Exh. 19

रे.क.नं 20/2026

मे. दिवाणी न्यायाधिशसो। क.स्तर कागल

यांचे कोर्टात..

शहाजी संतू उर्फ संतराम पोवार — वादी

विरुद्ध

अहिल्याबाई संतू उर्फ संतराम पोवार — प्र.वादी.

वगैरे

यातील प्र.वादी तर्फे सायटेशन यादी पुढील प्रमाणे —

अनं.	तपशील	पान नं.
1	Babrudhan v/s Surender Pal & others. C.R.No - 2034 of 2020	
2	AIR 2010 SC (Supp) 278 Narendra Kante v/s Anuradha Kante & others.	

Order Seen
C.J.J.D.,Kagal.
Date : 27/04/2026

येणे प्रमाणे प्रतिवादी तर्फे सायटेशन हजर

कागल

ता. 30/03/2026

प्रतिवादी तर्फे अँड.

अ.सं. 1 रे.क.सं. 20/2026 वे कामि प्रतिवादी सर्फे हजर सायटशन ता- 30/3/2026

Before Alka Sarin, J.

BABRUBHAN—*Petitioner*

versus

SURENDER PAL AND OTHERS—*Respondent*

CR No. 2034 of 2020

August 10, 2020

Civil Procedure Code, 1908—O. 39, Rls. 1 and 2—Blanket injunction against co-sharers—Held, where defendant is in exclusive possession of portion of suit land, plaintiffs on basis of their claim of being co-sharers, cannot restrain him from using portion of joint land in his possession in manner he likes—Only remedy which petitioner/plaintiff has is to seek partition of suit land—Amount being spent by defendant in raising construction on portion of land in his exclusive possession is at his own risk—Petitioner/plaintiff failed to show existence of prima facie case in his favour or balance of convenience being in his favour or him suffering any irreparable loss and injury if ad-interim injunction is not granted in his favour—Therefore, petitioner/plaintiff not entitled for injunction against co-sharers.

Held, that in the light of the facts of the present case and the judicial pronouncements mentioned above, the plaintiff-petitioner cannot seek a blanket injunction order against the defendant-respondents who admittedly are co-sharers with him. A co-owner cannot injunct and restrain the other co-owners from raising construction on portions of the joint land in the exclusive possession of the other co-owners. The remedy is to seek partition. In Jangir Singh v. Naranjan Singh & Ors., 2015 (1) RCR (Civil) 49, it has been held that where the defendant is in exclusive possession of a portion of the suit land, the plaintiffs on the basis of their claim of being co-sharers, cannot restrain him from using the portion of the joint land in his possession in the manner he likes. The only remedy which the plaintiff has is to seek partition of the suit land. The amount being spent by the defendant in raising construction on a portion of the land in his exclusive possession is at his own risk. It is also now well settled that mere raising of construction on common land by a co-sharer would not amount to ouster of other co-sharers. The plaintiff-petitioner has also been unable to show the existence of a prima facie case in his favour or the balance of convenience being in his favour or him suffering any

irreparable loss and injury if the ad-interim injunction is not granted in his favour. There is no allegation that the defendant-respondents are raising any construction on any portion of the joint land in exclusive possession of the plaintiff-petitioner. The reports of the Local Commissioners Annexures P-7 and P-8 do not further the case of the plaintiff-petitioner as neither of them state anything about the defendant-respondents raising construction in portions of the suit land not in their possession or in exclusive possession of the plaintiff-petitioner. The construction raised by the defendant-respondents would in any event be subject to the outcome of the civil suit.

(Para 17)

Manish Mehta, Advocate, *for the petitioner.*

Vijay Pal, Advocate, for the respondents.

ALKA SARIN, J.

(1) The present revision petition under Article 227 of the Constitution of India has been filed by the plaintiff-petitioner challenging the order dated 25.06.2020 passed by the Court of Additional District Judge, Narnaul whereby the order dated 05.06.2020 passed by the Additional Civil Judge (Senior Division), Narnaul granting an ad-interim injunction in favour of the plaintiff-petitioner, has been set aside.

(2) In brief, the facts relevant to the present *lis* are that one Rohtas sonof Matadin was the owner and in possession of 1/4thshare of land situated in Village Balh Kalan, Tehsil Narnaul, District Mohindergarh, comprised in KhewatNo.112 Khatoni No.173, Killa No.41//12 (8-0) measuring 8 kanals. Vide sale deed dated 20.11.2000, the said Rohtas sold an area measuring 1 kanal i.e. 20/160thshare out of his 1/4thshare in favour of Smt. Kamlesh wife of Babrubhan, the plaintiff-petitioner herein, and gave possession of a specific area to the purchaser i.e. Smt. Kamlesh wife of the plaintiff- petitioner. Vide another sale deed dated 20.11.2000, Rohtas sold another1 kanal i.e. 20/160th share out of his 1/4th share to the defendants-respondentsNo.1 and 2 herein and gave possession of a specific area to the purchaser i.e. defendant-respondent Nos.1 and 2. Though the suit land is un-partitioned, however, the parties to the *lis* have been enjoying the property in their possession for the last 20 years. The plaintiff-petitioner became co-owner ofthe suit land to the extent of 1/8th share by way of a relinquishment deed No.5683 dated 20.03.2020 executed by his wife Smt. Kamlesh in his favour.

(3) The present suit was instituted on 05.05.2020 by the plaintiff- petitioner against the defendant-respondents seeking a decree of permanent injunction to the effect that the defendant-respondents may not interfere in the area abutting to the National Highway No.11 in the land comprised in Khewat No.125 Khatoni No.141 Mustil and Killa No.41//12 (8-0) and may not change its nature by raising construction and interfere in use and possession of the same jointly without getting it partitioned. As per the averments in the plaint, the plaintiff-petitioner claims to being owner in possession to the extent of 1/8th share vide relinquishment deed No.5683 dated 20.03.2020 [however, in the present petition the date of the relinquishment deed has been mentioned as 20.05.2020]. The case set up in the plaint is that the plaintiff-petitioner and the defendant-respondent Nos.1 and 2 are the co-sharers in the suit property and that the suit property is abutting to National Highway No.11 and is yet to be partitioned. It is alleged that the defendant-respondents are carrying on construction work on the suit property and hence the suit for permanent injunction for restraining the defendants-respondents from carrying on the construction. Along with the plaint, an application under Order 39 Rules 1 and 2 read with Section151 of the Code of Civil Procedure, 1908 was also filed by the plaintiff- petitioner.

(4) The defendant-respondents filed written statement as well as a reply to the application under Order 39 Rules 1 and 2 CPC. They *inter-alia* averred that the defendant-respondents were in exclusive possession since long and have raised pucca construction without any objection by the plaintiff-petitioner and thus the plaintiff-petitioner was estopped to file the suit; that a co-sharer cannot seek an injunction against another co-sharer; that the suit was a result of grudge because the defendant-respondents were proposing letting out a part of the constructed area to a Bank; because the defendant-respondents had approached the authorities for compensation of the land compulsorily acquired.

(5) Vide order dated 05.06.2020 the Trial Court allowed the application under Order 39 Rules 1 and 2 CPC and the defendant-respondents were restrained from raising any further construction on the suit property i.e. Khasra No.41//12. Aggrieved by the said order, the defendant- respondents approached the lower Appellate Court which, vide order dated 25.06.2020, accepted their appeal and set aside the order dated 05.06.2020 passed by the Trial Court and dismissed the application of the plaintiff- petitioner filed under Order 39 Rules 1 and

2 CPC. Hence, the present revision petition by the plaintiff-petitioner challenging the order dated 25.06.2020 passed by the lower Appellate Court.

(6) I have heard learned counsel for the parties and perused the petition as well as the reply filed on behalf of the defendant-respondents.

(7) The undisputed facts in the present case are that the wife of the plaintiff-petitioner and defendant-respondent Nos.1 & 2 purchased shares in the suit property from one Rohtas by way of registered sale deeds dated 20.11.2000. The plaintiff-petitioner became co-sharer in the suit property by way of execution of relinquishment deed dated 20.03.2020/20.05.2020 in his favour by his wife. The plaint itself is totally bereft of any details or a site plan indicating the portions of the suit property which are in the respective possession of the parties. The admitted case of the plaintiff-petitioner is that defendants-respondent Nos.1 and 2 are co-sharers in the suit property. In para 1 of the plaint, it is averred *"Defendants No.1 and 2 are also co-sharers in the above property and defendant No.3 has nothing to do with the above property"*. In para 2 of the plaint, it is further averred "That the disputed property is irrigated type of land and is abutting to Highway No.1, which has not been partitioned legally by metes and bounds till date and is a joint property". In para 3 of the present petition, it is also averred "That the National Highway Authority of India has acquired certain land areas for building NH-11 from Delhi to Jaisalmer. For this road 5 marla land of aforesaid land has also been acquired. All the above named co-sharers as recorded have received the compensation from the competent authority in accordance with their respective shares without any dispute for objection from any side. This fact further reveal that the land is wholly joint and notyet partitioned".

(8) There is no averment in the plaint to suggest that the defendant- respondent Nos.1 and 2, who are co-sharers in the suit property, are raising construction on land in excess of their share. The plaintiff-petitioner iswanting a blanket stay on construction in the entire khasra number which is not permissible in law. The plaintiff-petitioner's own case is that some portion of the land abutting to National Highway No.11 comprised in Killa No.41//12 (8-0) was acquired by the National Highway Authority and the compensation was divided amongst the co-sharers. The stand of thedefendant-respondents is that the construction being carried out by them is over their old construction part of which was demolished due to the acquisition by the

National Highway Authority of India.

(9) The orders passed by the Courts below reveal that two Local Commissioners were appointed. The first Local Commissioner was appointed vide order dated 12.05.2020 on an application by the plaintiff- petitioner and in the report of the Local Commissioner (Annexure P-7) it is *inter-alia* stated that *"it was found at the spot that the defendant is raising construction upon the old plaster, which is doing inside his boundary"*. The plaintiff-petitioner, not satisfied with the report of the Local Commissioner (Annexure P-7), filed objections and also moved another application under Order 39 Rule 7 read with Order 26 Rule 9 read with Section 151 CPC for appointment of a fresh Local Commissioner i.e. some Revenue Officer and building expert to conduct inspection on the spot and to report whether there was any alleged old construction existing. Vide order dated 19.05.2020 the Trail Court appointed Field Kanungo of Village Balaha Kalan as Local Commissioner to conduct inspection on the spot in Khasra No.41//12 with the help of a building expert/SDE PWD(B&R). The Building Inspection Report prepared by the SDE PWD(B&R) is Annexure P-8 and it is *inter-alia*mentioned therein that "During course of inspection it was noticed that the building in Khasra No.41/12 was raised with new construction on the old existing foundation only Left Hand side & back Side wall. The Right Hand side wall & Front Side wall was raised with new foundation work of the building. The middle wall is also constructed with new construction work no old construction work was found in the building. All the super structure work of the building is newly constructed".

(10) Learned counsel for the plaintiff-petitioner has relied upon the judgment of a Full Bench of this Court in ***Ram Chander*** versus ***Bhim Singhand others***[1] to contend that even if a specific portion of the land was sold in favour of a co-sharer, he would continue tobe a co-sharer in every inch of land. To further buttress his arguments, learned counsel for the plaintiff-petitioner has relied upon the judgment of the Supreme Court in ***Gangubai Babiya Chaudhary and others*** *versus* ***Sitaram Bhalchandra Sukhtankar and others etc.***[2] Learned counsel for the defendant-respondents on the other hand has relied upon the Division Bench's judgment in ***Bachan Singh***

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[1] 2008 (3) RCR (Civil) 685
[2] 1983 (4) SCC

versus ***Swaran Singh***.[3]

(11) It is not the case set up by the plaintiff-petitioner that the defendants-respondents were in any way interfering or raising construction on land in his exclusive possession. Nor is it his case that the defendant- respondents are raising construction on land in excess of their share. Admittedly, the defendants-respondents are co-sharers and inpossession of part of the suit property and they have every right to construct as per their share.

(12) In the judgment of the Supreme Court in ***Gangubai Babiya Chaudhary's*** *case (supra),* it has been held as under:

> "6. When an interim injunction is sought, the Court may have to examine whether the party seeking the assistance of the Court was at any time in lawful possession of the property and if it is so established one would prima facie ask the other side contesting the suit to show how the plaintiffs were dispossessed? We pin-pointed this question and heard the submission. We refrain from discussing the evidence and recording our conclusions because evidence is still to be led and the contentions and disputes have to be examined in depth and any expression of opinion by this Court may prejudice one or the other party in having a fair trial and uninhibited decision. Having given the matter our anxious consideration, we are satisfied that this is not a case in whichinterim injunction could be refused. Similarly we are of the opinion that if respondents are allowed to put up construction by the use of the F.S.I. for the whole of the land including the land involved in dispute, the situation may become irreversible by the time the dispute is decided and would preclude fair and just decision of the matter. If on the contrary injunction is granted as prayed for the respondents are not likely to be inconvenienced because they are in possession of about 9,000 sq. metres of land on which they can put up construction."

(13) In the judgment by the Full Bench of this Court in ***Ram Chander's case*** *(supra)* it has been held:

> "18. It is, therefore, apparent that a co-owner has an interest in the entire property and also in every parcel of the joint

[3] 2000 (3) RCR (Civil) 70

land. When a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns i.e. a joint undivided interest in the joint property. A sale, therefore, of land from a specific khasra/killa number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different rectangles, khasra and killa numbers.

19. Another attribute of joint property is that where a co-owner in possession of a specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest, from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without, however, asserting exclusive ownership to the portion so transferred and possessed, till such time as the joint estate is not partitioned."

(14) It is trite that a co-owner is owner of every inch of the land tillsuch time as the partition is not effected. In both the judgments referred to by learned counsel for the plaintiff-petitioner it is nowhere held that a co-owner can seek a blanket injunction against another co-owner.

(15) In ***Bachan Singh's case*** *(supra)*, the Division Bench of this Court has held as under:

"15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction againstanother co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in, the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of

possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner".

(16) The suit is pending adjudication before the Trial Court. At the stage of consideration of an application under Order 39 Rules 1 and 2 CPC, the principles which need to be considered are the existence of a *prima facie* case, balance of convenience, and irreparable loss and injury that may be suffered. The rights and liabilities of co-sharers have been judicially interpreted in several decisions including ***Sant Ram Nagina Ram*** *versus* ***Daya Ram Nagina Ram***[4], ***Bhartu*** *versus* ***Ram Sarup,***[5]and in ***Ram Chander's*** *case (supra)*. The following principles stand culled out:

"(i) A co-owner has interest in the whole property and also in every parcel of it.

(ii) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.

(iii) A mere occupation of a larger portion or even of entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(iv) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the pre-emption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

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[4] AIR 1961 Punjab 528

[5] 1981 PLJ 204 (FB)

(v) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(vi) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar right of other co-owners.

(vi) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition.

(vii) Co-sharer in possession exclusively of some portion of joint holding not more than his share is entitled to continue in possession till joint holding partition and can transfer that portion subject to adjustment at the time of partition.

(vii) Transferee under section 44 of Transfer of Property Act gets right of transfer to joint possession and to enforce partition irrespective of the fact whether property sold is fractional share or specified portion."

(17) In the light of the facts of the present case and the judicial pronouncements mentioned above, the plaintiff-petitioner cannot seek a blanket injunction order against the defendant-respondents who admittedly are co-sharers with him. A co-owner cannot injunct and restrain the other co-owners from raising construction on portions of the joint land in the exclusive possession of the other co-owners. The remedy is to seek partition. In ***Jangir Singh*** *versus* ***Naranjan Singh & Ors.***,[6] it has been held that where the defendant is in exclusive possession of a portion of the suit land, the plaintiffs on the basis of their claim of being co-sharers, cannot restrain him from using the portion of the joint land in his possession in the manner he likes. The only remedy which the plaintiff has is to seek partition of the suit land. The amount being spent by the defendant in raising construction on a portion of the land in his exclusive possession is at his own risk. It is also now well settled that mere raising of construction on common land by a co-sharer would not amount to ouster of other co-sharers. The plaintiff-petitioner has also been unable to show the existence of a *prima facie* case in his favour or the balance of convenience being in his favour or him suffering any irreparable loss and injury if the ad-

[6] 2015 (1) RCR (Civil) 49

interim injunction is not granted in his favour. There is no allegation that the defendant- respondents are raising any construction on any portion of the joint land in exclusive possession of the plaintiff-petitioner. The reports of the Local Commissioners Annexures P-7 and P-8 do not further the case of the plaintiff-petitioner as neither of them state anything about the defendant- respondents raising construction in portions of the suit land not in their possession or in exclusive possession of the plaintiff-petitioner. The construction raised by the defendant-respondents would in any event be subject to the outcome of the civil suit.

(18) In view of the above, the present revision petition, which is devoid of any merit, is dismissed. It is however, made clear that any observation made above is only for the purpose of disposing of the present Revision Petition and is not to be construed as an opinion of this court on the merits of the suit.

Ritambra Rishi

अ. वं 2 रे.क.नं. 20/2026 चे कामी प्रतिवादी तर्फे हजर
स्थायटशन ता. 30/3/2026

AIR 2010 SC (Supp) 278 :: 2010 AIR SCW 305

Supreme Court Of India

(From : Madhya Pradesh)

HON'BLE JUDGE(S): Altamas Kabir AND Cyriac Joseph, JJ. **(2)**

Civil Appeal No. 8290 of 2009 (arising out of S.L.P.(C) No. 27909 of 2008),, D/-15-12-2009

Narendra Kante

Vs.

Anuradha Kante and Ors

(A) Constitution of India, Art.133 Question of fact - Oral partition - Finding by lower courts that oral partition was subsequently reduced into writing as memorandum and not as actual deed of partition which required no registration - Is finding of fact - Cannot be interfered with by Supreme Court. (Para No(s) 21)

A deed of Family Settlement seeking to partition joint family properties cannot be relied upon unless signed by all co-sharers. However, when in the instant case, acting upon the said settlement, the appellants had also executed sale deeds in respect of the suit property. It would not be open to appellants to contend that the Deed of Family Settlement was invalid on the ground that it was not signed by all co-sharers.

(Para No(s) 22)

(B) Transfer of Property Act (4 of 1882), S.5 Family settlement - Seeking to partition joint family properties - Cannot be relied upon when deed is not signed by all co-sharers. (Para No(s) 22, 22)

(C) Civil P.C. (5 of 1908), O.39 R.1 Question of balance of convenience and irreparable loss - Respondent acquiring right of development of suit property - Interim order preventing development would case irreparable loss and injury to since it would not be able to utilize property till suit and appeal is disposed of - Respondent therefore permitted to carry out construction activities over disputed land, however restrained from alienating or transferring property or from creating any third party right therein during pendency of suit. (Para No(s) 23)

Cases Referred	Chronological Paras
2009, AIR SCW 5236 : AIR 2009 SC 2882	Para No(s) (19)
2008, AIR SCW 3817 : AIR 2008 SC 2291 (Ref.)	Para No(s) (19)
AIR 1976 SC 807 (Ref.)	Para No(s) (17)
AIR 1972 SC 1279 (Foll.)	Para No(s) (11, 22)

Name of Advocates

For Respondent:
Ranjit Kumar, V.K. Bhardwaj, Nagendra Rai, Anoop G. Choudhary, Sr. Advocate Ms. Nisha Bagchi, Raja Sharma, Ms. Rakhi Ray, Anupam Srivastava, Prashant Shukla, Shantanu Sagar, Smarhar Singh, Santosh Kumar Tripathi, Prabhat Kumar Rai with them s.

ALTAMAS KABIR, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 13th October,. 2008, passed by the Gwalior Bench of the Madhya Pradesh High Court dismissing Miscellaneous Appeal No. 478 of 2007 filed by the appellant herein. The said Miscellaneous Appeal had been preferred by the appellant against the order dated 14th February, 2007, passed by 5th Additional District Judge, Gwalior, in Civil Suit No. 08A of 2006 filed by the appellant rejecting the appellant's application under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

3. The appellant herein had filed the above-mentioned suit for declaration and permanent injunction and also mandatory injunction in respect of the suit property situated at Nadigate Jayendra Ganj, Lashkar, Gwalior, bearing Survey No.37/903 on the ground that the suit property was the ancestral property of his father, Bapu Saheb Kante, who had died intestate on 13th May, 1976. The application for ad interim injunction had been filed in the suit which was rejected by the Trial Court on the ground that a partition had been effected between the legal heirs of Bapu Saheb Kante. It was also held that a Family Settlement had been effected between the heirs of Bapu Saheb Kante, whereby Smt. Putli Bai and Surendra Kante, the widow and son of Bapu Saheb Kante, acquired a 50% share of House No.95/21. The Respondent Nos.1 and 2 herein are the widow and daughter of late Surendra Kante, and after his death their names were recorded in the Municipal records.

4. At this juncture it may be pertinent to mention that Bapu Saheb Kante is said to have had two wives, Smt. Putli Bai and the mother of Jai Singh Rao. The appellant herein is one of the sons of Bapu Saheb Kante through his wife, Smt. Putli Bai. When, after the death of Bapu Saheb Kante a son by his second wife, Jai Singh Rao, came to claim a share in his estate, a family settlement was arrived at by which the properties of Bapu Saheb Kante were divided amongst the heirs by a Family Arrangement dated 8th February, 1967, by metes and bounds. Under the said arrangement, Jai Singh Rao was allowed to retain possession of plot No.25/528 and after his death on 15th June, 1971, his wife and children were allowed to live in the said premises. However, since the concession granted to them was misused, Surendra Kante filed a suit against them for possession in respect of the property in dispute and the same was partly decreed on 14th September, 1993.

5. First Appeal No. 76 of 1993 was filed by the legal heirs of Jai Singh Rao, wherein it was sought to be asserted that no partition had at all been effected in respect of the properties of late Bapu Saheb Kante and that the alleged document of partition could not be acted upon since the same had not been registered and was not, therefore, admissible in evidence. In the First Appeal it was held that there was a previous oral partition which was reduced into writing later on, on 8th February, 1967, which could in fact be said to be a Memorandum of Partition in the eyes of law. It was observed that while a document of partition does require registration, the Memorandum of Partition subsequently executed after an oral partition entered into on the basis of a mutual agreement could not be said to be inadmissible on account of non-registration,

since the same did not require registration within the meaning of Section 17 of the Registration Act, 1908.

6. The High Court accepted the contention that a partition had been effected between the heirs of Bapu Saheb Kante and that a document had been executed in that regard on 8th February, 1967, and that it was not open to the defendants, as well as to the predecessor-in-title of Jai Singh Rao, to wriggle out of the said agreement which had been admitted by the defendants. The First Appeal filed by Surendra Kante was allowed and the other appeal filed by the predecessor-in-interest of Jai Singh Rao was dismissed. A Letters Patent Appeal was filed by Jai Singh Rao questioning the judgment and decree passed by the Trial Court, which was also dismissed by the Division Bench of the High Court upon holding that the partition deed dated 8th February, 1967, is a Memorandum of Partition pertaining to a previous oral partition.

7. In the present suit filed by the appellant herein an attempt has been made to make out a case that the alleged partition deed of 8th February, 1967, was executed only with the intention of giving a separate share to Jai Singh Rao and the rest of the properties remained joint as there was no partition by metes and bounds. Accordingly, the Respondents Nos.1 and 2 had no right to execute an agreement and Special Powers of Attorney in respect of the suit property in favour of the Defendant Nos. 8 and 9 on 27th November, 2004, nor did the Defendant Nos. 8 and 9 have any right to execute a sale deed in favour of Defendant No. 10 on 31st March, 2006. The appellant herein prayed for a decree of permanent injunction against the defendants not to deal with the property without a partition having been effected and also prayed for a mandatory injunction on the defendants to remove the wall which had been erected in the disputed property. The appellant herein also prayed for a grant of temporary injunction which was rejected by the Trial Court, on 14th February, 2007, upon holding that a partition had been effected between the legal heirs of Bapu Saheb Kante and that the Family Settlement had been reduced into writing on 8th February, 1967 .

8. Before the High Court proof of partition and the Family Settlement, which was also accepted by the appellant herein without any objection, were produced, as was the decision of the High Court in First Appeal No. 9 of 1994 in which the learned. Single Judge had held that the documents of 8th February, 1967, had been held to be a Family Settlement for which no registration was required under Section 17 of the Registration Act, 1908. It was also urged that since the disputed property had come to the share of Surendra Kante, and, thereafter, to the Respondents Nos.l and 2, they had the right to transfer their share in favour of the transferees and that the defendant No. 10 was a bona fide purchaser for value. It was also pointed out that the decision of the learned Single Judge had been upheld by the Division Bench.

9. The High Court in the Miscellaneous Appeal observed that the matter of grant of temporary injunction had been considered in detail by the Trial Court which had exercised its jurisdiction in refusing to grant temporary injunction to the appellants. It also observed that in case injunction was granted, it would be the defendants who would suffer irreparable loss and injury. It was observed that the defendant No.10, the transferee from Respondents /defendant Nos.1 and 2, had acquired a right to the suit property. He was, therefore, allowed to carry out construction activities over the disputed land, but was restrained from alienating or transferring the property in question or from creating any third party rights during the pendency of the civil suit. The Trial Court was, however, directed to decide the suit expeditiously and to dispose of the same within six months from the date of appearance of the parties before the Trial Court.

10. Questioning the aforesaid decision of the High Court, Mr. Vivek Kumar Tankha, learned Senior Advocate, submitted that the High Court had erred in accepting the stand

taken on behalf of the defendants/respondents herein that a valid partition had taken place by metes and bounds, on account whereof the Respondents/defendant Nos.1 and 2, as the heirs of Surendra Kante, had acquired title to his share in the suit property and were, therefore, competent to dispose of the same in favour of Defendant No.10. Mr. Tankha urged

that a partition of joint family property could be effected only by metes and bounds and by delivery of actual possession. In the absence of the same, it could not be contended that a partition had, in fact, been effected between the co-sharers. Mr. Tankha urged that both the Trial Court, as well as the High Court, had erred in pre-supposing a partition between the parties simply on the basis of the Deed of Family Settlement executed on 8th February, 1967. It was submitted that in the absence of evidence of partition by metes and bounds, the learned Courts below had erred in refusing to grant ad interim injunction as prayed for by the appellant since once the portion of the property allegedly transferred in favour of Respondent No. 9 was permitted to be developed, the very object of the suit would stand frustrated.

11. Apart from the above, Mr. Tankha urged that the learned Courts below had erred in acting upon the Deed of Family Settlement executed on 8 February, 1967, which, in fact, was a Deed of Partition and could not have been acted upon without being executed by all the co-sharers and without being registered as provided for under Section 17 of the Registration Act, 1908. Mr. Tankha submitted that if the Deed of Family Settlement was to be acted upon, as has been done by the Courts below, it must also be held that partition had been effected thereby and, therefore, the same required registration. In the absence thereof, the Courts had wrongly placed reliance on the same in refusing to allow the appellant's prayer for grant of temporary injunction pending the hearing of the suit. In support of his aforesaid submissions, Mr. Tankha referred to and relied upon the decision of this Court in M.N. Aryamurthy v. M.D. Subbaraya Setty (dead) through L.Rs. (1972) 4 SCC 1 :(AIR 1972 SC 1279), wherein in the facts of the case it was held by this Court that under the Hindu Law if a family arrangement is not accepted unanimously, the Family Settlement has to fail as a binding agreement.

12. Mr. Tankha urged that there could be little doubt that in the facts of this case, the balance of convenience and inconvenience lay in favour of grant of temporary injunction during the pendency of the suit, as prayed for by the appellant herein as otherwise the appellants would suffer irreparable loss and injury.

13. Mr. Anoop G. Chaudhary, learned Senior Advocate, appearing for the Respondent No. 6, while supporting Mr. Tankha's submissions, reiterated that the Deed of Family Settlement had not been acted upon as would be evident from the Deed of Settlement itself. It would be clear therefrom that one of the co-sharers, Sau. Pratibha, who was shown as the eighth executant of the Deed of Settlement dated 8th February, 1967, had, in fact, not signed the said document. She was not also made a party in the First Appeal, although, admittedly she was one of the daughters, of Bapu Saheb Kante through his first wife.

14. On the other hand, Mr. Ranjit Kumar, learned Senior Advocate, appearing for the Respondent Nos.1, 2, 8, 9 and 10, reiterated that the family settlement of 8th February, 1967, had been duly acted upon, as would be evident from the sale deeds executed by Narendra Kante, which have been exhibited by Narendra Kante in the suit pertaining to the suit property. Mr. Ranjit Kumar also referred to a copy of the agreement made Annexure P-1 to the Special Leave Petition, which is an agreement alleged to have been executed by Udai Kante, Narendra Kante and Surendra Kante in favour of one Ram Bharose Lal Aggarwal regarding Municipal House No.15/642, known as "Kante Saheb Ka Bara". Reference was also made to a suit, being Case No.32A of 1991, filed by Ram Bharose Lal

Aggarwal in the Court of Third Additional District Judge, Gwalior, for specific performance of the agreement dated 8th February, 1967.

15. Similarly, several other documents were also referred to by Mr. Ranjit Kumar, which were also executed during the hearing of the suit, in order to establish the fact that the parties, including the present appellant, had acted in terms of the said Deed of Settlement and had dealt with the properties which had fallen to their respective shares.

16. Mr. Ranjit Kumar submitted that as far as the second question raised on behalf of the appellant was concerned, it was well-settled that a Deed of Family Settlement which was reduced into writing was not required to be registered under Section 17 of the Registration Act, 1908. Learned counsel submitted that

when an oral settlement had been arrived at and acted upon and a subsequent document was prepared only for the purpose of recording such settlement, the provisions of Section 17 of the Registration Act were not attracted, since except for recording a settlement, no actual transfer takes place by virtue of such document.

17. In support of his aforesaid submission, Mr. Ranjit Kumar firstly relied on the decision of the Three Judge Bench in Kale v. Dy. Director of Consolidation (1976 (3) SCC 119 : (AIR 1976 SC 807) in which the question of registration of a family arrangement had fallen for consideration. Their Lordships held that a family arrangement may be even oral in which case no registration is necessary. Registration would be necessary only if the terms of the family arrangement are reduced into writing but there 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 recording or for information of the Court for making necessary mutation. In such a case, the Memorandum itself does not create or extinguish any right in the immovable properties and, therefore, neither does it fall within the mischief of Section 17(2) of the Registration Act nor is it compulsorily registrable. Their Lordships went on further to conclude that a document, which was no more than a memorandum of what had been agreed to, did not require registration.

18. While holding as above, Their Lordships also indicated that even if a Family Arrangement, which required registration was not registered, it would operate as a complete estoppel against the parties, which had taken advantage thereof.

19. Learned counsel urged that as had been held by this Court in Mandali Ranganna v. T. Ramachandra (2008) 11 SCC 1 : (2008 AIR SCW 3817), while considering an application for grant of injunction, the Court has not only to take into consideration the basic elements regarding existence of a prima face case, balance of convenience and irreparable injury, it has also to take into consideration the conduct of the parties since grant of injunction is an equitable relief. It was observed that a person who had kept quiet for a long time and allowed another to deal with the property exclusively, ordinarily would not be entitled to an order of injunction. Mr. Ranjit Kumar also referred to the recent decision of this Court in Kishorsinh Ratansinh Jadeja v. Maruti Corpn. and Ors. (2009) 5 Scale 229 :(2009 AIR SCW 5236), in which the observation made in Mandali Ranganna's case (supra) was referred to with approval.

20. From the submissions made on behalf of the respective parties and the materials on record, we have to see whether the Courts below including the High Court, were justified in refusing the appellant's prayer for grant of interim orders pending the hearing of the suit. Though the Deed of Family Settlement has been heavily relied upon by the Courts below and the Respondents herein, it will have to be considered whether reliance could have been placed on the same since the same was not registered, though it sought to apportion the

shares of the respective co-sharers. It has also to be seen whether the document could at all be relied upon since all the co-sharers were not signatories thereto.

21. As far as the first point is concerned, since the same is a question of fact and has, on a prima facie basis, been accepted by the Courts below, we are not inclined to interfere with the prima facie view taken that an oral partition had been effected which had been subsequently reduced into writing as a Memorandum and not as an actual Deed of Partition. Of course, these observations are made only for the purpose of disposal of the Special Leave Petition and not for disposal of the suit itself.

22. As far as the second question is concerned, a Deed of Family Settlement seeking to partition joint family properties cannot be relied upon unless signed by all the co-sharers. In the instant case, admittedly, the Respondent No. 8, Sau. Pratibha, was not a signatory to the Deed of Settlement dated 8th February, 1967, although, she is the daughter of Bapu Saheb Kante by his first wife. As was held in the case of M. N.Aryamurthy (AIR 1972 SC 1279) (supra), under the Hindu Law

if a Family Arrangement is not accepted unanimously, it fails to become a binding precedent on the co-sharers. Both Mr. Vivek Tankha and Mr. Anoop G. Chaudhary, learned Senior Advocates, brought this point to our notice to indicate that all the co-sharers had not consented to the Deed of Family Settlement which could not, therefore, be relied upon.The argument would have had force had it not been for the fact that acting upon the said Settlement, the appellants had also executed sale deeds in respect of the suit property. Having done so, it would not be open to the appellants to now contend that the Deed of Family Settlement was invalid.

23. Now, coming to the question of balance of convenience and inconvenience and irreparable loss and injury, it has to be kept in mind that the Respondent No.10 has already acquired rights in respect of the share of the Respondent Nos. 8 and 9 to the suit property and in the event an interim order is passed preventing development of the portion of the property acquired by it, it would suffer irreparable loss and injury since it would not be able to utilize the property till the suit is disposed of, which could take several years at the original stage, and, thereafter, several more years at the appellate stages. The appellant herein has been sufficiently protected by the order of the High Court impugned in this appeal. While the Respondent No.10 has been permitted to carry out construction activities over the disputed land, it has been restrained from alienating or transferring the property or from creating any third party right therein during the pendency of the suit.

24. As mentioned hereinabove, there is yet another question which goes against the case made out by the appellant, viz., that after the Deed of Family Settlement, even the appellant has executed Conveyances in respect of portions of the suit property, thereby supporting the case of the respondent that the Deed of Family Settlement dated 8th February, 1976, had not only been accepted by the parties, but had also been acted upon.

25. In such circumstances, we are not inclined to interfere with the order passed by the High Court, but we are also concerned that the suit should not be delayed on one pretext or the other, once such interim order is granted.

26. We, accordingly, dispose of the appeal by directing the Trial Court to dispose of the pending suit within a year from the date of communication of this judgment. In the meantime, the co-sharers to the suit property shall not create any third party rights or encumber or transfer their respective shares in the suit property in any manner whatsoever and all transactions undertaken in respect thereof shall be subject to the final decision in the suit.

27. There will be no order as to costs.