 14 of the act deals with the property of the partnership firm. As per the same, the property belonging to a person in the absence of agreement to the contrary does not become property of a partnership merely because it is used for business of partnership. Reliance can be placed upon ratio of law laid down by Supreme Court in the case of ***Arm Group Enterprises Ltd vs Waldorf Restaurant & Ors, reported as 2003(6) SCC 423***.

21. The mode of settlement of accounts as set out in Section 48 of 1932 Act further provides that the partnership assets in their entirety need to be converted into money and from that pool disbursement has to be made. Once partnership got dissolved on the death of one of the two partners Harnam Singh, the plaintiff being legal heir of Harnam Singh was entitled to decree of rendition of accounts and the defendant is liable to pay value of the share left by Harnam Singh.

22. Taking up the objection raised by Mr. Bedi with respect to scope of second appeal, it needs to be pointed out that instant appeal is an appeal filed under Section 41 of Punjab Courts Act, 1918. It is now settled proposition of law that in Punjab and Haryana, the second appeals preferred are to be treated as appeal under Section 41 of the Punjab Courts Act, 1918 and not Section 100 of the Code of Civil Procedure. Reference can be made to a judgment of Supreme Court in the case of ***Pankajakshi (dead) Through LRs and others vs. Chandrika and others, (2016) 6 SCC 157***, wherein it has been held as under:-

"xxxx xxxx xxxx xxxx

23. Shri Viswanathan also relied upon a Division Bench judgment of this Court in Kulwant Kaur v. Gurdial Singh Mann [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] , to submit that this decision is an authority for the proposition that there is no need to expressly refer to a local law when the legislative intent to repeal local laws inconsistent with the Code of Civil Procedure is otherwise clear.

24. The judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] raised a question which arose on an application of Section 41 of the Punjab Courts Act, 1918. This section was couched in language similar to Section 100 of the Code of Civil Procedure as it existed before the Code of Civil Procedure (Amendment) Act, 1976, which amended Section 100 to make it more restrictive so that a second appeal could only be filed if there was a substantial question of law involved in the matter. The question this Court posed before itself was whether Section 41 stood repealed by virtue of Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, which reads as under :

> *"97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed."*

This Court concluded that Section 41 of the Punjab Courts Act was repealed because it would amount to an amendment made or provision inserted in the principal Act by a State Legislature. This Court further held that, in any event, Section 41 of the Punjab Courts Act being a law made by the Legislature of a State is repugnant to a later law made by Parliament, namely, Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, and that therefore, by virtue of the operation of Article 254 of the Constitution of India, the said provision is in any case overridden. In arriving at the aforesaid two conclusions, this Court held [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262.

> *"27. Now we proceed to examine Section 97(1) of the Amendment Act and the amendment of Section 100 CPC by the said 1976 Act. Through this amendment, right to second appeal stands further restricted only to lie where, 'the case involves a substantial question of law'. This introduction definitely is in conflict with Section 41 of the Punjab Act which was in pari materia with unamended Section 100 CPC. Thus, so long there was no specific provision to the contrary in this Code, Section 4 CPC saved special or local law. But after it comes in conflict, Section 4 CPC would not save, on the contrary its language implied would make such special or local law inapplicable. We may examine now the submission for the respondent based on the language of Section 100(1) CPC even after the said amendment. The reliance is on the following words:*
>
> *'100. Second appeal.—(1) Save as otherwise expressly provided … by any other law for the time being in force….'*
>
> *These words existed even prior to the amendment and are unaffected by the amendment. Thus, so far it could legitimately be submitted that, reading this part of the section in isolation it saves the local law. But this has to be read with Section 97(1) of the Amendment Act, which reads:*
>
> *'97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.' (Noticed again for convenience.)*
>
> *28. Thus, language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field.*
>
> *29. Since Section 41 of the Punjab Act is expressly in conflict with the amending law viz. Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to hold that the law declared by the Full Bench of the High Court in Ganpat [Ganpat v. Ram Devi, AIR 1978 P&H 137] cannot be sustained and is thus overruled."*

25. We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to *amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression "principal Act" occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression "any provision inserted in the principal Act" by a High Court has reference to Section 122 of the Code of Civil Procedure by which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure.*

26. Thus, Kulwant Kaur [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] decision on the application of Section 97(1) of the Code of Civil Procedure (Amendment) Act, is not correct in law.

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] . Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India *immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri Viswanathan's reliance upon this authority, therefore, does not lead his argument any further.*

xxxx xxxx xxxx"

23. Scope of second appeal with respect to construction of a document from which the rights of the litigating parties emanate has been explained by Supreme Court in ***Chaman Lal vs. Kamlawati*** reported as ***(2020) 11 SCC 693,*** wherein it has been held as under:-

"*xxxx xxxx xxxx*

9. On consideration of the matter, we find that the High Court cannot be said to have exceeded its jurisdiction, as has to be exercised within the ambit of Section 41 of the Punjab Court Act. We say so as the fulcrum of the dispute was the gift deed itself being the document in question. The document was originally penned down in Urdu with the Persian dialect and was thereafter translated to the Punjabi language. The next translation was done in English as also the transliteration. Thus, there would be a reliance on an inaccurate document if the translation and the transliteration was not accurate. This is the objective which was sought to be subserved by getting an authenticated translation done in the High Court and the *concession/submission of the appellants herein recorded in order dated 02.04.2002 [Kamla Wati v. Chaman Lal, RSA No.3888 of 1999, order dated 2-4-2002 (P&H)] in respect of the translation, albeit the order being set aside. The acknowledgment of both the parties to the accuracy of the translation and the transliteration could not be doubted thereafter. If the substratum being the document has been inaccurately translated then there would be a fundamental legal infirmity in the interpretation to be given and in determining the controversy in question. We are thus not inclined to accept this preliminary objection sought to be raised by learned senior counsel for the appellant on the right of the High Court to look into the question on merits.*

10. We are fortified in our aforesaid view by earlier judicial pronouncements. We may note that these judgments are in the context of the provisions for second appeal under Section 100 of the said Code as it existed prior to the amendment of 1976, which is almost pari materia to the existing provision which applies to Punjab (as noticed in Pankajakshi v. Chandrika, (2016) 6 SCC 157 in para 24]. Per se construction of documents (unless documents of title) to prove a question of fact do not involve an issue of law unless it can be shown that the material evidence contained in that was misunderstood by the court of fact. [Nedunuri Kameswaramma v. Sampati Subba Rao, (1963) 2 SCR 208 : AIR 1963 SC 884] In the facts of the present case we are, in fact, dealing with a document of title, i.e., the Gift Deed. Thus, there can be little doubt that if the translation of the document itself is not correctly done, an aspect which was addressed to by the High Court by getting the translation done, which was accepted, then the correct translation would have to be re-construed. <u>It is this principle, which was recognized in Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd., AIR 1962 SC 1314 while observing in para 2 as under:</u>

> *"2. ....Indeed it is well settled that the construction of a document of title or of a document which is the foundation of the rights of parties necessarily raises a question of law."*
>
> *xxxx xxxx xxxx"*

24. Thus, wherever the issue relates to construction of a document which is germane to the right of the parties to *lis*, the same involves question of law and interference by this Court is not beyond the scope of regular second appeal. In the present case, apparently the courts below erred and misread agreement dated 14th January 1988 Ex.P1 and misconstrued it to be a case of succession of Harnam Singh. Thus, the present second appeal involves question of law.

25. As a sequel of the discussion held herein above, this court finds that the findings recorded by the courts below are unsustainable and deserve to be set aside. Accordingly, the present appeal is ***allowed*** and accepted. Suit filed by the plaintiff is order to be decreed. It is ordered as under:

a) Impugned judgements and decrees passed by both the courts below are hereby set aside;

b) Suit filed by plaintiff is ordered to be decreed with costs throughout. Plaintiff Jasbir Singh is declared to be partner in the partnership firms, namely M/s. Harnam Singh Mohinder Singh and M/s HM Auto Mandi Gurdaspur in terms of agreement dated 14th January 1988, Exhibit P1.

c) Both the partners namely Jasbir Singh and Mohinder Singh died during the pendency of the present appeal. Jasbir Singh died on 8th February 2012. Mohinder Singh died on 12th April 2013. The partnership firms are deemed to have been dissolved on the date of death of Jasbir Singh. LRs of Jasbir Singh are held entitled to seek rendition of accounts from Mohinder Singh.

d) Preliminary decree be drawn in favour of Appellant(s) holding them entitled to seek rendition of accounts of the aforementioned two firms for the period commencing from 1st day of April 1988 till 2nd day of February 2012.

26. Pending miscellaneous applications, if any, shall also stand disposed off.

(PANKAJ JAIN)
JUDGE

August 07, 2025
Paritosh Kumar/*ashish*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No