

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1176 OF 2002

RAJ KUMAR

Appellant (s)

VERSUS

RAM KANWAR & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. of will deed, written statement and deed of partition and placing additional documents and deletion of the name of respondent and exemption from filing O.T. and with office report)

Date: 12/12/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE H.S. BEDI

For Appellant(s) Mr.M.N.Krishnamani, Sr.Adv.  
Mr. Goodwill Indeevar, Adv.

For Respondent(s) Respondent-In-Person

Mr.Sachin Datta, Adv.

Mr.Amit Mehta, Adv.

Mr.Himinder Lal ,Adv

Mr. Mahabir singh, Sr. Adv.

Mr.Rakesh Dahiya, Adv.

Mr.Ajay Pal, Adv.

Mr.Nikhil Jain, Adv.,

Mr. D. Mahesh Babu ,Adv

UPON hearing counsel the Court made the following  
ORDER

Application for deletion of name of respondent No. 7 is allowed.

The appeal is dismissed. However, in the facts and circumstances of this case, there would be no order as to costs.

[ Meenu Sethi ]  
Court Master

[ Pushap Lata Bhardwaj ]  
Court Master

Signed order is placed on the file  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1176 OF 2002

Raj Kumar .....Appellant

Versus

Ram Kanwar & Ors. ....Respondents

ORDER

Application for deletion of name of Respondent No. 7 is allowed.



Respondent No.1 filed a suit marked as Suit No. 83 of 1974 praying for a decree that the said consent decree is not binding on him. The said suit was decreed. Appeals filed thereagainst by the appellant were dismissed up to this Court.

Manohar Lal, however, purported to have executed a Will in favour of Jai Bhagwan(Respondent No.2 herein) son of Respondent No.1.

After the disposal of the said appeal by this Court on 23.7.1979, Respondent No.2 sought to get his name mutated relying on and on the basis of the said Will. It was denied on the premise that there were intricate questions of law and fact which could not be gone into by the Revenue Officer.

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Respondent No.1, thereafter, filed a suit inter alia for joint possession of the entire property purported to have been left by Manohar Lal.

The said suit was marked as Suit No. 478 of 1983. However, it appears that an application for amendment of plaint was filed in terms whereof in substitution of the original the following prayer was made:

"....That the plaintiff requests for grant of decree of ownership and possession of 1/3 part of land mentioned in para no.2 to 4 against the defendant with costs and or pass such order which the Hon'ble Court deems fit and proper in the circumstances of the case"

It may, furthermore, be placed on record that in the said suit, the respondent no.1 raised a contention that the Will executed by Manohar Lal in favour of respondent No.2 herein was not binding on him.

The said Suit was decreed by a judgment and decree dated 15.10.1990.

Plaintiff- Respondent No.1, Appellant herein, as also Respondent No.2 (Defendant No.5) preferred appeals thereagainst. The said appeals were disposed of by judgment and order dated 29.1.1992 The suit of the plaintiff-respondent No.1 was dismissed. Appellant herein filed a Second Appeal before the

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Punjab and Haryana High Court. Against certain findings in the said suit before the Appellate Court, Respondent No.1 also preferred appeal thereagainst.

The High Court by reason of the impugned judgment decreed the suit of the plaintiff declaring that the said Ram Kanwar would be joint owner and in possession to the extent of 1/4th share in the ancestral properties held by his father Manohar Lal and remaining 3/4 th share shall

go to Raj Kumar, Jai Bhagwan and heirs of Shiv Kumar alias Shiv Lal. It was clarified that Jai Bhagwan will also inherit on the basis of the Will all non-ancestral properties which were held by Manohar Lal.

Appellant is, thus, before us.

No appeal thereagainst has been preferred either by the Appellant-Defendant No.2 or Defendant No.5-Respondent No.2.

Mr. M.N. Krishnamani, learned senior counsel appearing on behalf of the appellant in support of the appeal, inter alia, would submit;

(i) that the family settlement was not required to be registered as it merely recorded an earlier oral partition amongst the co-sharers

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(ii) As upon execution of the said Deed of Family Settlement, Manohar Lal was not having any right, title and interest in the property, he could not have executed any Will in favour of Jai Bhagwan.

(iii) Family Settlement in any event having been acted upon was not required to be registered by reason of the judgment and decree dated 31.5.1977 passed in Suit No. 83/1974.

(iv) As the consent decree dated 18.5.1974 was held to be not binding on Respondent No.1 herein, the transaction between Manohar Lal on the one hand, and his two sons, on the other hand, must held to have been acted upon .

(v) In any event Respondent No. 1 having prayed for a decree of 1/3rd share in the entire property, the High Court committed a serious error in holding that respondent No.2 herein(defendant No.5) was entitled to the 1/4th share of the ancestral properties of the Manohar Lal and other non-ancestral properties by reason of the said Will dated 5.12.1975.

Mr. Mahabir Singh, learned senior counsel appearing on behalf of plaintiff- respondent No.1 supported the judgment.

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Mr. Sachin Datta, learned Counsel appearing on behalf of respondent No.2, however, would submit that the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that the property left by Manohar Lal was a self acquired property as would be evident from the findings arrived at by almost all the Courts as also in the title Suit No. 83/1974 and Suit No. 478/1983.

The purported family settlement ex-facie is not a memorandum of partition. It may be true that the appellant at one stage, inter alia, contended that the properties held by Manohar Lal were non-ancestral properties but as noticed hereinbefore the plaintiff respondent No.1 in the suit claimed at least a portion of the property as an ancestral property. He had prayed for possession in respect of his 1/3 rd share. He claimed his 1/3rd share in the property not by reason of the family settlement but by way of inheritance after Manohar Lal died on 16.8.1977.

Once it is held that the purported family settlement was not a memorandum of partition, it required registration. Even otherwise it required registration as Manohar Lal thereby was required to relinquish his right, title and interest therein. In

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the absence of the said deed having been registered as is required in terms of Section 17 of the Indian Registration Act, the purported family settlement would have been given effect to. However, there cannot be any doubt whatsoever that the intention of Manohar Lal and two of his sons to sever their joint status became evident thereby. Once the intention of a co-sharer to sever the joint status becomes explicit, a notional partition must be held to have taken place. It was in that sense Manohar Lal had 1/4 th share in his ancestral properties. If Manohar Lal had 1/4th share in the ancestral properties, indisputably, after the partition was effected, he could have executed a Will in favour of Respondent No.2.

Submission of Mr. Krishnamani, learned senior counsel, therefore that the Will is void in its entirety cannot be accepted.

It may be that Jai Bhagwan did not file a suit. He also did not file any application for grant of letters of admission. But it was not necessary to do so as the properties were situated in the State of Punjab and furthermore were agricultural properties. His father had filed a suit for the purpose of grant of a preliminary decree for partition. The

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Court, thus, was required to take into consideration all questions involved in the matter including the one as regards the extent of the property available for partition amongst the co-sharers. For the purpose of determining the said issue, the validity of the Will or otherwise executed by Manohar Lal in favour of Jai Bhagwan was required to be gone into.

If in the said process, execution of Will by Manohar Lal in favour of Jai Bhagwan has been found to be valid, no exception be taken thereto.

Submission of Mr. Krishnamani, learned senior counsel that the family settlement having been set aside only in regard to the share of the plaintiff- respondent No.1 in the aforementioned Suit No. 83/1974 and thus the remaining part remain, valid in our opinion is mis-placed.

The deed of partition of a family settlement must be given effect to either in its entirety or not at all. If it is held to be not binding on one of the co-parcenar or upon a person representing a branch who admittedly had a share therein, it is difficult to conceive as to how a part of the said settlement could be acted upon. It was not a case where the shares of

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each co-parcenars having been validly determined, a partial partition was effected.

As indicated hereinbefore Manohar Lal purported to have executed a family settlement in respect of the entire property whether ancestral or non-ancestral. The said family settlement has been found to be illegal. Once, therefore, by reason of the decree passed in the Suit No. 83/1974 it was held that the consent decree dated 18.5.1974 was not binding on Ram Kanwar(Respondent No.1), the entire consent decree became in-executable.

It was not accepted by the Courts below that the family settlement was fully acted upon. Succession, thus, opened amongst the heir of Manohar Lal only after his death.

We, therefore, are of the opinion that the appeal has no merit.

So far as the submission of Mr. Datta, learned counsel that this Court should re-open the entire issue and hold that all properties left by Manohar Lal were self acquired properties, in our opinion cannot be accepted. He has not preferred any appeal. The judgment of the High Court, therefore, has attained finality so far as he is concerned.

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This Court in exercise of its jurisdiction even under Order XL Rule 33 of the Code of Civil Procedure at the instance of the said respondent, thus, cannot grant him any relief which had not been granted by the High Court. The matter might have been different if the said respondent intended to support the judgment of the High Court, in that event it would have been permissible for the said respondent to attack the findings of the High Court only for the purpose of supporting the judgment and not for any other matter. Order XL Rule 33 of the Code of Civil Procedure would not confer

jurisdiction to the Court to pass a judgment and decree contrary to or inconsistent with the judgment of the Court below as no separate appeal or cross-objections have been filed by the respondent.

For the reasons aforementioned, we find no merit in this appeal. It is dismissed accordingly. However, in the facts and circumstances of this case, there would be no order as to costs.

(S.B.SINHA) .....J

(H.S.BEDI) .....J

New Delhi,  
December 12, 2007.