

Rajinder Kaur And Another vs Yashodan Devi (Deceased) Through Lrs on 6 May, 2024

Author: Virender Singh

Bench: Virender Singh

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA RSA No. : 114 of 2020 .

Reserved on : 13.03.2024

Decided on : 06.05.2024

Rajinder Kaur and another

...Appellants

Versus

Yashodan Devi (deceased) through LRs
and others

...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge. Whether approved for reporting?1 Yes.

For the appellants : Mr. Rajneesh K. Lal, Advocate.

For the respondents : Mr. Divya Raj Singh, Advocate,

(b).

Name of respondent No.2 stands deleted.

Mr. Sunil Mohan Goel, Advocate, for respondents No. 3 to 10.

Virender Singh, Judge.

Appellants have preferred the present Regular Second Appeal, before this Court, against the judgment and Whether Reporters of local papers may be allowed to see the judgment? Yes.

decree, dated 30th September, 2019, passed by the Court of learned Additional District Judge-III, Kangra at .

Dharamshala, District Kangra, H.P. (hereinafter referred to as 'the First Appellate Court'), in Civil Appeal No. 15-P/XIII/2008, titled as Smt. Rajinder Kaur and another versus Smt. Yashodan Devi and others.

2. Vide judgment and decree, dated 30 th September, 2019, the learned First Appellate Court has dismissed the appeal, preferred by the appellants, against the judgment and decree, dated 20th February, 2008, passed by the Court of learned Civil Judge (Senior Division), Palampur, District Kangra, H.P. (hereinafter referred to as 'the trial Court') in Civil Suit No. 123/2002, titled as Rajinder Kaur and another versus Yashodhan Devi.

3. By virtue of the judgment and decree, dated 20 th February, 2008, the learned trial Court has dismissed the suit filed by the appellants, for declaration and permanent injunction.

4. When, the lis was pending before the learned First Appellate Court, vide order, dated 11 th March, 2016, respondents No. 3 to 10, namely, Ravinder Parkash, Ghanshyam, Tilak Raj, Sunil Kumar, Anil Kumar, Savita Sood, Mayank Sood and Shashank Sood, had moved .

application for impleading them as respondents, in the present lis. The said application has been filed on the ground that the applicants have purchased part of the suit land from Smt. Yashodhan Devi and after the dismissal of the suit, the applicants were put in possession, however, part of the suit property at Mohal Dhoran could not be transferred due to status quo order by the Court.

5. The said application was considered by the learned First Appellate Court, however, the same was dismissed vide order, dated 11th March, 2016. Against the said order of dismissal, the applicants preferred CMPMO No. 196 of 2016, which was decided by this Court on 29 th March, 2019, by allowing the application, under Order 1 Rule 10 of the Code of Civil Procedure (hereinafter referred to as 'CPC').

The operative part of the judgment, dated 11 th March, 2016, is reproduced, as under:

"The petition is allowed, the petitioners herein are ordered to be impleaded, as defendants/ respondents, in the appeal, concerned. However, as stated at bar by the learned counsel, for, the petitioners, the learned appellate Court, shall not permit, the petitioners to institute any written statement to the plaint, and also shall not permit

the petitioners, to adduce any evidence on any issue, except for permitting them to place on record, the, certified copy of, a, verdict .

rendered by the Civil Concerned, wherethrough sale deed concerned, stands declared to be valid, and, wherethrough the petitioners acquired title, in, a part of the suit property.

The parties are directed to appear before the learned appellate Court on 16.4.2019."

6. For the sake of convenience, parties to the present lis, are, hereinafter, referred to, in the same manner, in which, they were referred to, by the learned trial Court.

7. Brief facts, leading to the filing of the present appeal, before this Court, may be summed up, as under:

7.1. Plaintiffs-Rajinder Kaur and Nalini Kumari had filed the suit for declaration, to the effect that the plaintiffs are exclusive owners in possession of the land, as entered in khata No. 72 min, khatauni No. 96, khasra Nos. 121, 123, 125, 127, 128, 130, 132, 134, 161, 168, 170, 225, 228, 246 measuring 15-25-62 Hectares, alongwith Tea Factory Machinery and residential accommodation, situated in Mohal and Mouja Gopalpur, Tehsil Palampur (H.P.); the land in khata No. 71, Khatauni Nos. 94, 95, khasra Nos. 19, 60, 63, 65, 88, 90, 92, 93, 87, 89, 91, measuring 19-77-93 Hects., situated in Mohal and Mouja Gopalpur Tehsil Palampur (HP);

land entered in khata No. 26, khatauni No. 44, khasra No. .

44, Khasra Nos. 168, 171, 176, 177, 179, 181, 184, 186, 189, 537, measuring 20-51-25 Hects., situated in Mohal Dhanota, Mouja Gopalpur Tehsil Palampur (HP); land entered in khata No. 151, khatauni No. 244, khasra No. 1156, measuring 01-93-80 Hects., situated in Mohal Dadh Upper, Tehsil Palampur; land entered in khata No. 182, khatauni No. 376, khasra Nos. 966, 967, 968, 970, 972, 975, 977, 979, 981, 982, 983, 985, 986, 989, 992, 1001, measuring 18-52-01 Hects.; and land in khatauni No. 378 Khasra No. 964, 984, 987, 988 (988), 991, measuring 0-37- 56 Hects., situated in Mohal and Mouja Dhoran, Tehsil Palampur; and the land entered in khata No. 70, khatauni No. 99, khasra No. 48, 52, measuring 1-03-42 Hects., situated in Mohal and Mouja Gopalpur, Tehsil Palampur Distt. Kangra, as 'Hissadar'.

7.2. The suit has been filed, on the ground, that the suit land has been entered, in the revenue record, in the ownership of plaintiff No. 2, to the extent of 1/3 share and defendant to the extent of 2/3 share. In this regard, the plaintiffs have relied upon the revenue record, i.e. jamabandi, for the year 1998-99. However, according to .

them, land bearing khata No. 71, khatauni No. 94, khasra Nos. 19, 60, 63, 65, 88, 90, 92, 93, measuring 19-68-17 Hects., is entered in the ownership and possession of the defendant and the land in khatauni No. 95, khasra Nos. 87, 89, 91, measuring 0-09-71 Hects., situated in Mohal and

Mouja Gopalpur, Tehsil Palampur, District Kangra, is entered in the ownership of defendant and in the column of possession, it has been recorded as 'Share Aam'.

7.3. Similarly, the land entered in khata No. 26, khatauni No. 44, khasra Nos. 168, 171, 176, 177, 179, 181, 184, 186, 189, 537, measuring 20-51-25 Hects., situated in Mohal Dhanota, Mouja Gopalpur, Tehsil Palampur, District Kangra, is stated to have been entered in the ownership and possession of plaintiff No. 2, to the extent of 1/3 share and defendant to the extent of 2/3 share.

7.4. The land, bearing khata No. 151, Khatauni No. 244, Khasra No. 1156, measuring 1-93-80 Hects., situated in Mohal Dadh Upper, Tehsil Palampur, District Kangra, is stated to have been entered in the ownership of the defendant.

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7.5. It is the further case of the plaintiffs that the land bearing khata No. 182, khatauni No. 376, khasra Nos. 966, 967, 968, 970, 972, 975, 977, 979, 981, 982, 983, 985, 986, 987, 992, 1001, measuring 18-52-01 Hects., has been entered in the ownership and possession of the defendant.

The land in khatauni No. 378, khasra Nos. 969, 984, 987, 988, 991, measuring 0-37-56 Hects., has been entered in the ownership of the defendant and in the column of possession, it has been recorded as 'share aam'.

7.6. According to the plaintiffs, the land, bearing khata No. 70, khatauni No. 99, khasra Nos. 48, 52, measuring 1-03-42 Hects., situated in Mohal and Mouja Gopalpur, Tehsil Palampur, District Kangra, has been entered in the column of possession in the 'Hissadari' ownership of plaintiff No. 2 and defendant.

7.7. For the sake of brevity, the land, detailed and described hereinabove, is being referred to as the 'suit property'.

7.8. As per the case of the plaintiffs, the parties to the lis had reached on a compromise on 23rd May, 2002, with .

regard to the suit property and as per the compromise, the entire suit property has vested with the plaintiffs and the defendant has absolutely got no right, title or interest in the property. The photocopy of the compromise has been annexed with the plaint.

7.9. It is their further case that the plaintiffs, from the day of the execution of the said compromise, are owners in possession of the suit property and are continuing as such, till then. The revenue entries, existing in the name of defendant, after the aforesaid compromise, are stated to be merely the paper entries and her name is required to be deleted from the revenue record and names of the plaintiffs are to be recorded there.

7.10. The plaintiffs, according to their stand, had requested the defendant to get the revenue entries corrected, in view of the compromise, dated 23 rd May, 2002, but, the defendant, according to them, without any reason or rhyme, had evaded to do so and on the basis of the said illegal entries, the defendant has threatened the plaintiffs to alienate the part of the suit property and also to cut trees, on 30th May, 2002 and 15th June, 2002.

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7.11. The cause of action, to file the suit, is stated to have accrued on 30th May, 2002 and 15th June, 2002.

8. On the basis of the above facts, the plaintiffs have sought the decree of declaration and prohibitory injunction.

9. When put to notice, the suit has been contested/ resisted by the defendant, by taking the preliminary objections, that, the suit is not maintainable; the plaintiffs have no cause of action; plaintiffs are estopped from filing the suit, on account of their act and conduct; they have no locus standi to file the suit; the learned trial Court has no jurisdiction to try the suit, as, value of the property is more than 50 lakh and, according to the defendant, property worth several lakhs cannot be transferred in an oral compromise deed; the suit is not properly valued for the purpose of Court fee and jurisdiction; and the alleged compromise is a forged document, as, according to the defendant, the relationship between the parties remained strained throughout and there was litigation between the parties from the year 1994 till the date of filing the written statement.

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9.1. On merits, the factum of revenue entries has not been disputed. While replying para 8 of the plaint, it has been pleaded that from the very face of the compromise, the same appears to be a forged document, which, according to the defendant, has been forged, with the help of the witnesses. The date of the alleged compromise is stated to be 23rd May, 2002, whereas, the parties remained in litigation from the year 1994.

9.2. Elaborating her stand, it is the further case of the defendant that a number of appeals are pending at the District Court level, as well as, before the High Court. In addition to this, a stand has also been taken that the plaintiffs have even tried to declare the defendant and her sons as mentally unsound and for that, the plaintiffs had filed a petition in the Court of District Judge, Patiala, under the provisions of Sections 50, 51 and 54 of the Mental Health Act, 1987, for appointing them as Guardians and Managers, for the management of the property of the defendant, however, according to her, the said petition was ultimately dismissed on 25th January, 2003.

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9.3. The compromise deed is stated to have been forged prior to 23rd May, 2002, as, the said compromise does not bear any date of execution and it was cleverly exhibited in the petition, filed

under the Provisions of the Mental Health Act.

9.4. The defendant has taken the further stand that in case, the compromise was in possession of the plaintiffs, why the same has not been produced in Civil Suit No. 76 of 1996, titled as Rajinder Kaur versus Yashoda Devi and others, which was decided on 28th May, 2002. According to the defendant, in case, there had been a compromise, then, there was no occasion for the plaintiffs to file the appeal and even, in the appeal, agreement has not been annexed. Rest of the allegations have been denied.

10. On the basis of these facts, a prayer has been made to dismiss the suit.

11. From the pleadings of the parties, the following issues were framed, by the learned trial Court, vide order, dated 27th September, 2006:

"1. Whether the plaintiffs are exclusive owners in possession of the suit land as alleged?

OPP .

2. Whether the Revenue entries showing defendant to be owner in possession and joint possession as Hisedar in the suit land are wrong and liable to be deleted as alleged?

OPP

3. Whether the plaintiffs are entitled to the relief of perpetual injunction as prayed for by them ?

OPP

4. Whether the suit is not maintainable in the present form?

OPD

5. Whether the plaintiffs have no locus standi and cause of action to file the suit?

OPD

6. Whether the plaintiffs are estopped by their act and conduct from filing the present suit?

OPD

7. Whether this Court has no jurisdiction to try this suit?

OPD

8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?

OPD

9. Whether the alleged compromise is a forged document, as alleged?

OPD

10. Relief."

12. Thereafter, parties to the lis were directed to adduce the evidence. Consequently, both the parties have led oral, as well as, documentary evidence.

13. The learned trial Court, after perusal of the evidence and on hearing the learned counsel for the parties, .

vide judgment and decree, dated 20 th February, 2008, has dismissed the suit of the plaintiffs.

14. Feeling aggrieved from the said judgment and decree, the plaintiffs have assailed the same, by way of First Appeal, before the learned First Appellate Court, however, the said appeal has also been dismissed, vide judgment and decree, dated 30th September, 2019.

15. Aggrieved from the said judgment and decree, the present Regular Second Appeal has been preferred, before this Court, on the ground that both the Courts below have not appreciated the provisions of law applicable, nor, considered the pleadings, as well as, the evidence adduced by the parties, in its right perspective.

16. The findings of the learned trial Court on issues No. 1 to 3 are stated to be contrary to the evidence, as, the same have been returned by mis-reading and mis-

appreciating the law and facts.

17. According to the appellants-plaintiffs, the family settlement/compromise, Ex. PW-6/C, between the parties, has been admitted by the defendant, in the written statement. The documents, Ex. PW-1/B, Ex. PW-1/C and .

Ex. PW-1/D are also stated to have not been considered properly. Similarly, the findings on issue No. 9 are also stated to be not sustainable in the eyes of law. The evidence of PW-10 Ravinder Singh, is stated to have not been considered, as, according to the appellants, the document, Ex. PW-6/C, has duly been proved, in this case.

18. According to the appellants, the findings of the learned trial Court on issues No. 4 and 5 are bad in the eyes of law, the particulars of forgery have not been mentioned in the written statement. The findings of the learned trial Court on issue No. 9 are also stated to be contrary to the pleadings, as well as, the evidence adduced by the parties, before the learned trial Court.

19. The documentary evidence, according to the appellants, has not been considered by the Courts below in its right perspective.

20. On the basis of the above facts, a prayer has been made to decree the suit, by setting aside the judgment and decree, passed by the learned trial Court, which, according to the learned counsel for the appellants, has wrongly been upheld by the learned First Appellate Court.

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21. Per contra, the prayer, so made, by the learned counsel appearing for the plaintiffs, has been opposed by the learned counsel for the respondents, on the ground that both the Courts below have rightly appreciated the evidence and the findings, recorded by both the Courts below, do not require any interference, by this Court. Hence, a prayer has been made to dismiss the appeal.

22. The present appeal has been admitted, on the following substantial question of law, vide order, dated 22 nd October, 2021:

"1. Whether both the learned Courts below have mis-read and mis-appreciated oral and documentary evidence, more especially statements of PW-1 to PW-10 and documents, Ex. PW-1/A to Ex. PN, thereby vitiating the impugned judgments and decrees?"

23. In order to decide the controversy involved, in the present case, it would be just and appropriate, for this Court, to discuss the oral, as well as, documentary evidence, led before the learned trial Court.

24. After framing of the issues, the parties were directed to adduce the evidence. Consequently, plaintiffs had examined Trilok Chand, Senior Assistant (Copying Section), High Court of H.P., as PW-1, who has proved the .

copy of the plaint, Ex. PW-1/A, copy of written statement, Ex. PW-1/B in Case No. 270 of 2003, titled as Mukesh Sood versus Yashodha Devi and others, as well as, amended head notes, Ex. PW-1/C and Ex. PW-1/D in case No. 28 of 2003, titled as Mehar Singh Rana and others versus Yashodha Devi and others. rThe copy of the written statement in the said suit has also been exhibited as Ex. PW-1/E.

25. PW-2, Narottam Singh, Clerk, Copying Agency, Record Room, Dharamshala, has proved the copy of case No. LR-B-C-26 (2002) as Ex. PW-2/A and Ex. PW-2/B.

26. PW-3, P. Chhatri, Incharge, Tea Board, Palampur, has proved the record of development subsidy, which was given to Rajinder Kaur and Nalini, as Ex. PW-3/A to Ex. PW-

3/H. 26.1. In the cross-examination, this witness has admitted that in the documents, Ex. PW-3/A to Ex. PW-3/H, the reference of the land has been given. According to this witness, alongwith the documents, Ex. PW-3/A to Ex. PW-

3/H, the claimants have to supply the extract of the revenue record and after perusing the revenue record of the claimant, the development subsidy has to be released. This witness .

has further deposed that as per the original record, the ownership of the revenue extract is in the name of Yashodha Devi, but, on the directions of the power of attorney holder, subsidy was paid on 7th May, 2007; 28th October, 2005; 28th March, 2006; and 7th April, 2006, to Ravinder Singh Chahal, on the application of Rajinder Kaur and Nalini Kumari. This witness has feigned his ignorance to the fact that when the development subsidy was paid, at that time, the power of attorney, in favour of Ravinder Singh Chahal was already cancelled.

27. PW-4, Shiv Raj, Junior Assistant from Tehsildar Office, Palampur, has proved the copy of the General Power of Attorney given by Mahender Singh, in favour of Baldev Raj, as Ex. PW-4/A.

28. PW-5, Balwant Singh, has deposed that he was the attesting witness of the lease deed, Ex. PW-5/A, which was executed between plaintiff Nalini and Mohinder Singh, through his GPA. According to this witness, Nalini has made the payment of 33,300/- to Baldev Raj.

29. PW-6, Rakesh Kumar, Record Clerk from Sessions Court, Patiala (Pb) has proved the copies of the documents .

Ex. PW-6/A to Ex. PW-6/C and the copy of the order, Ex.

PW-6/D. He has also proved the documents, Ex. D-1 to D-

23, which, according to him, are correct, as per the record.

He has admitted that the document Ex. D-23, does not bear the signatures or thumb impression of Yashodha Devi.

30. PW-7, Sher Singh, Registration Clerk from the office of Sub Registrar, Patiala (Pb) has deposed, on the basis of the record, that GPA No. 438 was cancelled on 23 rd May, 2002, vide document, Ex. PW-7/A. The said document was registered by the Sub Registrar, at the residence of Yashodha Devi, on her application. In addition to this, this witness has proved the copy of GPA No. 439, dated 23rd May, 2002, as Ex. PW-7/A.

31. Plaintiff No. 2, Nalini Kumari, stepped into the witness box as PW-8, and deposed that Yashodha Devi is her real grandmother and Mohan Inder Singh is her real uncle.

The suit land is stated to be situated in Village Gopalpur, Dhanota. According to this witness, regarding the suit land, a compromise was effected between the plaintiffs and Yashodha Devi and Mohan Inder Singh, which has been exhibited as Ex. PW-6/C. The said compromise is stated to .

have been entered upon at Patiala.

31.1. This witness has further deposed that after scribing, the said document was read over to the parties, and, thereafter, all of them had accepted the same as correct and put their thumb impressions and signatures on the same. According to her, Yashodha Devi had put her thumb impression. When, the compromise was scribed, at that time, Sanjay Bharaj and Bhopal Singh were present. Both of them had signed the same as witness. As per the compromise, the land, measuring 1060 kanal, belonging to Mohan Inder Singh, which was leased in favour of this witness, was given to Mohan Inder Singh.

31.2. As per the further deposition of this witness, in terms of the compromise, Yashodha Devi had given the land to the plaintiffs, out of her free will and consent. The father of this witness had expired in the year 1965. After the death, his land was inherited by Yashodha Devi, Rajinder Kaur and this witness, in equal shares. The share, which was received by the mother of this witness, was transferred in the name of Yashodha Devi, by the uncle of this witness, namely Kiran Inder Singh, on the basis of the power of attorney of plaintiff .

No. 1.

31.3. This witness has further deposed that they are owners and in possession of the land, which, they had received, through compromise, Ex. PW-6/C. The revenue entries are stated to be wrongly made in the name of Yashodha Devi. A request was also made to get the revenue entries corrected. According to this witness, on 30th May, 2002 and 15th June, 2002, the defendant had threatened to sell the land, upon which, the plaintiffs have filed the suit.

During pendency of the suit, Kiran Inder Singh is stated to have forged the agreement, on the basis of which, he has filed the Civil Suit in the High Court, which was withdrawn, in the year 2007.

31.4. In the cross-examination, this witness has feigned her ignorance about the fact as to when she had applied for obtaining the subsidy on the property of Yashodha Devi. She has admitted that she had applied for the same on 10 th February, 2004, and 17th April, 2004. She has denied that Rajinder Singh has applied on 13th January, 2004 and in the month of July, 2005. The Power of Attorney, which was in favour of Ravinder Chahal, is stated to have cancelled on 28 th .

January, 2004. This witness has denied that on the basis of the revoked power of attorney, she has got released the subsidy.

31.5. According to the further deposition of this witness, Yashodhan Devi is still considering herself to be the owner of the suit property.

r Yashodhan Devi had never objected to the right of this witness. This witness has denied that after the compromise, Ex. PW-6/C, Yashodha Devi has directed her not to interfere in the suit land. Compromise, Ex. PW-6/C is stated to have been prepared at Computer Center, Patiala. The same was got scribed by Advocate Anil Puri. At that time, uncle of this witness, Mohan Inder Singh and Yashodha Devi were present. On that day, Yashodha Devi had executed and registered the General Power of Attorney of Ravinder Singh Chahal.

31.6. This witness has further admitted that on that day, Yashodha Devi had moved the application before the Registrar by mentioning that she is unable to move, as such, her General Power of Attorney be attested. Yashodha Devi had put her signatures over the document, Ex. PW-6/C, while at home. At that time, uncle of this witness, namely .

Mohan Inder Singh, Yashodha Devi and other witnesses were present there. In addition to this, the employees of Tehsil Office and Notary Public were also there. The compromise was attested by Notary Public, in the presence of Tehsildar.

She has denied that the document, Ex. PW-6/C, was read over to them by Notary Public.

r Again stated that the compromise was read over by Bhopal Singh. Signatures over the compromise, Ex. PW-6/C, were obtained by the Notary in his presence. Thereafter, Notary Public has entered the document, Ex. PW-6/C, in his register. Thereafter, the witnesses and the parties to the compromise had also put their signatures.

31.7. This witness has denied that when document, Ex.

PW-6/C, was read over to Yashodha Devi, then, its contents were objected to by her, due to which, the said document was cancelled. This witness has denied that thereafter, the Notary Public has cancelled the said document and endorsement regarding cancellation was signed by them.

She has admitted that Mark X bears their signatures, but, the same were obtained fraudulently. According to her, she came to know about this fraud, for the first time, when she .

appeared in the witness box.

31.8. This witness has admitted that Ravinder Singh Chahal and Bhopal Singh are the sons of her maternal uncles and Sanjay Bharaj was the Advocate of her paternal uncle. She has admitted that there were negotiations between her and Mohan Inder Singh to the effect that he will not claim his right over the ornaments of her mother and in turn, they will not claim their right over the leased out land of Mohan Inder Singh, which was in their possession. She has further admitted that pursuant to this, Mohan Inder Singh has sworn in an affidavit and handed over the same to them, and as per the settlement, after the execution of the said affidavit, they had handed over the said property to Mohan Inder Singh.

31.9. This witness has denied that in connivance with the witnesses and Ravinder Singh Chahal, they had fraudulently got prepared the document, Ex. PW-6/C. This witness has feigned her ignorance about the fact that when Mohan Inder Singh and Yashodha Devi had not agreed to the terms of the document, Ex. PW-6/C, then, the same was got cancelled from the Notary Public. She has denied that .

Yashodha Devi had put her thumb impression in good faith.

32. PW-9, Bhopal Singh, has deposed that compromise, Ex. PW-6/C, was read over by him to Yashodha Devi and other persons, who had accepted the contents of the same to be correct and put their thumb impressions and signatures over the same.

r This witness has admitted that the plaintiff is his cousin. He has deposed that Yashodha Devi had relinquished about 200 acres of land, in favour of the plaintiffs. He has feigned his ignorance about the fact that at the time of execution of document, Ex. PW-6/C, the plaintiffs had paid anything to Yashodha Devi. According to this witness, Ravinder Singh Chahal was not present at the house of Yashodha Devi.

33. PW-10, Ravinder Singh Chahal, has deposed that he is the General Power of Attorney of Yashodha Devi. This General Power of Attorney was executed on 23 rd May, 2002, at the instance of Yashodha Devi, which was attested by the Tehsildar. According to this witness, on the same day, a compromise, Ex. PW-6/C, was effected between Yashodha Devi, Mohan Inder Singh, Rajinder Kaur and Nalini Kumari, whereupon Yashodha Devi had put thumb impression and .

other parties, including the witnesses, had signed the same.

33.1. As per the further deposition of this witness, Bhopal Singh has read over the compromise, which was admitted to be correct by Yashodha Devi and she had put her thumb impression. This witness has also deposed about the petition, which was filed before the Court of ADJ, Patiala and in that case, as per the directions of Yashodha Devi, this witness had appeared as her GPA and made the statement, Ex. PW-6/B. This witness had produced the medical of Yashodhan Devi in the proceedings before ADJ, Patiala.

According to this witness, he has made the statement, Ex.

PW-6/B, at the instance of Yashodha Devi. According to him, Yashodha Devi has never issued any notice to cancel the GPA.

33.2. In the cross-examination, this witness has deposed that when, the compromise, Ex. PW-6/C, was signed by the parties, at that time, this witness was present at the residence of Yashodha Devi. He has signed the compromise, Ex. PW-6/C, as attesting witness. According to him, firstly, compromise, Ex. PW-6/C was executed and thereafter, GPA was executed by Yashodha Devi, in his .

favour. As per the compromise, Yashodha Devi had given 200 acres of land to the plaintiffs.

33.3. According to this witness, compromise, Ex. PW-

6/C, was executed in the presence of the Tehsildar and he had attested the same. Firstly, the compromise was attested and thereafter, the GPA was attested.

r This witness has denied that when the document, Ex. PW-6/C, was read over to Yashodha Devi, she has termed the compromise to be incorrect. He has feigned his ignorance about the fact that when Yashodha Devi had termed the contents of the compromise as incorrect, thereafter, the same was cancelled.

He has also feigned his ignorance to the fact that Rajinder Kaur has filed Civil Suit No. 76 of 1996, in the Court of Sub Judge (II), Palampur against Yashodha Devi. In the said suit, Rajinder Kaur has challenged the sale deed executed by Yashodha Devi to the extent of the share of Rajinder Kaur.

33.4. This witness has denied that Yashodha Devi had given her GPA to him to depose regarding the property at Palampur. Plaintiff No. 1 is his paternal aunt. According to him, he is not aware about the case filed against Yashodha Devi under Mental Health Act before ADJ Patiala. This .

witness has appeared as GPA of Yashodha Devi in the Court of ADJ Patiala on 25th January, 2003. He has admitted that on 25th January, 2003, he has appointed a counsel to defend Yashodha Devi and thereafter, he never appeared before the Court of ADJ Patiala. Medical, Ex. D-23, was handed over to this witness by Yashodha Devi for producing the same before the Court. The compromise was with plaintiff No. 1-Rajinder Kaur, which she herself presented before the Court of ADJ Patiala. Yashodha Devi has directed this witness to appear in the litigation at Palampur. Plaintiffs never directed this witness to appear in the litigation at Palampur. He has feigned his ignorance regarding the fact that Yashodha Devi has cancelled the GPA on 28th January, 2004.

34. To rebut this evidence, Netar Singh, Tehsildar, Palampur, appeared as DW-1. He has proved the certificate, Ex. DW-1/A. In his cross-examination, this witness has feigned his ignorance about the fact as to whether the defendant is having a big estate in Village Dhanota. He has not brought the revenue record relating to the document, Ex.

DW-1/A, on the pretext that the same was not directed to be brought.

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35. DW-2, Gurinder Jit Singh Rai, is the Notary Public. On the basis of the record, i.e. register, brought by him, he has deposed that Ex. PW-6/C bears his notary seal and was attested by him and the relevant entry was there at S.No. 871, dated 23rd May, 2002.

35.1. According to this witness, on the relevant day, since his case was called, as such, by keeping the document in the relevant register, he had gone to attend the Court proceedings, and, when, he came back, the parties to the said document had already left the said place. According to his further deposition, the party, who had put the thumb impression, had not come to the Court. This witness

had gone to her residence and obtained her thumb impression over the document, as well as, in the register, as, she was an old lady and Nalini Kumari, Rajinder Kaur, Sanjay Bharaj, Advocate, who had identified the executant, came back to the Court premises.

35.2. This witness has proved the extract of the register as Ex. DW-2/A. After putting the document, mentioned at S. No. 871 to 874, he had gone to Court. According to this witness, the registration numbers in the register were being .

entered by this witness or on his instructions, by his clerk.

He has feigned his ignorance about the fact as to who had entered the words 'documents cancelled' in his register, from S. No. 871 to 873. According to him, he has not cancelled the documents, as, he had drafted the document, signed the same and put the same in the register.

35.3. While replying to the Court question, he has deposed that before attesting the document by the Notary, the same is required to be entered in the register of the Notary.

35.4. When another Court question was put to him as to why he has not entered the documents, before attesting the same, which were mentioned at S. No. 871 to 873, he has deposed that he, alongwith the register, had gone to the house of the old lady and got the documents attested, however, the entries were to be made. This witness came to know about the fact that there was entry regarding cancellation of these documents, when, he received summons from the Court, on 5th September, 2007.

35.5. This witness has admitted that the document, Mark-X, which is the photocopy, is the true extract of his .

register, Ex. DW-2/B. The documents mentioned at S. No. 874 and 875 were attested on 23rd May, 2002 and entry was made by him. He has feigned his ignorance about the person, who had taken away the documents, mentioned at S. No. 871 to 873, however, deposed that perhaps, the document at S. No. 874 was taken away by the executant.

35.6. On the request of the learned counsel appearing for the defendant, the learned trial Court has permitted the learned counsel to cross-examine this witness. In the cross-

examination, this witness has denied that he and Bhopal Singh are residing in the same mohalla. He has feigned his ignorance about the fact that Bhopal Singh is cousin of Nalini Kumari. He has admitted that the signatures of Yashodha Devi, in the register, were obtained by visiting her home, however, denied that Yashodha Devi apprised him that she is not considering the documents as correct, as such, her signatures were obtained. He has denied that in the documents, the entire property of Yashodha Devi was got mentioned, as such, she has got the said documents cancelled.

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35.7. In the cross-examination by the learned counsel for the plaintiffs, this witness has deposed that affidavit, dated 23rd May, 2002, which was attested by him, was required to be entered in the register at S. No. 873. In this regard, according to him, the copy of the register is Ex. P-X. He has proved the copy of the original entries at S. No. 874, as Ex. PY. He has admitted that if an attested document is required to be cancelled, the same could only be done with the consent of the parties. Document, Ex. PW-6/C, is stated to have read over to the parties, thereafter, they had put their signatures. Document, Mark-X, has also been attested by this witness, which has been entered at S. No. 830, dated 22nd April, 2002, in the relevant register. As per the further deposition of this witness, the document, Ex. PW-6/C, was accepted to be correct by the parties and, thereafter, they had put their signatures in the relevant register.

36. DW-3, Manjeet Singh, GPA of Yashodha Devi, has proved the GPA as Ex. DW-3/A. According to him, about 5½ years ago, from the date, when he appeared in the witness box, on 12th October, 2007, Nalini Devi, Bhopal Singh and Rajinder Kaur came to the house of Yashodha Devi. When, .

they had rang the door bell, this witness had opened the door. Bhopal Singh apprised him that he is relative of Yashodha Devi. Thereafter, he has apprised this fact to Yashodha Devi, who called them inside.

36.1. According to the further deposition of this witness, they had discussed the matter with Yashodha Devi, regarding the land. The negotiations were made with regard to 30-35 acres of land, regarding which, Kiran Inder Singh has executed the sale deed, in favour of Yashodha Devi.

Rajinder Kaur has apprised Yashodhan Devi that their land has been transferred in her favour and requested her to give the said land back to them, upon which, Yashodha Devi told them that land belongs to them and she will return back the same and directed them to prepare the papers, upon which, she assured them to sign.

36.2. This witness has further deposed that thereafter, Bhopal Singh, Rajinder Kaur and Nalini Devi left the place.

After about one and a half hours, they came back alongwith the material, typed over the green paper. This witness has proved Ex. PW-6/C to be the same papers, if the same had been typed on green paper. Thereafter, this witness helped .

Yashodha Devi to put her thumb impression.

36.3. As per further deposition of this witness, he has further deposed that the other witnesses, including Rajinder Kaur and Nalini Devi, had already signed the same. At the time when, the thumb impression of Yashodha Devi was being obtained, the plaintiffs had disclosed that these documents were regarding 30-35 acres of land, which was being returned to them. Yashodha Devi was less educated.

This witness has studied up to 8th standard. Thereafter, discussions had started between them.

36.4. This witness has further deposed that after about one and a half hours, three persons, out of which, Sanjay Bharaj, Advocate, was known to him and another Advocate, alongwith the third person, who was being referred as Rai, came with a register. Thereafter, on the paper, which was brought by plaintiffs and Bhopal Singh, thumb impression and signatures were obtained. Thereafter, they inquired from Yashodha Devi about the contents of the said document, upon which, Yashodha Devi told them that she is giving back 30-35 acres of land to them. The person, who came later on, disclosed Yashodha Devi that document does .

not pertain to the land, bearing 30-35 acres of land and by virtue of the said document, the entire land was purported to be given, upon which, Yashodha Devi become furious and told them as to why they had not got recorded, as was directed by her. Thereafter, Nalini Devi, Rajinder Kaur and Bhopal Singh told Yashodha Devi that they will get the documents prepared again. Bhopal Singh left the spot, alongwith the document, so prepared. Nalini and Rajinder Kaur remained with Yashodha Devi. Thereafter, Bhopal Singh did not come back.

36.5. According to this witness, thereafter, the person, who had put the round stamp, came there and said that he will not sit there, as, he has certain other works and also told that when, the new papers will be prepared, he will check the same and said that he is going to cancel Ex. PW-6/C. This witness has identified the register, which was shown to this witness in the Court, to be the same register. This witness has got the thumb impression of Yashodha Devi over this register. On the same day, in the evening, one Sardarji and Tehsildar came to the house of Yashodha Devi at 04.00 p.m., alongwith papers, upon which, Mohan Inder Singh stated .

that he will go through the documents and thereafter, he obtained the thumb impression of Yashodha Devi. The said document is stated to be the General Power of Attorney.

36.6. As per further deposition of this witness, thereafter, the said document was handed over to this witness for getting the thumb impression of Yashodha Devi over it. After getting the thumb impression of Yashodha Devi, the document was handed over to said Sardarji, who, alongwith the papers, thereafter, left the spot and Yashodha Devi directed the said Sardarji to submit the said GPA in Palampur Court. After perusing Ex. DW-2/B, this witness has stated that the original is in the register, which had been brought from Patiala Court about 8-9 months ago.

36.7. This witness has further deposed that about 8-9 months ago, one person, from Palampur, came to the house of Yashodha Devi and as per the direction of Mohan Inder Singh, this witness took him to Sanjay Bharaj, Advocate, but, he was not there. His clerk was there, who has directed this witness to take the said person to one Rai. When, they had gone to said Rai, he had directed them to come after 2- 2½ hours. When, the request was made to him to attest the .

said document, he has stated that he has got prepared the same, as such, he could not attest the same. Thereafter, they had gone to the office of Sanjay Bharaj. Sanjay Bharaj was not there, but, his clerk was there, who got the document, Ex. DW-2/B, attested from Notary and the same was handed over to the person, who had come from Palampur.

36.8. Lastly, this witness has deposed about the mental condition of Yashodha Devi, to be having the sound disposing mind, however, she is stated to be feeble and hard of hearing.

36.9. In the cross-examination by the learned counsel for the plaintiffs, this witness has deposed that Yashodha Devi was having three sons. When, document, Ex. PW-6/C, was prepared, Mohan Inder Singh was present at the home of Yashodha Devi, however, this witness has feigned his ignorance about the fact as to whether Mohan Inder Singh has also put the signatures over the document. When, the document, Ex. PW-6/C, was shown to this witness, he has identified the signatures of Mohan Inder Singh.

36.10. According to him, Mohan Inder Singh and Yashodha Devi were having cordial relations with each other.

Ex. PW-6/C was signed by Mohan Inder Singh, on the ground, that Yashodha Devi had signed the same, on the pretext that since the document has been signed by Yashodha Devi, the same would be genuine. Mohan Inder Singh was Graduate. This witness has admitted that Mohan Inder Singh does not sign the document without going through its contents. Voluntarily stated that sometimes, he used to sign the same. Mohan Inder Singh was mentally fit and alert. Ex. PW-6/C was signed by remaining witnesses, Rajinder Kaur and Nalini. This witness has got the thumb impressions over the document, Ex. PW-6/C, during the noon.

36.11. This witness has feigned his ignorance about the fact that Mohan Inder Singh was General Power of Attorney of Yashodha Devi. This witness had gone to Rai to obtain the document, Ex. DW-2/B. Mohan Inder Singh had directed him to accompany the person who came from Palampur. He could not disclose about the room where Advocate Sanjay Bharaj and said Rai used to sit. He could not disclose about .

the name of the person, who had come from Palampur, as, he has not inquired the same. This witness is not relative of Yashodha Devi, but, his father was serving her and Yashodha Devi used to treat him like her children. This witness does not receive any remuneration from Yashodha Devi, however, he was residing alongwith his wife and mother in her house.

36.12. Rest, this witness has denied all the suggestions, which have been put to him, by the learned counsel for the plaintiffs.

37. This is the entire evidence led by both the parties, before the learned trial Court.

38. On the basis of the evidence, so adduced, as well as, the grounds taken by the appellants-plaintiffs, Mr. Rajnish K. Lal, learned counsel appearing for the plaintiffs, has vehemently argued that defendants No. 3 to 10 have no locus standi to contest the appeal.

39. In this regard, he has also argued that in Civil Suit No. 123 of 2002, before the learned trial Court, one CMA No. 60 of 2004, was filed under Order 1 Rule 10 CPC, for impleading Surinder Kumar Sood as party, in the Civil Suit, .

the reply to the same was filed by Yashodha Devi and in the said application, she was represented by Mr. Rajender Ghogra, Advocate, who had represented defendants No. 3 to 10 in the appeal, when, they were impleaded as defendants, in pursuance of the order passed by this Court, in CMPMO No. 196 of 2016, decided on 29th March, 2019. These facts have been highlighted to show that the act of Shri Rajender Ghogra, Advocate, is nothing, but a professional misconduct.

40. In the said reply, which was filed through Mr. Rajinder Ghogra, Advocate, it has been mentioned that defendant No. 1 has given her property to plaintiff-Rajinder Kaur, who would actually be the owner of the same, had the GPA of defendant No. 1 not been misused by Kiran Inder Singh.

41. Learned counsel for the plaintiffs could not satisfy the judicial conscience of this Court as to how this Court can decide the question of professional misconduct. As such, the said argument of the learned counsel appearing for the plaintiffs is not required to be considered by this Court.

42. So far as the locus standi of defendants No. 3 to 10 to contest the appeal is concerned, the order with regard .

to their impleadment has been passed, by this Court, in CMPMO No. 196 of 2016, and the conditions, which have been imposed, vide this order, have not been violated by defendants No. 3 to 10. They have not filed any written statement nor any prayer has been made, in this regard.

They have been impleaded in the lis at the stage, when, the matter was pending by way of appeal, before the learned First Appellate Court. Once, they have been impleaded, as party, in the proceedings, before the learned First Appellate Court, they have every locus standi to contest the present appeal. Defendants No. 3 to 10 had purchased the part of the suit property and as such, they have every locus standi to protect their title.

43. In this regard, reference can be made to the decision of the Hon'ble Supreme Court, in a case, titled as Ramesh Hirachand Kundanmal versus Municipal Corporation of Greater Bombay and others, reported in (1992) 2 Supreme Court Cases 524. Relevant para 14 of the judgment, is reproduced, as under:

"14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule .

rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct

solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.* [(1956) 1 All ER 273 : (1956) 1 QB 357], wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A. v. Bank of England* [(1950) 2 All ER 605, 611], that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:

"The test is 'May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights'."

44. Similar view has again been reiterated by the Hon'ble Supreme Court, in a case, titled as *Thomson Press*.

(India) Limited versus Nanak Builders and Investors Private Limited and others, reported in (2013) 5 Supreme Court Cases 397.

45. In this case, the suit for declaration and injunction, filed by the plaintiffs, has been dismissed, by the learned trial Court, while holding that Ex. PW-6/C is not a genuine document, rather, according to the learned trial Court, the same appears to be a forged document.

46. In addition to this, while deciding issues No. 1, 2, 3, 4, 5 and 9, it has been held by the learned trial Court that the plaintiffs could not prove the due execution of the compromise, Ex. PW-6/C. These findings have been assailed by the plaintiffs before the learned First Appellate Court and their appeal has also been dismissed by the learned First Appellate Court by re-iterating that the due and proper execution of the compromise deed, Ex. PW-6/C, has not been established and the said document has been held to be a forged document.

47. The learned counsel appearing for the plaintiffs has also argued that an application, under Order 41 Rule 27.

read with Section 151 CPC, bearing CMA No. 105 of 2013, had been filed on 26th November, 2012, before the learned First Appellate Court to produce and prove the documents, (i) copy of plaint in Civil Suit No. 163 of 2008; (ii) copy of written statement of Mohan Inder Singh, filed in the said suit;

(iii) copy of application under Order 39 Rule 4 CPC filed in Case No. 297/2007, titled as Gopal Sood versus Mohan Inder Singh; (iv) copy of application, titled as Gopal Sood versus Mohan Inder Singh, filed by Gopal Sood, under Section 340 CrPC, in the Court of learned Civil Judge (Junior Division), Palampur. According to the learned counsel for the plaintiffs, the said application has not been decided by the learned First Appellate Court, while deciding the appeal.

48. It would not be out of place to record herein that the said application, as per the orders passed by the learned First Appellate Court was taken up for hearing, on 3rd June, 2013, when, the application has been ordered to be taken up at the time of final disposal of the appeal. Thereafter, the reply to the application was filed. Thus, it has been contended on behalf of the learned counsel for the plaintiffs that since, the application, under Order 41 Rule 27 CPC has .

not been decided by the learned First Appellate Court, as such, this Court has left with no option, but, to remand back the matter to the learned First Appellate Court, for deciding the same afresh, after deciding the application, under Order 41 Rule 27 CPC.

49. The plaintiffs-appellants have moved CMP No. 13476 of 2023, under Section 100 (5) CPC, for framing the additional substantial question of law, on the ground, that the application, under Order 41 Rule 27 CPC, which was filed before the learned First Appellate Court, has not been decided.

50. The said application had been considered by this Court and was rejected on 19th October, 2023. The said order had been assailed before the Hon'ble Supreme Court, by way of Petition for Special Leave to Appeal (C) No. 26599 of 2023. The said SLP was disposed of by the Hon'ble Supreme Court, vide order, dated 11th December, 2023, which is reproduced, as under:

"Having regard to the proviso to sub-section (5) of Section 100 of the Code of Civil Procedure, 1908 (for short "CPC"), liberty is reserved to the petitioners herein to raise additional questions of law which may arise at the time of final hearing of the second appeal.

.

It is needless to observe that if such questions are raised the same shall be considered in accordance with law.

With the aforesaid observations, the Special Leave Petition is disposed of.

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

51. Even, as per the direction of the Hon'ble Supreme Court, as referred to above, the question, which falls within the definition of substantial question of law, is to be considered, by this Court.

52. The power of this Court, under Section 100 CPC, is confined only to decide the substantial question of law. As such, sine quo non for considering the submission of the learned counsel

appearing for the appellants, is that the said question must fall within the definition of substantial question of law.

53. In this regard, view of this Court is being guided by the decision of the Hon'ble Supreme Court, in a case, titled as Bhagyashree Anant Gaonkar versus Narendra @ Nagesh Bharmar Holkar & Anr., reported in 2023 LiveLaw (SC) 688. Relevant paragraphs, of the judgment, are reproduced, as under:-

"We have considered the contentions advanced at the Bar in light of the requirements of Section 100 of the CPC. It is trite that the exclusive jurisdiction of the High Court to deal with a regular second appeal is stipulated in Section 100 of the CPC, which grants power to the High Court to consider a regular Second Appeal only on a substantial question of law. This would clearly indicate that the First Appellate Court is the final court on questions of facts but only if there is any substantial question of law, a second appeal could be considered and raised by the High Court and such substantial question(s) of law ought to be answered. In fact, it is the practice and a mandatory requirement that at the time of admitting the regular second appeal, substantial question(s) of law must be framed, on the basis of which the arguments must be advanced and a decision given thereon. It is also permitted that once the arguments have been advanced, the court is at liberty to re-frame or frame fresh substantial questions of law and answer the same on hearing the learned counsel for the respective parties for immediate reference Section 100 of the CPC extracted as under:

"100. Second appeal.--(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a .

substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question: Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear,

for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

The law on the practice to be followed while considering a regular second appeal, have been re-iterated by this Court, and the relevant extracts in this regard are exposted as under:

a. Roop Singh v. Ram Singh, (2000) 3 SCC 708, as relied upon in C.A. Sulaiman vs. State Bank of Travancore, Alwayee (2006) 6 SCC 392:

"7. It is to be reiterated that under Section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC."

b. State Bank of India vs. S.N. Goyal (2008) 8 SCC 9215:

"15. It is a matter of concern that the scope of second appeals and as also the procedural aspects of second appeals are often ignored by the High Courts. Some of the oft-repeated errors are:

(a) Admitting a second appeal when it does not give rise to a substantial question of law.

(b) Admitting second appeals without .

formulating substantial question of law.

(c) Admitting second appeals by formulating a standard or mechanical question such as "whether on the facts and circumstances the judgment of the first appellate court calls for interference"

as the substantial question of law.

(d) Failing to consider and formulate relevant and appropriate substantial question(s) of law involved in the second appeal.

(e) Rejecting second appeals on the ground that the case does not involve any substantial question of law, when the case in fact involves substantial questions of law

(f) Reformulating the substantial question of law after the conclusion of the hearing, while preparing the judgment, thereby denying an opportunity to the parties to make submissions on the reformulated substantial question of law.

(g) Deciding second appeals by reappreciating evidence and interfering with findings of fact, ignoring the questions of law.

These lapses or technical errors lead to injustice and also give rise to avoidable further appeals to this Court and remands by this Court, thereby prolonging the period of litigation. Care should be taken to ensure that the cases not involving substantial questions of law are not entertained, and at the same time ensure that cases involving substantial questions of law are not rejected as not involving substantial questions of law."

c. Municipal Committee, Hoshiarpur v. Punjab SEB, (2010) 13 SCC 216:

"16...A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a .

substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. It is the obligation on the court to further clear the intent of the legislature and not to frustrate it by ignoring the same.

d. Umerkhan v. Bismillabi, (2011) 9 SCC 684:

"11. In our view, the very jurisdiction of the High Court in hearing a second appeal is founded on the formulation of a substantial question of law. The judgment of the High Court is rendered patently illegal, if a second appeal is heard and judgment and decree appealed against is reversed without formulating a substantial question of law. The second appellate jurisdiction of the High Court under Section 100 is not akin to the appellate jurisdiction under Section 96 of the Code; it is restricted to such substantial question or questions of law that may arise from the judgment and decree appealed against. As a matter of law, a second appeal is entertainable by the High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof. Section 100 of the Code provides that the second appeal shall be heard on the question so formulated. It is, however, open to the High Court to reframe substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved at the time of hearing the second .

appeal but reversal of the judgment and decree passed in appeal by a court subordinate to it in exercise of jurisdiction under Section 100 of the Code is impermissible without formulating substantial question of law and a decision on such

question."

e. Raghavendra Swamy Mutt v.

Uttaradi Mutt, (2016) 11 SCC 235 "18. In the instant case, the High Court has not yet admitted the matter. It is not in dispute that no substantial question of law has been formulated as it could not have been when the appeal has not been admitted. We say so, as appeal under Section 100 CPC is required to be admitted only on substantial question/questions of law. It cannot be formal admission like an appeal under Section 96 CPC. That is the fundamental imperative. It is peremptory in character, and that makes the principle absolutely cardinal."

At this stage, it would be apposite to refer to the judgement of the Karnataka High Court, rendered by one of us (Nagarathna J) in Raghavendra Swamy Mutt v. Utaradi Mutt, 2016 SCC OnLine Kar 473. The Karnataka High Court had disposed of an I.A. No. 1/2016 filed in RSA No. 100446/2015 by the Respondent therein against the favourable interim order dated 16.12.2015 granted to Petitioner without the issuance of notice. The High Court pointed out that in the interim order allowing the application filed by the appellant, the satisfaction of the court on any substantial question of law had not been recorded.

The judgement was upheld in appeal by this court in Raghavendra Swamy Mutt v. Uttaradi Mutt, (2016) 11 SCC 235 while observing that:

"24. It is clear as day that the High Court cannot admit a second appeal without examining whether it raises any substantial question of law for admission and thereafter, it is obliged to formulate the substantial question of law. Solely because the Court has the jurisdiction to pass an ex parte order, it does not empower it not to formulate the substantial question of law for the purpose of admission, defer the date of admission and pass an order of stay or grant an interim relief. That is not the scheme of CPC after its amendment in 1976 and that is not the tenor of precedents of this Court and it has been clearly so stated in Ram Phal [Ram Phal v. Banarasi, (2003) 11 SCC 762] . Therefore, the High Court has rectified its mistake by vacating the order passed in IA No. 1 of 2015 and it is the correct approach adopted by the High Court. Thus, the impugned order is absolutely impregnable."

54. Now, this Court would proceed to consider as to whether the question, as raised by the learned counsel appearing for the appellants, qua non-decision of the application, under Order 41 Rule 27 CPC, falls within the purview of substantial question of law.

55. The application, under Order 41 Rule 27 CPC has been ordered to be taken up, for disposal, by the learned First Appellate Court, alongwith the main appeal. The First Appellate Court has decided the appeal on 30th September, 2019 and in para 48 of the judgment, it has been held that .

no other point has been urged. Meaning thereby, the application, under Order 41 Rule 27 CPC has not been pressed by the appellants-plaintiffs.

56. Had the said application been pressed by the appellants-plaintiffs, before the learned First Appellate Court, the same should have been pointed out by the learned counsel representing the appellants-plaintiffs, before the learned First Appellate Court. Even otherwise, no application for review has been filed before the learned First Appellate Court, by the appellants-plaintiffs, nor, this ground has been taken in the grounds of appeal, as well as, at the stage, when the appeal was admitted on the substantial question of law framed and reproduced above. The plea of non-decision of the application, under Order 41 Rule 27 CPC, for the first time, has been taken, when CMP No. 13476 of 2023 was filed, on 26th September, 2023.

57. On the basis of the above facts, a prayer has been made to frame the additional substantial question of law.

58. In order to buttress his contention, the learned counsel appearing for the appellants-plaintiffs, has relied .

upon the decisions of the Hon'ble Supreme Court in Santosh Hazari versus Purushottam Tiwari (deceased) by LRs, reported in (2001) 3 Supreme Court Cases 179; State of Rajasthan versus T.N. Sahani and others, reported in (2001) 10 Supreme Court Cases 619; Bhavnagar University versus Palitana Sugar Mill (P) Ltd. and others, reported in (2003) 2 Supreme Court Cases 111; C.A. Sulaiman and others versus State Bank of Travancore, Alwayee and others, reported in (2006) 6 Supreme Court Cases 392; North Eastern Railway Administration, Gorakhpur versus Bhagwan Das (Dead) by LRs, reported in (2008) 8 Supreme Court Cases 511; Jatinder Singh and another Minor through Mother versus Mehar Singh and others, reported in (2009) 17 Supreme Court Cases 465;

Shalimar Chemical Works Limited versus Surendra Oil and Dal Mills (Refineries) and others, reported in (2010) 8 Supreme Court Cases 423; Vijay Arjun Bhagat and others versus Nana Laxman Tapkire and others, reported in (2018) 6 Supreme Court Cases 727; Corporation of Madras and another versus M. Parthasarathy and others, reported in (2018) 9 Supreme Court Cases 445; G. .

Shashikala (Died) through Legal Representatives versus G. Kalawati Bai (Died) through Legal Representatives and others, reported in (2019) 15 Supreme Court Cases 201;

and Ms. Mani Devi versus Sh. Suresh Chand and others, reported in Latest HLJ 2021 (HP) (2) 874.

59. The case laws, which have been relied upon, as well as, referred to above, are to be seen, in view of the decision of a three Judge Bench of the Hon'ble Supreme Court in Bhavnagar University's case (supra), wherein, it has been held that a decision is an authority, for which, it is decided and not what can logically be deduced therefrom.

Relevant paragraph 59 of the judgment, is reproduced, as under:

"59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See *Ram Rakhi v. Union of India, Delhi Admn. (NCT of Delhi) v. Manohar Lal, Haryana Financial Corpn. v. Jagdamba Oil Mills and Nalini Mahajan (Dr) v. Director of Income Tax (investigation).*]"

60. Similar view has been taken by the Hon'ble Supreme Court in *Bharat Petroleum Corpn. Ltd. & anr.*

versus *N.R. Vairamani & anr.*, reported in (2004) 8 Supreme Court Cases 579. Paras 9 to 11 of the judgment, are reproduced, as under:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. V. Horton* (1951 AC 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

10. In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition it will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly lacing reliance on a decision is not proper."

61. Now, in the light of these decisions of the Hon'ble Supreme Court, this Court would proceed to analyze the judgments, relied upon by the learned counsel appearing for the appellants-plaintiffs .

62. So far as the decision of the Hon'ble Supreme Court, in Santosh Hazari's case (supra) is concerned, the same, in no way, helps the case of the plaintiffs, as, the appeal has been admitted on the substantial question of law, which has been framed, on 22 nd October, 2021 and reproduced above.

63. Apart from this, the arguments of the learned counsel appearing for the plaintiffs, qua the non-decision of the application, under Order 41 Rule 27 CPC, by the learned First Appellate Court, are too short to formulate additional substantial question of law.

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64. The learned counsel appearing for the plaintiffs could not satisfy the judicial conscience of this Court as to how the decision of the Hon'ble Supreme Court in T.N. Sahani's case (supra), is applicable to the facts and circumstances, of the present case. The learned First Appellate Court has not decided the application, prior to the final decision of the appeal and once, it has been held by the learned First Appellate Court that no other point has been urged, meaning thereby, the application has not been pressed by the appellants-plaintiffs .

65. The decision of the Hon'ble Supreme Court in Bhavnagar University's case (supra) is not applicable to the facts and circumstances of the present case, as, the relief, which has not been granted to a party, is deemed to have been rejected.

66. So far as the decision of the Hon'ble Supreme Court in C.A. Sulaiman's case (supra) is concerned, when, once, this Court has held that the arguments of the learned counsel appearing for the plaintiffs, regarding the alleged non-decision of the application, under Order 41 Rule 27 CPC and remanding the matter back to the learned First Appellate .

Court, are too short to formulate the substantial question of law, then, no benefit could be derived by the plaintiffs, from the decision of the Hon'ble in C.A. Sulaiman's case (supra).

67. Coming to the decision of the Hon'ble Supreme Court in North Eastern Railway Administration's case (supra), the said decision, in the considered opinion of this Court, in no way helps the case of the plaintiffs, as, in the said case, the High Court had dismissed the application, under Order 6 Rule 17 CPC, by holding that the said application cannot be entertained, in the second appeal, whereas, in the present case, the learned First Appellate Court has categorically held that except the points, which all were considered by the learned First Appellate Court, no other point had been urged. Meaning thereby, all the applications, which were pending, are deemed to have been dismissed, with

the dismissal of the appeal, by the learned First Appellate Court.

68. So far as the decision of the Hon'ble Supreme Court in Jatinder Singh's case (supra) is concerned, in the said case, the Regular Second Appeal was dismissed by the High Court of Punjab and Haryana, by holding that the same .

does not involve any substantial question of law, whereas, in the present case, the substantial question of law has duly been formulated by this Court and the additional substantial question of law cannot be framed on the mere asking of the plaintiffs, without establishing the grounds for the same.

Hence, this case is of no help to the plaintiffs.

69. The decision of the Hon'ble Supreme Court in Shalimar Chemical Works Limited's case (supra), does not apply to the facts and circumstances of the present case, as, the controversy, before the Hon'ble Supreme Court, was with regard to giving the opportunity to the opposite party to rebut the additional evidence, so produced, under the provisions of Order 41 Rule 27 CPC.

70. So far as the decision of the Hon'ble Supreme Court in Corporation of Madras' case (supra), is concerned, the same, in no way, helps the case of the plaintiffs, as, additional evidence has not been permitted to be adduced, as such, remanding the same under Order 41 Rule 23A or Order 41 Rule 25 CPC does not arise.

71. The decisions of the Hon'ble Supreme Court in Vijay Arjun Bhagat's and G. Shashikala's cases (supra) are .

not applicable, to the facts and circumstances of the present case.

72. Now, coming to the facts and circumstances of the present case, the application, under Order 41 Rule 27 CPC, by virtue of which, four documents, as mentioned above, were sought to be produced and proved, remained pending before the learned First Appellate Court, for a considerable long time. When, the matter was taken up for hearing, on 20th September, 2019, it appears that the application has not been pressed, on that day, as, the arguments in the main appeal were heard, whereas, vide judgment, dated 30th September, 2019, the appeal of the plaintiffs was dismissed and, as referred to above, in para 48 of the judgment, it has specifically been held that no other point has been urged. Meaning thereby, the application, under Order 41 Rule 27 CPC, has not been pressed, by the learned counsel representing the plaintiffs, before the learned First Appellate Court.

73. Had the application been pressed, before the learned First Appellate Court and as per the stand taken by .

the plaintiffs, if the same had not been considered, in that eventuality, the said point/contention should have been raised, in the second appeal, which has been filed before this Court.

74. Perusal of the grounds of appeal shows that this plea has not been raised in the grounds of appeal, nor, the same has been raised, when, the appeal was admitted on substantial question of law. The appeal was proposed to be admitted on the following substantial questions of law:

"1. Whether both the Id. Courts below erred in appreciating the provisions of law applicable, pleadings of the parties and evidence adduced by them in its right perspective thereby vitiating the impugned judgments and decrees?

2. Whether both the learned Courts below have mis-read and mis-appreciated oral and documentary evidence, more especially statements of PW-1 to PW-10 and documents, Ex. PW-1/A to Ex. PN, thereby vitiating the impugned judgments and decrees?

3. Whether there being no averments qua particulars of fraud in the written statement, findings on issue No. 9 qua Ex. PW-6/C being forged document by both the learned Courts below, in law, stand vitiated and liable impugned to be set aside?

4. Whether evidence without pleading could not be appreciated and both the Courts below having acted contrary, thus, .

impugned judgment & decrees, in law, stand vitiated and liable to be set aside?

5. Whether findings on issues No. 4 & 5 by learned trial Court and affirmed by learned First Appellate Court qua maintainability of suit and locus standi returned by both the Courts below are unsustainable and liable to be set aside?"

75. However, the appeal was admitted on the substantial question of law, which has been proposed at serial No. 2. The lis has been instituted before the learned trial Court on 4th July, 2002 and the application, under Order 41 Rule 27 CPC, was moved on 26 th November, 2012.

Thereafter, the matter remained pending before the learned First Appellate Court till the date of the passing of the judgment, on 30th September, 2019, i.e. for long seven years.

76. Learned counsel appearing for the plaintiffs could not satisfy the judicial conscience of this Court as to how the documents, which have been annexed with the application, under Order 41 Rule 27 CPC, were required, for the learned First Appellate Court to effectively decide the controversy involved. Even otherwise, the application lacks the ingredients of Order 41 Rule 27 CPC, as, in para 1 of the application, it has been pleaded that the documents, sought to be produced and proved, by way of the application, under .

Order 41 Rule 27 CPC, were not available with the plaintiffs, whereas, Civil Suit No. 163 of 2008 was instituted by applicant-Rajinder Kaur and her daughter-Nalini Kumari.

Similarly, the other documents pertain to the proceedings, which were instituted by plaintiff-Rajinder Kaur and the applicant. r

77. In order to frame additional substantial question of law, learned counsel appearing for the plaintiffs, is bound to demonstrate that the documents, sought to be produced/ proved, are having some relevance to the controversy, involved in the case. Mere filing of application, under Order 41 Rule 27 CPC, does not mean that the said documents, were required by the learned First Appellate Court, to decide the controversy involved, in an effective manner.

78. Without fulfilling the essential ingredients of Order 41 Rule 27 CPC, as well as, without pointing out the relevance of the documents, sought to be produced/proved, the said fact is too short to frame additional substantial question of law. Hon'ble Supreme Court has directed this Court to decide the substantial question of law, if raised. It does not mean that whatsoever question is raised by the .

appellants, would fall within the definition of 'substantial question of law'.

79. Even otherwise, from the perusal of the proceedings, before the learned First Appellate Court, it can be inferred that the application, under Order 41 Rule 27 CPC, has not been pressed by the plaintiffs, before the learned First Appellate Court, and now, by seeking to frame the additional substantial question of law, at this stage, just an attempt is being made to keep the litigation alive, which is pending for the last 22 years. Had the plaintiffs been serious enough to contest this application, in the ordinary course of events, the application would have been agitated before the learned First Appellate Court, or, the non-decision of the said application would have been mentioned in the grounds of appeals, in the Regular Second Appeal, before this Court.

80. No efforts have been made by the plaintiffs to get their grounds of appeal amended, by incorporating the grounds, with regard to the alleged non-decision of the application, under Order 41 Rule 27 CPC.

81. So far as the argument of the learned counsel appearing for the plaintiffs, qua the fact that after framing .

the additional substantial question of law, the matter is required to be remanded back, to the learned First Appellate Court, is concerned, in the considered opinion of this Court, the learned counsel appearing for the plaintiffs is not able to make out a case for framing additional substantial question of law, under Order 100 CPC, in the present case.

82. Even otherwise, remand order can only be passed, if the ingredients of Order 41 Rules 23 and 23A CPC would have been fulfilled. Remand order is not meant for providing a fresh opportunity to a party, which remained silent, during the course of pendency of the case, before the First Appellate Court, as well as, at the time of filing of the present appeal, before this Court and at the time, when the appeal was admitted, on the substantial question of law. Remanding a case is serious matter. Such order can only be passed in exceptional circumstances, when there had been no trial.

83. In the present case, the contents of the application, under Order 41 Rule 27 CPC, are too short to hold that the documents, sought to be proved/produced, have any relevance qua the dispute involved in the present lis. The plaintiffs have sought the declaration on the basis of .

the document, Ex. PW-6/C. The right to adduce additional evidence, at appellate stage, is circumvent to the conditions, as enumerated under Order 41 Rule 27 CPC. This Court does not find any relevance of those documents, qua the dispute, involved in the present lis.

84. As per the submissions made by the learned counsel appearing for the plaintiffs, the property in dispute was earlier owned by Maharaja Bhupinder Singh. After his death, the same was inherited by Yashodha Devi, Mohan Inder Singh, Kiran Inder Singh and Kumud Inder Singh.

Plaintiffs are the widow and daughter of Kumud Inder Singh.

Meaning thereby, the family is consisting of Yashodha Devi, Mohan Inder Singh, Kiran Inder Singh, Rajinder Kaur and Nalini Kumari.

85. The plaintiffs have sought the declaration of their title, on the basis of the compromise, dated 23 rd May, 2002, Ex. PW-6/C. The plaintiffs have approached the Court to declare them as owners in possession of the suit property, on the basis of the alleged compromise deed, dated 23 rd May, 2002, Ex. PW-6/C. Defendant-Yashodha Devi has not admitted the said document. In such situation, the onus .

was upon the plaintiffs to plead and prove that the document, which has been relied upon by them, as family settlement, must fulfill the ingredients, as per law.

86. The learned counsel appearing for the plaintiffs has made a futile attempt to demolish the case of the defendant by arguing that no pleadings of fraud or mis-

representation have been made, in the written statement, as per Order VI Rule 4 of the CPC.

87. The pleadings of the plaintiffs are totally silent about the fact as to how the document, Ex. PW-6/C, comes within the definition of memorandum of family settlement.

This document has allegedly been executed between defendant-Yashodha Devi, plaintiff No. 1-Rajinder Kaur, plaintiff No. 2-Nalini Kumari and Mohan Inder Singh. Said Mohan Inder Singh has not even been impleaded as party, in the present lis.

88. As per the arguments of the learned counsel appearing for the plaintiffs, Maharaja Bhupinder Singh left behind Yashodha Devi, Mohan Inder Singh, Kiran Inder Singh and Kumud Inder Singh, as his LRs. In the absence of the entire family members, the document, Ex. PW-6/C, is too .

short to be considered as family settlement. The fourth signatory of the document, Ex PW-6/C, Mohan Inder Singh, has not been impleaded as party, in the suit.

89. The concept of family settlement has elaborately been discussed by the Hon'ble Supreme Court in a case, titled as Kale and others versus Deputy Director of Consolidation and others, reported in AIR 1976 Supreme Court 807, wherein, the essentials of a family settlement have been enumerated, by the Hon'ble Supreme Court.

Relevant para-10 of the judgment, is reproduced, 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 arrangement 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 immovable properties and therefore does not fall within the mischief of Section 17(2) 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 no 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 owner, then the antecedent title must be assumed 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."

90. According to the much relied document, Ex. PW-

6/C, no fair and equitable distribution and allotment of the properties has been done, as, the entire property of defendant-Yashodha Devi had allegedly been given to the .

plaintiffs.

91. If the facts and circumstances of the present case, are seen, in the light of the decision of the Hon'ble Supreme Court, in a case, titled as Smt. Badami (Deceased) By Her L.R. versus Bhali, reported in AIR 2012 Supreme Court 2858, then, the document, Ex. PW-6/C, is too short to be considered as a compromise and as such, this Court is unable to accept it to be a bona fide settlement. Relevant paras 15 to 17, of the judgment, in Badami's case (supra), are reproduced, as under:

"24. In Kale and others v. Deputy Director of Consolidation and others, AIR 1976 SC 807, it has been held that the object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family.

Their Lordships opined that the family is to be understood in the wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of claim or even if they have a spes successionis so that future disputes are sealed forever and litigation are avoided. What could be the binding effect and essentials for a family settlement were expressed thus :

"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 arrangement 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 immovable 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 registerable;

(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 no 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 owner, then the antecedent title must be assumed 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."

16. We may note that the principles stated in *Maturi Pullaiah and another v. Maturi Narasimham and others*, AIR 1966 SC 1836, were reiterated in *S. Shanmugam Pillai & others v. K. Shanmugam Pillai & others*, AIR 1972 SC 2069, in the following terms :

"In *Maturi Pullaiah v. Maturi Narasimham*, AIR 1966 SC 1836, this Court held that although conflict of legal claims in praesenti or in futuro is generally a condition for the validity of family arrangements, it is not necessarily so. Even bona fide disputes present or possible, which may not involve legal claims would be sufficient. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an agreement is entered into bona fide and the terms thereto are fair in the circumstances of a particular case, the courts would more readily give assent to such an agreement than to avoid it."

17. If the present factual matrix tested on the anvil of the aforesaid decisions, the family arrangement does not remotely appear to be bona fide. Bhali had not semblance of right in the property. All rights had already been settled and she was the exclusive owner in possession. It is difficult to visualise such a family settlement. More so, it is absolutely irrational that Badami would give everything to Bhali in lieu of nothing and suffer a consent decree. That apart, there was no reason to exclude the daughter and the son-in-law. Had there been any likely possibility of any future legal cavil between the daughter and Bhali the same is understandable. It is well-nigh impossible to perceive any dispute over any property or the possibility of it in future. On the contrary in this so-called family settlement the whole property of Badami is given to Bhali. We are unable to accept it to be a bona fide settlement."

92. As per the documents produced on the file, the .

plaintiffs had also instituted a petition, under Sections 50, 53 and 54 of the Mental Health Act, 1987, before the Court of learned Additional District Judge, Patiala, with a prayer to appoint them, as guardian of and manager for the management of the property of Yashodha Devi. In the said petition,

the plaintiffs have impleaded Mohan Inder Singh, Kiran Inder Singh, as well as, Yashodha Devi (defendant herein), as parties.

93. The said petition was decided on 25th January, 2003, on the basis of the compromise between the parties.

The compromise has been placed before the Court, where the petition, under the Mental Health Act was pending, as Ex.

CX. Ex. CX is the document, which has been sought to be accepted by the Courts, as family settlement, by the plaintiffs. Perusal of those documents shows that Yashodha Devi was impleaded as respondent No. 3, in the said proceedings. The recital of the said petition, is reproduced as under:

"Petition under Section 50, 53, 54 of the Mental Health Act 1987 for the appointment of the petitioners as the Guardian of and Managers for the management of the property of respondent No. 3 by holding an inquisition into the mental condition of the respondent No. 3 and for .

PERMANENT INJUNCTION restraining the respondents No. 1 & 2 from utilising the power of Attorney/alienating in any manner the properties of respondent No. 3 or to part with the possession of any of the moveable or immoveable properties of the respondent No. 3 Yashoda Devi."

94. When, a prayer has been made, by the plaintiffs, to appoint them as guardian of, as well as, manager of the property of Yashodha Devi, by holding inquisition into her mental condition, then, how she can be represented before the said Court, by a counsel, is a fact, which, the learned counsel appearing for the plaintiffs, could not explain to the satisfaction of the judicial conscience of this Court.

95. The provisions of Sections 50, 53 and 54 of the Mental Health Act, 1987, are reproduced, as under:

"50. Application for judicial inquisition. -

(1) Where an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either-

(a) by any of his relatives, or

(b) by a public curator appointed under the Indian Succession Act, 1925 (39 of 1925),
or

(c) by the Advocate-General of the State in which the alleged mentally ill person resides, or

(d) where the property of the alleged mentally ill person comprises land or interest in land, or where the property or .

part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any law for the time being in force in the State, by the Collector of the District in which such land is situate, to the District Court within the local limits of whose jurisdiction the alleged mentally ill person resides.

(2) On receipt of an application under sub-section (1), the District Court shall, by personal service or by such other mode of service as it may deem fit, serve a notice on the alleged mentally ill person to attend at such place and at such time as may be specified in the notice or shall, in like manner, serve a notice on the person having the custody of the alleged mentally ill person to produce such person at the said place and at the said time, for being examined by the District Court or by any other person from whom the District Court may call for a report concerning the mentally ill person:

Provided that, if the alleged mentally ill person is a woman, who according to the custom prevailing in the area where she resides or according to the religion to which she belongs, ought not to be compelled to appear in public, the District Court may cause her to be examined by issuing a commission as provided in the Code of Civil Procedure, 1908 (5 of 1908).

(3) A copy of the notice under sub-section (2) shall also be served upon the applicant and upon any relative of the alleged mentally ill person or other person who, in the opinion of the District Court, shall have notice of judicial inquisition to be held by it.

(4) For the purpose of holding the inquisition applied for, the District Court may appoint two or more persons to act as assessors.

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53. Appointment of guardian of mentally ill person. - (1) Where the mentally ill person is incapable of taking care of himself, the District Court or, where a direction has been issued under sub-section (2) of section 54, the Collector of the District, may appoint any suitable person to be his guardian.

(2) In the discharge of his functions under sub-

section (1), the Collector shall be subject to the supervision and control of the State Government or of any authority appointed by it in that behalf.

54. Appointment of manager for management of property of mentally ill person. - (1) Where the property of the mentally ill person who is incapable of managing it is such as can be taken charge of by a Court of Wards under any law for the time being in force, the District Court shall authorise the

Court of Wards to take charge of such property, and thereupon notwithstanding anything contained in such law, the Court of Wards shall assume the management of such property in accordance with that law.

(2) Where the property of the mentally ill person consists in whole or in part of land or of any interest in land which cannot be taken charge of by the Court of Wards, the District Court may, after obtaining the consent of the Collector of the District in which the land is situate, direct the Collector to take charge of the person and such part of the property or interest therein of the mentally ill person as cannot be taken charge of by the Court of Wards.

(3) Where the management of the property of the mentally ill person cannot be entrusted to the Court of Wards or to the Collector under sub- section (1) or sub-section (2), as the case may be, .

the District Court shall appoint any suitable person to be the manager of such property."

96. The defendant has placed on record the certified copy of the proceedings, under the Mental Health Act, as Ex.

D-1 to Ex. D-23. As per the document, Ex. D-1, on 15 th June, 2001, injunction order was issued against Kiran Inder Singh and Mohan Inder Singh, from utilizing the power of attorney and alienating, in any manner, the properties of Yashodha Devi or to part with the possession of any of the movable or immovable properties of Yashodha Devi, till the date fixed.

97. On 22nd September, 2001, it has been held, by the Court, before which, the petition, under the Mental Health Act, was pending, that Yashodha Devi is stated to be of unsound mind. Consequently, the plaintiffs were directed to supply the list of her natural guardian, on the date fixed.

98. In terms of order, dated 28th November, 2001, passed by the said Court, since, the interest of Mohan Inder Singh and Kiran Inder Singh, who are the sons of Yashodha Devi, was stated to be in clash with Yashodha Devi, as such, they could not be appointed as Court guardian. On that day, it has also been recorded that Kiran Inder Singh stated at .

bar that Yashodha Devi is not of unsound mind and an undertaking was given by him, to produce Yashodha Devi, however, he could not produce her, in the Court.

99. On 5th January, 2002, Mohan Inder Singh and Kiran Inder Singh moved an application, before the said Court, for proceeding further with the case, without the presence of Yashodha Devi.

100. Interestingly, the correct address of Yashodha Devi could not be supplied by the plaintiffs, despite the fact that they are not the strangers, but, the real daughter-in-law and grand daughter of Yashodha Devi. Ultimately, the Court was constrained to serve the summons of the petition, upon Yashodha Devi, through publication, as depicted vide order, dated 23rd August, 2002, Ex. D-10.

101. Thereafter, the publication charges were not deposited and on 8th October, 2002, Mr. R.N. Kaushal, Advocate, had put appearance on behalf of Yashodha Devi, by filing power of attorney.

102. The learned counsel appearing for the plaintiffs, before this Court, is not able to point out that how the .

presence of a person, through counsel, on the basis of the power of attorney, has been accepted, by the Court, before which, the proceedings, under the Mental Health Act, were pending, when, she is stated to be of unsound mind, as per the averments of the petition.

103. On 25th January, 2003, those proceedings were culminated, by holding that the petition has become infructuous, as the mental health of Yashodha Devi is stated to be good, according to her age. Copy of the said order is Ex. D-20.

104. Copy of the power of attorney, which was filed on behalf of Yashodha Devi, in the proceedings, conducted in the Court, before which, the petition under Mental Health Act, has also been placed on record, as Ex. D-21. The said power of attorney was signed by Ravinder Singh, being GPA of Yashodha Devi. The said Ravinder Singh has made a statement, on the basis of GPA No. 439, dated 23rd May, 2002, registered with Sub Registrar, Patiala, and prayed that as per the terms and conditions of compromise deed, Ex. CX, the petition be decided. Similar prayer has been made by plaintiff-Rajinder Kaur. On that day, the certificate, with .

regard to the mental status of Yashodha Devi, was also placed on record, copy of which is Ex. D-23.

105. These documents have been relied upon and highlighted by the learned counsel for the defendant, to show, that a quite contrary stand has been taken by the plaintiffs, regarding the family settlement, as, it could not be pointed out by the plaintiffs as to how the family settlement was possible between the parties, when, they were litigating with each other.

106. Not only this, the mental status of Yashodha Devi has also been stated to be not fit and as such, a prayer has been made by the plaintiffs to appoint them as guardian and manager for the management of the property of Yashodha Devi.

107. Interestingly, all the documents, with regard to the proceedings, under the Mental Health Act, have been placed on record by the plaintiffs also. Meaning thereby, those documents are not in dispute.

108. Before treating the document, Ex.PW-6/C, as family settlement, it is for the plaintiffs to prove that the said .

document falls within the definition of family settlement, deciding all the inter se disputes between the parties. In other words, before accepting the said document as family settlement, the conditions, as enumerated by the Hon'ble Supreme Court in Kale's case (supra), are to be fulfilled.

109. As stated above, all the family members were not party to the document, Ex. PW-6/C. Kiran Inder Singh has not been made party to the alleged document, whereas, said Kiran Inder Singh was duly represented by his counsel, in the proceedings, under the Mental Health Act. Neither Kiran Inder Singh or his legal representatives were made party, nor, any reference, with regard to them, has been made.

When, the entire members of the family, were not made party, then, the document, Ex. PW-6/C, is too short to be considered as family settlement.

110. It has rightly been argued by the learned counsel appearing for the defendant that the document, Ex. PW-6/C, does not seem to be a voluntary document, as, when the claim has been set up, on the basis of the said document, Yashodha Devi has contested the same. The age of Yashodha Devi, at the relevant time, was mentioned as 94 .

years.

111. The said family settlement is stated to be signed by Sanjay Bharaj and Bhopal Singh, as witnesses. Out of the said two witnesses, Bhopal Singh has been examined as PW-9. Since, the onus was upon the plaintiffs to prove that the document, Ex. PW-6/C, is a family settlement, it is for them to prove that the same is voluntary and has not been induced by fraud, coercion and undue influence.

112. The person who has signed the said document, as attesting witness, when appeared in the witness box, as PW-

9, has simply deposed that the compromise, Ex. PW-6/C, was read over by him and thereafter, Yashodha Devi and other parties to the compromise, accepted the same, as correct and put their thumb impression and signatures. He remained silent about the contents of the said document.

113. In the opening line of the cross-examination, he has deposed that the plaintiff is his cousin sister and as per the compromise, 200 acres of land was given by Yashodha Devi to plaintiffs, however, he has feigned his ignorance about the fact as to whether at the time of alleged execution of Ex. PW-6/C, something was given to Yashodha Devi or .

not. The absence of Ravinder Singh Chahal, PW-10, from the spot, at the time of alleged execution of Ex. PW-6/C, has been admitted by this witness. When, the document, Ex.

PW-6/C, was prepared, he was not present there also. He has also feigned his ignorance regarding the fact as to whether the Notary Public was present at the spot or not, but, again stated, that his clerk was present there.

114. According to his further deposition, after execution of Ex. PW-6/C, after putting signatures, all of them had left the spot. This witness could not depose about the fact as to whether the same has been attested or not.

115. In such circumstances, the voluntary execution of the document, Ex. PW-6/C, has not been proved by the plaintiffs. The overcautious approach of PW-10, Ravinder Singh Chahal, by deposing that the document, which is stated to be GPA, was attested by the Tehsildar, at the residence of Yashodha Devi, is a fact, which brings this document under the cloud of suspicion. The GPA, which was given to this witness, allegedly, by Yashodha Devi, has been stated to be registered by Tehsildar, after visiting the house of Yashodha Devi. The said GPA is on the file, as Ex.

PW-7/B, which was executed in favour of PW-10, Ravinder Singh Chahal, for the following purpose:

"1. To engage counsel on my behalf for conducting any case pending against me or filed by me which are pending in the court of Ld. Sub Judge Palampur (H.P.)"

116. In clauses 2 to 6, other authorities have also been given by Yashodha Devi, in favour of Ravinder Singh Chahal, but, applying the rules of construction, conditions No. 2 to 6 are to be considered ancillary, or to achieve the primary condition No. 1, for which, the document has been executed.

117. This view of this Court is fortified by the decision of the Lahore High Court, in case, titled as Smt. Jan versus Smt. Fajjan, reported in AIR 1938 Lahore 351, wherein, it has been held as under:

"Power of attorney be strictly perused, and construed as giving only such authority as they confer expressly or by necessary implicate, the following are the most important rules of construction : (1) The operative part of the deed is controlled by the recitals, (2) Where authority is given to do particular acts, followed by general words, the general words be restricted to what is necessary for the proper performance of the particular acts."

118. This fact assumes significance, as, the proceedings, under the Mental Health Act, were initiated and .

were pending against defendant-Yashodha Devi, in the competent Court of law, at Patiala, in which, she could not be served, as, even her correct address had not been filed by the plaintiffs.

119. A truth seldom appears directly, it has to be gathered for the surrounding circumstances. Two documents were, allegedly, executed on 23rd May, 2002, one was allegedly attested by the Tehsildar, after visiting the house of Yashodha Devi and another document, which has heavily been relied upon by the plaintiffs, as family settlement, was even not been attested by the person, who is stated to have attested the same, i.e. Notary, as per the deposition of PW-9, Bhopal Singh. He has deposed that he could not remember that the Notary Public, at that time, came to the spot or not, but, again stated that his clerk was there.

120. A lady of 94 years, in her statement, has denied the execution of the said document. Thus, onus was upon the plaintiffs, to prove the due execution, of the said document, to the satisfaction of the

Court, by adducing the evidence. The evidence of PW-9, Bhopal Singh, is too short to hold that the document, Ex. PW-6/C, was conscious .

execution, by Yashodha Devi, a lady of 94 years of age.

121. The presence of PW-10, Ravinder Singh Chahal, is also not sufficient to prove the document, Ex. PW-6/C, as, he is neither signatory nor put the signatures, as identifier, of the parties to the compromise. Even, his presence is also not proved, as per the deposition of PW-9, Bhopal Singh, who, in the cross-examination, has stated that Ravinder Singh Chahal, was not present, at the house of Yashodha Devi.

When he was not present, then, whatsoever has been deposed by him, with regard to the execution of Ex. PW-6/C, is not liable to be taken into consideration.

122. Ex. PW-7/A is the revocation deed of GPA, which was given by Yashodha Devi, in favour of Kiran Inder Singh, on 7th February, 1994, whereas, Ex. PW-7/B is the GPA, which was given in favour of PW-10, Ravinder Singh Chahal.

Non-voluntary execution of document, Ex. PW-6/C, is also probabalized by the defendants, on the ground, that in the GPA, Ex. PW-7/B, no reference, with regard to the proceedings, which were pending before the Court of learned ADJ, under the Mental Health Act, has been given.

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123. As referred to above, the said GPA was given to him, for conducting any case, pending against Yashodha Devi, or filed by her, which are pending in the Court of learned Sub Judge, Palampur. Although, the word 'GPA' has been mentioned, in this document, but, when, a specific purpose has been mentioned in GPA, then, the said document has to be considered, for that specific purpose, for which, the same was executed.

124. From the documents, Ex. PW-7/A and Ex. PW-

7/B, which were attested by Tehsildar, after visiting the house of Yashodha Devi, Ex. PW-7/A was witnessed by Sanjay Bharaj, Advocate and Sandeep Singh, s/o Ajit Singh, whereas, in the GPA, the copy of which is Ex. PW-7/A, the name of Sandeep Singh has been mentioned as witness No. 2, however, his name and address have been written by hand, whereas, in Ex. PW-7/A, the same was typed.

125. Again, reverting back to the document, Ex. PW-

6/C, by way of this document, as per clauses 9 and 11, reference of future assets, has been given. Meaning thereby, the document is neither yadashtnama nor the same is the document, which recognizes the family settlement, which .

had taken place, prior to reducing the terms and conditions of the same, in writing. In para 2 of the document, Ex. PW-

6/C, reference with regard to the litigation pending at Palampur, as well as, Patiala, has been made and in clause 8, it has been mentioned that after this oral family arrangement, there shall be no litigation between the parties, whereas, according to the documents, placed on record, the petition, under the provisions of the Mental Health Act, was pending.

126. Clause 8 of the Ex. PW-6/C is reproduced as under:

"That the entire litigation has come to an end after this oral family arrangement/compromise here after there shall be no litigation between the parties."

127. Not only this, a Civil Suit No. 76 of 1996, was pending adjudication, which, as per the judgment, Ex. PA, was decided on 28th May, 2002. The said suit was for declaration and alternatively, for possession, filed by plaintiff-Rajinder Kaur against Yashodha Devi, Kiran Inder Singh and Nalini Kumari, including other defendants also.

The subject matter of the lis was the land situated in Mohal Gopalpur.

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128. Had this compromise been taken place voluntarily, on 23rd May, 2002, then, there was no legal hesitation for the plaintiffs to place on record, the said compromise before the Court of learned Sub Judge, Palampur, where, Civil Suit No.76 of 1996 was pending adjudication, or, even to withdraw the said suit, on the basis of Ex. PW-6/C.

129. Interestingly, in the said case, Yashodha Devi was not represented by any counsel and was proceeded against ex parte.

130. The vague terminology used in Clause 10 of Ex.

PW-6/C, is sufficient to take away this document out of the purview of family settlement acknowledging the previous oral settlement.

131. A person can tell a lie, but, the documents would not. The object to be achieved by this document has clearly been indicated in the document, Ex. PW-6/C, where, it has been mentioned that "Now the parties considerent, expedient to obtain a compromise decree on the basis of the oral family arrangement.", whereas, the pleadings are contrary to the documents.

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132. As per the stand taken by the plaintiffs, the compromise has taken place only on 23 rd May, 2002, with regard to the suit property and as per the compromise, the entire suit property has been

vested with the plaintiffs and the defendant has absolutely got no right. Meaning thereby, whatsoever done, r that has been done, as per the compromise, dated 23rd May, 2002. Hence, this document cannot be said to be the memorandum of settlement, but, the same falls within the definition of deed of settlement, which requires compulsory registration.

133. Even, further pleadings also state that the plaintiffs, from the date of execution of compromise, became owners in possession of the suit property. Meaning thereby, the ownership is not antecedent to the compromise, dated 23rd May, 2002, but, by virtue of the said document.

134. Once, it has been mentioned, in the document, Ex. PW-6/C, that the alleged compromise has taken place, on the day, when the document was executed, meaning thereby, the same required registration, under Section 17 of the Registration Act. The document does not fall within the definition of mere memorandum of family settlement, but, .

the alleged settlement has been made under the document, as such, the same requires registration.

135. So far as the argument of the learned counsel appearing for the plaintiffs, qua the evidence of DW-2, Gurinder Jit Singh Rai is concerned, as held earlier, onus was upon the plaintiffs to prove that the document, Ex. PW-

6/C, was voluntarily executed by Yashodha Devi with her sound disposing mind, as, admittedly, the proceedings were initiated by the plaintiffs, against her, under the Mental Health Act.

136. In normal circumstances, once, a document is purported to be signed by a person, it is to be taken as her voluntary execution, but, when the proceedings under the Mental Health Act, were pending against her, in that eventuality, the plaintiffs are required to adduce the evidence, to prove the voluntary execution of the document.

The witness, although, has been examined by the defendant, but, when, he has not supported the case of the defendant, then, with the permission of the Court, he was cross-

examined by the defendant.

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137. When, the onus was upon the plaintiffs, then, no benefit could be derived by the plaintiffs, on account of non-

appearance of Yashodha Devi, in the witness box. The case law, relied upon by the learned counsel appearing for the appellants-plaintiffs, on this point, i.e. Janki Vashdeo Bhojwani and another versus IndusInd Bank Ltd. and others, reported in (2005) 2 Supreme Court Cases 217;

and Man Kaur (Dead) By LRs versus Hartar Singh Sangha, reported in (2010) 10 Supreme Court Cases 512; is of no help, as the onus has been put upon the plaintiffs to prove all the ingredients of

the law, upon which, they have sought the relief to declare them as owners in possession, on the basis of the document, Ex. PW-6/C. The onus to prove issues No. 1 to 3 has been put upon the plaintiffs, as such, they cannot take advantage of non-appearance of Yashodha Devi, in the witness box.

138. No doubt, her GPA, Manjeet Singh, appeared in the witness box, as DW-3. His statement, on oath, about the facts, which happened, in his presence, cannot be effaced from the record. No suggestion has been put to him that he was not present at the spot, when, the alleged document, Ex.

PW-6/C, was allegedly executed. According to his deposition on asking, Yashodha Devi told the person about the veracity of the document, that she has returned 30-35 acres of land and when Yashodha Devi was told that the details of her entire land have been mentioned in the said document, she got furious and told them that they have not got mentioned whatever was directed by her. From this deposition also, the document, Ex. PW-6/C, does not qualify to be a family settlement, settling all the disputes of the family, on account of the reasons, as stated above.

139. Much has been argued by the learned counsel for the plaintiffs, qua the fact that the ingredients of Order VI Rule 4 CPC, have not been fulfilled, in the written statement.

In this regard, he has relied upon the decisions in Subhas Chandra Das Mushib versus Ganga Prosad Das Mushib and others, reported in AIR 1967 Supreme Court 878;

Afsar Shaikh and another versus Soleman Bibi and others, reported in AIR 1976 Supreme Court 163; P. Saraswathi Ammal versus Lakshmi Ammal alias Lakshmi Kantam, reported in AIR 1978 Madras 361; and D. Ramachandran versus R.V. Janakiraman and others, .

reported in AIR 1999 Supreme Court 1128.

140. With due respect to the law laid down, in the aforesaid decisions, to the considered opinion of this Court, the same are not applicable to the facts and circumstances of the present case, as the plaintiffs have approached the Court, for declaring them as owners, on the basis of the document, Ex. PW-6/C, as such, the onus was upon them to prove that the same fulfills all the ingredients, for being considered as family settlement.

141. When a person approaches the Court, it is for him to plead and prove the case, for seeking the relief. As such, it was for the plaintiffs to plead and prove that the compromise, Ex. PW-6/C, fulfills the legal ingredients, to be considered as memorandum of settlement or family settlement.

142. While holding so, the view of this Court is being guided by the decision of the Hon'ble Supreme Court, in a case, titled as State of Madhya Pradesh versus Nomi Singh and another, reported in (2015) 14 Supreme Court Cases

450. Relevant para 11 of the judgment, is reproduced, as under:

"11. It is settled principle of law that in respect of relief claimed by a plaintiff, he has to stand on his own legs by proving his case. On perusal of the impugned order passed by the High Court, this Court finds that the High Court has wrongly shifted burden of proof on the defendants. In the middle of para 12, while giving its reasons to disagree with the decree passed by the courts below, the High Court has observed as under:

"It was the respondent-defendant who has challenged the possession of the plaintiff and his father on the ground of khasra entries, therefore, burden of proving the fact that allegations made by the defendant are correct, is on the defendant, in which the defendant has failed. Further, it has been admitted before the Court that entry of the plaintiffs in the khasra record is as encroacher, but no such khasra entries have been produced by them...."

In the middle of para 15 of the impugned decree, again the High Court observes:

"Further, the defendant has failed to prove the possession of the plaintiff and his father was that of an encroacher. The defendant has further failed to prove Khasra Nos. 1950 to 1952 to be wrong or that patta given to the plaintiffs, was only for one year...."

The above observations made by the High Court, show that it has erroneously placed onus of proof of title and possession of the plaintiffs, on the defendant. The High Court has completely ignored the fact that the plaintiff after losing case in the first round from the trial court, got amended the plaint and took plea of adverse possession, on which matter was remanded to the trial court, and after hearing parties suit was again dismissed, which was upheld by the first appellate court. The above approach of the High Court is against the law laid down by this Court, and in our opinion, it erred in law in reversing the .

decree passed by the trial court and that of the first appellate court by shifting burden of proof on the defendant."

143. In this case, it has vehemently been argued by the learned counsel appearing for respondents No. 3 to 10, that the much relied document, Ex. PW-6/C, cannot be said to be the family settlement, as, even, all the parties to the said compromise, have not been made party, in the present case.

The suit has simply been filed against Yashodha Devi. The pleadings of the plaintiffs are totally silent as to why all the persons, who were party to Ex. PW-6/C, have not been impleaded, in this case.

144. In order to consider the document, Ex. PW-6/C, as family settlement, the conditions, which have been enumerated by the Hon'ble Supreme Court, in Kale's case (supra), are to be pleaded and proved, by the person, seeking the benefit from this document.

145. The Hon'ble Supreme Court, in a case, titled as Yellapu Uma Maheswari and another versus Buddha Jagadheeswararao and others, reported in (2015) 16 Supreme Court Cases 787, has held that the nomenclature given to the document is not decisive factor, but, the nature and substance of the transaction has to be determined with .

reference to the terms of the documents. Relevant paras-13 to 16 of the judgment, are reproduced, as under:

"13. Section 17(1)(b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered under Section 17 of the Act.

14. Coming to the facts on hand, Defendant 1 wanted to mark Exts. B-21 and B-22; according to her, these two documents are agreement and a memorandum which were unregistered and unstamped documents and do not require registration. We have seen Exts. B-21 and B-22 which are placed before us. Ext. B-22, dated 4-6- 1975 as per the recitals, is an agreement between Respondent 1-plaintiff, Appellant 1-Defendant 1 and late Mahalakshamma. Clause 1 of the agreement speaks about relinquishment of rights of Mahalakshamma in favour of Respondent 1-plaintiff and Appellant 1-Defendant 1 and Clause 4 specifies that the life estate of Mahalakshamma is devolved upon Respondent 1- plaintiff and Appellant 1-Defendant 1 equally. It is further specified that the stock amount of Rs 50,000 in the shop was given to Mahalakshamma and left over amount will be divided between Respondent 1-plaintiff and Appellant 1-Defendant 1 and further, it was agreed upon that Mahalakshamma was entitled to reside in the house where she was residing. She was at liberty to reside in the house of Respondent 1-plaintiff and Respondent 1-plaintiff and Appellant 1-Defendant 1 shall not raise any dispute over this. Coming to Ext. B-21, dated 5-6- 1975, which is an agreement between Mahalakshamma, Respondent 1-plaintiff and Appellant 1-Defendant 1 wherein at Clauses 4 to 6 the recitals pertain to relinquishment of shares between the parties to the agreement. It is stated .

in the memorandum, Ext. B-22, that each of them having partitioned the properties by good and bad qualities, have been enjoying the respective properties that fell to their shares; in proof thereof, the deed of memorandum is executed. Taking us through the recitals of these two documents, the learned Senior Counsel tried to impress upon this Court, particularly through the last few lines from Ext. B-21, that these documents are only evidencing the past transaction of partition that has taken place but through these documents no rights in immovable property have accrued to

the parties as envisaged under Section 17 of the Registration Act and which makes these documents out of the purview of Section 49 of the Registration Act.

15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition.

16. Then the next question that falls for .

consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High Court in Chinnappareddigari Peda Mutyala Reddy v.

Chinnappareddigari Venkata Reddy [Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy, 1967 SCC OnLine AP 4 : AIR 1969 AP 242] has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded.

Hence, if the appellant-defendant want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial court is at liberty to mark Exts. B-21 and B- 22 for collateral purpose subject to proof and relevance."

146. Judging the facts and circumstances of the present case, in the light of the above decision, this Court is of the view that the property, in the hands of Yashodha Devi was her absolute property and as such, the plaintiffs or any other person, cannot claim any antecedent title, claim or interest, even a possible claim, in the suit property.

147. So far as the decision of the Hon'ble Supreme Court, in the case, titled as Korukonda Chalapathi Rao & .

anr. versus Korukonda Annapurna Sampath Kumar, reported in 2021 (1) SCALE 596, is concerned, the same is not applicable to the facts and circumstances of the present case, as, here, the plaintiffs are seeking the relief, on the basis of the document, which is not the memorandum of settlement, which had already taken place, but, on the basis of the compromise, which had allegedly taken place, on 23 rd May, 2002.

148. The person, who has approached the Court, is duty bound to plead all the necessary facts to claim the relief. There are no pleadings with regard to the oral settlement. Paras 8 and 9 of the plaint, are reproduced, as under:

"8. That the parties to the suit i.e. plaintiffs and defendant have reached a compromise on 23.5.2002 with regard to suit property and as per the Compromise the entire suit property has vested with the plaintiffs and the defendant has absolutely got no right, title or interest in the property. Photo copy of the Compromise reached between the parties on 23.3.2002 is attached herewith.

9. That the plaintiffs from the day of the execution of Compromise as detailed above, are owners in possession of the suit property and are continuing as such til then."

149. The evidence, which is contrary or beyond the .

pleadings, is not liable to be considered.

150. Once, the right in the suit property has been claimed, on the basis of the document, dated 23 rd May, 2002, then, the next question, which arises for determination, before this Court, is as to whether the document, Ex. PW-

6/C, can be admissible in evidence?

151. In the document, Ex. PW-6/C, it has been asserted that they have entered into an oral family arrangement in consideration for love and affection, goodwill and enmity between the members. However, in view of the stand taken by the plaintiffs, in paras 8 and 9, reproduced above, clause 10 of the document, Ex. PW-6/C, cannot be taken into consideration, as, the same is in contradiction to the above stand. Even clause 10 of the document, Ex. PW-

6/C, is in violation of the recital of the said document, wherein, it has been mentioned that "The parties being from the same family have entered into an oral family arrangement in consideration for love and affection, goodwill and enmity between the family members.....".

152. Clauses 9 and 11 of the document, Ex. PW-6/C, are also sufficient to take this document out of the purview of .

memorandum of family settlement. Clauses 9 and 11 of Ex.

PW-6/C, are reproduced, as under:

"9. That the IIIrd party Smt. Nalini Kumari has given up rights under the lease in favour of Sh. Mohan Indera Singh Party No. 4 and delivered back possession to Sh. Mohan Indera Singh. If in any case this compromise is not given effect by party No. 1 and party No. 4 for any reason whatsoever, then the party No. 3 shall be entitled to hold back the leased property mentioned in clause 9 above, and she will not be bound to leave or abandon the lease.

10.

11. It is further mentioned that in case in future some other land/moveable etc. is discovered to be belonging to the first party then the assets shall be given to the extent of 1/3rd share by the first party to the third party and fourth party."

153. If the facts and circumstances of the present case, are seen in the light of the decision of the Hon'ble Supreme Court, in a case, titled as Sita Ram Bhama versus Ramvatar Bhama, reported in AIR 2018 Supreme Court 3057, then, the document, Ex. PW-6/C, is inadmissible in evidence. Relevant paras-10 to 13, of the judgment, are reproduced, as under:

"10. The only question which needs to be considered in the present case is as to whether document dated 9-9-1994 could have been accepted by the trial court in evidence or the trial court has rightly held the said document inadmissible. The plaintiff claimed the document dated 9-9-1994 as memorandum of family .

settlement. The plaintiff's case is that earlier partition took place in the lifetime of the father of the parties on 25-10-1992 which was recorded as memorandum of family settlement on 9-9-1994.

There are more than one reasons due to which we are of the view that the document dated 9-9-1994 was not mere memorandum of family settlement, rather a family settlement itself. Firstly, on 25-10- 1992, the father of the parties was himself owner of both, the residence and shop being self- acquired properties of Devi Dutt Verma. The High Court has rightly held that the said document cannot be said to be a will, so that the father could have made the will in favour of his two sons, the plaintiff and the defendant. Neither the plaintiff nor the defendant had any share in the property on the day when it is said to have been partitioned by Devi Dutt Verma. Devi Dutt Verma died on 10-9-1993. After his death, the plaintiff, the defendant and their mother as well as sisters become the legal heirs under the Hindu Succession Act, 1956 inheriting the property being a Class I heir. The document dated 9-9- 1994 divided the entire property between the plaintiff and the defendant which document is also claimed to be signed by their mother as well as the sisters. In any view of the matter, there is

relinquishment of the rights of other heirs of the properties, hence, the courts below are right in their conclusion that there being relinquishment, the document dated 9-9-1994 was compulsorily registrable under Section 17 of the Registration Act.

11. Pertaining to family settlement, a memorandum of family settlement and its necessity of registration, the law has been settled by this Court. It is sufficient to refer to the judgment of this Court in *Kale v. Director of Consolidation* [*Kale v. Director of Consolidation*, (1976) 3 SCC 119]. The propositions with regard to family settlement, its registration were laid down by this Court in paras 10 and 11: (SCC pp.

126-27) "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 arrangement 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 immovable properties and therefore does not fall within the mischief of Section 17(2) 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 no 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 owner, then the antecedent title must be assumed 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, which we shall discuss presently."

12. We are, thus, in full agreement with the view taken by the trial court as well as the High Court that the document dated 9-9-1994 was compulsorily registrable. The document also being not stamped could not have been accepted in evidence and the order of the trial court allowing the application under Order 13 Rule 3 CPC and the reasons given by the trial court in allowing the application of the defendant holding the document as inadmissible cannot be faulted.

13. There is only one aspect of the matter which needs consideration i.e. whether the document dated 9-9-1994, which was inadmissible in evidence, could have been used for any collateral purpose. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. Further, an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. A two-Judge Bench judgment of this Court .

in Yellapu Uma Maheswari v. Buddha Jagadheeswararao, (2015) 16 SCC 787 : (2016) 3 SCC (Civ) 767 is appropriate. In the above case also, admissibility of documents, Ext. B-21 dated 5-6-1975 a deed of memorandum and Ext. B-22 dated 4-6-1975 being an agreement between one late Mahalakshamma, Respondent 1-plaintiff and Appellant 1-defendant came for consideration. Objection was taken regarding admissibility which was upheld both by the High Court [Yellapu Uma Maheswari v. Buddha Jagadheeswara Rao, 2013 SCC OnLine AP 766] and trial court. Matter was taken up by this Court. In the above case, this Court held that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents. This Court after considering both the documents, B-21 and B-22 held that they require registration. In para 15, the following was held: (SCC p. 794) "15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents .

and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition."

154. It has rightly been argued by the learned counsel appearing for defendants No. 3 to 10 that the compromise is also hit by the provisions of Section 7-A of the Himachal Pradesh Ceiling on Land Holdings Act, 1972. The provisions of Section 7-A of the said Act, are reproduced, as under:

"7-A. Bar to transfer of land under tea estates. - (1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the time being in force, and the provisions contained in clause (g) of section 5 of this Act no transfer of whole or part of the land under a tea estate and identified to be exempted under section 10 of this Act, shall be made by way of sale, gift, exchange, lease, mortgage with possession or creation of any tenancy or otherwise except with the permission of the State Government.

(2) No Registrar or the Sub-Registrar appointed under the Indian Registration Act, 1908, (16 of 1908) shall register any document pertaining to the transfer of land which is in contravention of the provisions of sub-section (1) and such transfer, shall be void ab-initio and the land involved in such transfer, shall together with structures, buildings or other attachments, if any, vest in the State Government free from all encumbrances and such land shall be treated as surplus area under the provisions of this Act."

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155. The cumulative effect of compromise is transfer of title from Yashodha Devi to the plaintiffs and as such, on account of non-obtaining the requisite permission from the State Government, the said document, i.e. Ex. PW-6/C, can be said to be nullity in the eyes of law.

156. The learned counsel appearing for the plaintiffs has also relied upon the decision of the Hon'ble Supreme Court, in a case, titled as Subraya M.N. versus Vittala M.N. and others, (2016) 8 Supreme Court Cases 705, to contend that there is no provision of law requiring the family settlements to be reduced to writing and registered.

157. In view of the foregoing paras, wherein, it has been held that, by virtue of document, Ex. PW-6/C, the rights in favour of the plaintiffs were created, for the first time, as such, no benefit could be derived from the said case law. In this regard, relevant para 15 of the judgment, in the said case, is reproduced, as under:

"15. Under Section 17 of the Registration Act, the documents which purport or operate to create, declare, assign, limit or extinguish any right, title or interest of the value of one hundred rupees and upwards, are to be registered. Under Section 49 of the Registration Act no document required by Section 17 or by any provision of the

Transfer of Property Act to be registered shall be received as evidence of any transaction affecting an immovable property. As provided by Section 49 of .

the Registration Act, any document, which is not registered as required under the law would be inadmissible in evidence and cannot therefore be produced and proved under Section 91 of the Evidence Act."

158. No other point has been urged or argued.

159. In view of the discussions made hereinabove, the findings of the learned Courts below cannot be said to be perverse, as such, the substantial question of law, which has been framed on 22nd October, 2021, is decided against the appellants.

160. Consequently, the appeal is dismissed and findings of the learned Courts below are affirmed.

161. Pending miscellaneous applications are also disposed of accordingly.

162. Decree sheet be prepared.

163. Record be sent back.

(Virender Singh) Judge May 06, 2024 (rajni)