(2015) 08 JH CK 0061

In the Jharkhand High Court

Case No : F.A. Nos. 379 of 1991(R), 95 and 107 of 2007

Priya Ranjan Bhagat and Others APPELLANT

Vs

Saroj Bhagat and Others RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 33
Limitation Act, 1963 — Section 6

Citation : (2015) 4 AJR 702

Hon'ble Judges : Dhrub Narayan Upadhyay, J

Bench : Single Bench

Advocate : P.R. Bhagat, Binod Kumar, A.K. Srivastava and Srijeet Chaudhary, for the Appellant; A.K. Srivastava, Badal Vishal, Nitin Pasari and Srijit Chaudhary, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dhrub Narayan Upadhyay, J—F.A. No. 379 of 1991 has been preferred against the judgment dated 3rd September, 1991 and decree dated 13th September, 1991, passed and signed by Subordinate Judge-V, Ranchi, in connection with Title Partition Suit No. 86 of 1988, whereby and whereunder, the suit filed for partition has been decreed in part in favour of the plaintiffs.

F.A. No. 95 of 2007 and F.A. No. 107 of 2007 have been preferred by Mukul Bhagat, son of Late Santosh Lal Bhagat [Original Defendant No. 7(b)] and Saroj Bhagat, wife of Pradeep Kumar Bhagat [Original Defendant No. 1(a)], respectively, against the final decree dated 17th March, 2007, arising out of judgment dated 9th September, 2004 passed by this Court in F.A. No. 379 of 1991(R), whereby and whereunder, this Court had been pleased to allow the first appeal in part.

2. In F.A. No. 379 of 1991(R), the appellants were plaintiffs and respondents were defendants in the court below.

3. It appears from the record that by judgment dated 9th September, 2004, F.A. No. 379 of 1991(R) was allowed in part. Thereafter, the matter went up to the Hon''ble Supreme Court. After grant of leave, arising out of S.L.P. (Civil) No. 4493 of 2007, Civil Appeal No. 8222 of 2012 was disposed of by order dated 22nd November, 2012 and the judgment dated 9th September, 2004 passed by this Court has been set aside and the matter has been remanded back with the following observations and directions:--

"The High Court may now re-hear the appeal in question afresh and pass appropriate orders in accordance with law as expeditiously as possible and preferably within six months from the date the parties appear before it. The parties are directed to appear before the High Court either personally or through their counsel on 3.12.2012. We make it clear that no further notice shall be necessary to be served to any of the parties and the Court shall be free to proceed ex-parte against anyone absenting from hearing. We make it clear that Abha Bhagat, Ritu Bhagat and Saroj Bhagat, legal representatives left behind by Shri Pradeep Bhagat may make arrangement for their representation before the High Court failing which adverse consequence may follow against them. The appeal is allowed with the above directions leaving the parties to bear their own costs."

4. The appellants/plaintiffs filed Title Partition Suit No. 10 of 1987 in the court of Sub Judge at Khunti and the said suit was transferred to the court of Sub Judge-V, Ranchi where after it was re-registered as Title Partition Suit No. 86 of 1988.

5. The case of the plaintiffs, in brief, is that Late Lachhan Ram Bhagat was the common ancestor of the parties to the suit and he died in or about 1956, leaving behind his only son and sole legal heir-Nand Lal Bhagat. It is further disclosed that Nand Lal Bhagat died on 13th October, 1973, leaving behind three sons, namely, Santosh Lal Bhagat (Defendant No. 7), Mahendra Lal Bhagat (Defendant No. 8) and Ranjeet Lal Bhagat (Defendant No. 9). Basant Lal Bhagat, the eldest son of Nand Lal Bhagat, pre-deceased sometime in the year 1969 leaving behind his widow-Shanta Bhagat (Defendant No. 6) and five sons, namely, Pradeep Kumar Bhagat (Defendant No. 1), Pramod Bhagat (Defendant No. 2), Jayant Bhagat (Defendant No. 3), Ashok Bhagat (Defendant No. 4) and Alok Bhagat (Defendant No. 5) and Ratna Gupta (Defendant No. 5a).

6. It is contended in the plaint that Lachhan Ram Bhagat had sufficient properties, both, agricultural and non-agricultural, measuring about 60 acres in different villages within the district of Ranchi, yielding sufficient income so much so that even after maintenance of the family sufficient amount was left over every year. Out of income of agricultural and non-agricultural properties, the joint family acquired a piece of land in the name of Nand Lal Bhagat on 20th April, 1934, measuring 10 Kathas in the town of Ranchi, pertaining to Thana No. 205, Municipal Holding No. 839, Ward No. 2, commonly known as Old Commissioner Compound, within Kotwali Police Station, District Ranchi, and a building thereon was constructed from the earnings of joint family. The said

property has been more fully described in Schedule-B of the plaint. Further averment has been made that on 20th April, 1959, land measuring One Bigha, One Katha, Seven Chhatak and Twenty Seven sq. ft. under Plot No. 1458 (P), Ward No. 7 of Ranchi Municipality, Mohalla commonly known as Burdwan Compound, Police Station-Lalpur, was acquired from the joint family earnings and also from the contributions made by the earning members of the family. The said property has been described under Schedule-D of the plaint.

7. It is contended that Lachhan Ram Bhagat has tenure interest in number of villages and after vesting of Jamindari the compensation amount in the form of Jamindari Bond was given to the joint family and the sale proceeds of Jamindari Bond was invested towards construction of the house at Burdwan Compound.

8. On account of differences between the members of the family, a partial partition through registered deed dated 30th July, 1968 took place in respect of property described in Schedule-B.

Portion of Schedule-B property was left in the jointness since it was not possible to partition and that portion of the property has been described in Schedule-C of the plaint.

Another partial partition had taken place in the year 1971 amongst the descendants of Late Lachhan Ram Bhagat in respect of agricultural land except the land mentioned and described in Schedule-E annexed to and forming part of the plaint.

It is contended that after death of Nand Lal Bhagat, the properties under Schedules-C, D and E remained joint and were available for partition amongst the plaintiffs and defendants and for that partition has been sought for.

9. The plaintiff has made out a specific case that his father-Ranjeet Lal Bhagat (Defendant No. 9) had never taken interest in the ancestral properties and due to his willful neglect and default, the Defendant Nos. 1 to 8, taking advantage of the situation, had been trying to deprive the plaintiffs from their legitimate interest in the aforesaid ancestral joint family properties, described in Schedules-C, D and E. The father of the plaintiffs was a Judicial Officer and in course of his employment he was compelled to remain outside the district of Ranchi and he was in the clutches of his brothers, who were always playing their influence and sometimes coercion and misrepresentation regarding ancestral properties. The father of the plaintiffs did not take care about the legitimate and equitable share in the property, as a result in the partitions effected between the year 1968 and 1971, the plaintiffs were deprived from their legitimate share in the properties. The plaintiffs were minor and their interest in the property was not protected by their father.

10. The plaintiffs have further made out a case that Basant Lal Bhagat, being the eldest son, kept his brothers under his influence and by that act, Defendant No. 9 and other junior members were deprived from their legitimate share in the

properties. In the year 1985, when Plaintiff No. 1 enrolled as an advocate and started practising at Ranchi, he could able to know about the ancestral properties left in jointness. The Plaintiff No. 2, who is younger brother of the Plaintiff No. 1, also accompanied him to continue his study at Ranchi.

Since no partition had taken place in respect of Schedule-C, D and E properties and there was unity of title and possession of the plaintiffs and the defendants, the plaintiffs requested for partition, but no heed was paid and hence they brought the suit for partition.

11. The defendants have filed their written statement in different sets. The Defendant Nos. 1 to 6 filed their written statement, denying therein the unity of title and possession of the parties over the suit land. They have stated that Lachhan Ram Bhagat did not have any agricultural or non-agricultural properties in the village Sahera, Baxidih and Jaspur within Ormanjhi police station, rather Nand Lal Bhagat had acquired the properties about nine acres in village Jaspur, 2.62 acres of land in village Baxidih and 4.58 acres of land in village Sahera and he had purchased Schedule-B properties out of his independent income and constructed a double storied building over the same. On 30th July, 1968 he made a registered partition amongst himself and his four sons and they all got their separate possession except the properties shown in Schedule-C of the plaint, which remained in jointness because of nature of the property and it was kept for common use for the parties. There was an arrangement in the agreement that rent collected from southern blocks of the Schedule-B house, which contains stairs on the ground floor and two flats on the upper floor will be used to pay municipal tax, but the branches started disputing the arrangement after death of Nand Lal Bhagat. Hence, in the year 1975 another agreement was arrived at in between Defendant Nos. 6 to 9. As per said agreement, the lower portion of the southern block shall be divided in two units, likewise the upper potion shall also be divided in two units and each of the unit will be given to each of four brothers or their children and they will collect rent from their respective units and, accordingly, all four sons of Late Nand Lal Bhagat came in their exclusive possession of their separate unit of the southern block of the house.

12. It is further contended that Schedule-D property was purchased for Rs. 14,500/- from contribution made by Late Basant Lal Bhagat and three brothers, Defendants Nos. 7, 8 and 9, from their own personal income in the name of Mahendra Lal Bhagat (Defendant No. 8). The Defendant No. 9, father of the plaintiffs, made a request to refund his contribution after which his share was purchased by Basant Lal Bhagat. On the basis of power of attorney executed by Defendant No. 9 in favour of Basant Lal Bhagat, a registered family settlement between Nand Lal Bhagat, Basant Lal Bhagat, Santosh Lal Bhagat, Mahendra Lal Bhagat, Ranjeet Lal Bhagat and Pradeep Lal Bhagat had taken place with respect to Schedule-D property. 1/4th share in the house was given to Defendant No. 7 and 1/4th share was given to Defendant No. 8, whereas remaining half share pertaining to Basant Lal Bhagat was given to his son Pradeep Lal Bhagat, since

Ranjeet Lal Bhagat (father of the plaintiff) disclaimed his entire interest in the said property. After the said partition, Defendant Nos. 1, 7 and 8 acquired possession over their respective shares in Schedule-D property and, thereafter, they had constructed building thereon from their own fund. They also got their respective portion mutated in the municipal record and separate holding numbers were allotted.

13. Further case of the Defendant Nos. 1 to 6 is that on 1st October, 1971, Nand Lal Bhagat and Defendant Nos. 6 to 9 got the entire agricultural land of village Jamudag partitioned amongst themselves and they acquired possession over their respective shares. Since Schedule-E property had already been partitioned during the lifetime of Nand Lal Bhagat, the plaintiffs have wrongly stated that Schedule-E property is available for partition and there is unity of title and possession. The defendants have clearly conceded that properties left by Nand Lal Bhagat, as shown in Schedule-III of the written statement, can be said to be available for partition amongst the descendants. The land situated in village Jaspur, Sahera and Baxidih, as shown in Schedule-IV of the written statement are available for partition. It is disclosed that Defendant No. 9 preferred Title Suit No. 157 of 1987 in the court of learned Sub Judge, Ranchi, but latter he withdrew the same unconditional. The plaintiffs were duly represented by their father-Ranjeet Lal Bhagat (Defendant No. 9) in the partitions, which had taken place in between 1968-1969 and 1971 and their interest in the property was well protected. It was further contended that Schedules-C, D & E properties did not remain in jointness in view of the pleadings made in their written statement.

14. Further case of the defendants is that at no point of time, Nand Lal Bhagat had become mentally and physically infirm, rather till his last breath he was fully fit, both, mentally and physically. As a matter of fact, it is the Defendant No. 9, in whose connivance, the plaintiffs have brought the suit for partition. Admittedly, Defendant No. 9 retired as a District Judge and he was well aware with the legal consequences of the partition which had taken place on three different occasions and, those partitions were given effect to the knowledge of Defendant No. 9. He never raised any objection, but followed the partition and family settlement arrived at between the parties. It is incorrect to say that he had not taken care of the plaintiffs'' share in the property. Rai Bahadur Nand Lal Bhagat was posing more trust and faith in Defendant No. 9 and he was entrusted to look after the property described under Schedule-IV of the written statement. After death of Nand Lal Bhagat, Defendant No. 9 had sold portions of the said property to different purchasers, namely, Basumati, Jageshwar Mahto, Sahaj Nath Ganjhu and Mangra Mahto without consent of the answering defendants. He had purchased approximately six Kathas of land at Ashokpuram in Mohalla Ashok Nagar, P.S. Kadru, Ranchi, in the name of Plaintiff No. 1-Priya Ranjan Bhagat, constructed a house thereon and he has been living with the plaintiffs in that very house. He had also occupied the share allotted to him in Schedule-B property and made further construction in due course. Therefore, the present suit cannot be considered as partition suit, rather it is a suit for declaration of

plaintiffs'' title and got the sale deeds and partition deed set aside and for that the plaintiffs were required to pay ad valorem court fee. The suit properties have also been less valued.

15. Defendant No. 7 has filed separate written statement. In his written statement, the Defendant No. 8 pointed out that Room Nos. 3, 4, 5 and 7 shown in Schedule-C of the partition deed dated 30.7.1968 were allotted to Defendant No. 7 and Room Nos. 12, 13(1), 30 and 32 were allotted to Defendant No. 8 and one share were kept by Nand Lal Bhagat. Since the property of Schedule-C of the plaint has already been partitioned, it cannot be reopened now. It has been further alleged that on 1st October, 1971 Defendant Nos. 6 to 9 and Late Nand Lal Bhagat divided the entire immovable properties situated in village Jamundag, P.S. Sonahatu, District Ranchi. The share allotted to Nand Lal Bhagat was also divided after his death in the month of June, 1975 amongst Defendant Nos. 6 to 9. The land measuring 3.54 acres of village Jamundag previously allotted to Defendant Nos. 7 and 8 were divided into equal parts between Defendant Nos. 1 to 6 and 9. The defendants are coming in separate possession of the property as per registered partition deeds of the year 1968 and 1971.

Therefore, it is contended that the properties described in schedule-C, D and E of the plaint are not still joint in between the parties and as such there is no unity of title and possession exists in between the parties. No cause of action ever arose for the suit because Schedule-C, D & E properties were not available for partition.

16. The defendants have more or less repeated and corroborated the same averments as made by Defendant Nos. 1 to 6 in their written statement.

17. The Defendant No. 8 filed a separate written statement, stating, inter alia, that Nand Lal Bhagat died on 13th October, 1973, leaving behind three sons, four daughters, grandsons, granddaughters and the eldest son''s widow Shanta Bhagat. Same facts have been repeated by Defendant No. 8 in his written statement that Nand Lal Bhagat on 12th October, 1934 had purchased 10 Kathas of land from Ibraj Poddar out of his earnings and constructed a double storied Pucca building over the same. The said property was partitioned between himself and his four sons on 30th July, 1968. Schedule-F of said portion corresponds Schedule-C of the plaint. The said partition deed discloses that entire southern block of the said building could not be partitioned because the entire building had to be demolished. The aforesaid block consists of veranda, courtyard, well, lounge, latrine, servant quarter, Puja Ghar and garage which were not divisible. So far southern block of the said building is concerned, it was decided that rent collected from that portion shall be utilized for payment of municipal tax.

18. After death of Nand Lal Bhagat, trouble started in respect of southern block of building and, thereafter, four brothers amicably decided that lower portion and upper portion of the building shall be divided in two units and each of the brother shall acquire one unit from the said southern block and that amicable settlement

was given effect to. In the circumstances, Schedule-C of the plaint more or less describes Schedule-F of the said partition deed, which had taken place in the year 1968. Defendant No. 8 had also corroborated same declaration that Schedule-D property was purchased from independent earning of of four sons of Nand Lal Bhagat and it was not a joint family property. Schedule-D property was also partitioned amongst the brothers and for that Defendant No. 9-father of the plaintiffs had given authority to elder brother-Basant Lal Bhagat. It is also disclosed that Defendant No. 9 took refund of the money, which he had invested in purchasing Schedule-D property from Basant Lal Bhagat. Schedule-D property was partitioned by a registered family settlement and according to that Basant Lal Bhagat had given his share to his son Pradip Kumar Bhagat and rest part was partitioned between remaining two brothers, namely, Mahendra Lal Bhagat and Santosh Lal Bhagat. Nand Lal Bhagat, Basant Lal Bhagat and Ranjeet Lal Bhagat had declared that they will have no claim in Schedule-D property situated at Burdwan Compound and, therefore, the plaintiffs, who are sons of Ranjeet Lal Bhagat, have no right, title and interest over Schedule-D property and there is no unity of title and possession and, therefore, Schedule-D property was not available for partition amongst the descendants of Nand Lal Bhagat.

The Defendant No. 8 has also repeated the same fact with regard to the property of village Jamundag as stated by Defendant No. 7.

19. It is pleaded that Defendant No. 9 purchased six Kathas of land in the name of Plaintiff No. 1 at Ashokpuram from the sale proceeds of joint family properties and, therefore, the property situated at Ashokpuram acquired by the plaintiffs and Defendant No. 9 is also liable to be partitioned.

20. Defendant No. 9, who happens to be father of the plaintiffs, even after knowing pendency of the suit, brought by his sons, did not appear and, therefore, written statement was not filed on his behalf.

21. While the suit was pending for preparation of final decree in view of the judgment and decree passed in F.A. No. 379 of 1991 (R), Defendant Nos. 1, 2, 7 and 8 died and hence they were substituted by their legal heirs vide order dated 28th January, 2005 and they are Defendant Nos. 1(a) to 1(d), Defendant Nos. 2(a) and 2(b), Defendant Nos. 7(a) to 7(g) and Defendant Nos. 8(a) to 8(c).

22. During pendency of the suit, by order dated 4th May, 1989, Defendant No. 5(a) and Defendant Nos. 10 to 20 were added as parties to the suit. On the basis of the pleadings, Schedule-F, G and H were also added to the plaint.

23. On the basis of the pleadings of the parties, learned court below framed following issues:--

"I. Is the suit maintainable as framed?

II. Have the plaintiff valid cause of action for the suit?

III. Is there unity of title and possession of the parties over the suit land?

IV. Is the suit barred by limitation and adverse possession?

V. Can the partition of schedule properties be reopened in view of the partition which took place on 30th July, 1968 with regard to Schedule-B property, family settlement deed dated 19th May, 1969 with regard to Schedule-D property partition of Schedule-E property dated 1st October, 1971 and partition of property of Jamundag left by Nand Lal Bhagat vide oral partition in June, 1975?

VI. Is the property acquired by the Plaintiff No. 1 at Ashok Puram, an item of joint property of the parties?

VII. Are the plaintiff entitled to share? If yet, to what extent?

VIII. Are the plaintiff entitled to any relief or reliefs as claimed?"

24. The plaintiffs as well as defendants adduced evidence and submitted documents in support of their claims and contentions made in their pleadings. The learned Trial Court has decreed the suit in part in favour of the plaintiffs and held that "Admittedly schedule C property corresponds to schedule A of Ext. 3 which also includes the separate exclusive allotment to Late Nand Lal Bhagat and schedule F of Ext. 3 was common and joint properties of all the four sons of Nandlal Bhagat. Therefore, in the exclusive share of Nandlal Bhagat the plaintiffs have 1/27th share each whereas in schedule F property of Ext. 3 the plaintiffs have 1/12th share each and in Schedule F, G and H the plaintiffs conclusively would get 1/27th share each. The plaintiffs are not entitled to get partition of schedule D and E properties". Hence this appeal by the plaintiffs.

25. The suit was decreed in part in favour of the plaintiffs and they have filed the present appeal, challenging the findings of the Trial Court, which have been decided against interest of the plaintiffs.

The Plaintiff No. 1, who is an advocate, had appeared himself for the appellants in the present first appeal. It was submitted that the appeal may be decided only in respect of Schedule-D of the plaint and he challenges the findings of the learned Sub Judge in this regard.

The arguments advanced by the parties are many folds on various grounds, both, on facts as well as in law.

In the first part of the argument, it was submitted that the great grandfather-Late Lachhan Ram Bhagat was tenure holder and he was having acres of land within the district of Ranchi. He was having agriculture and non-agriculture income, which was sufficient to maintain the family and to create a fund for future exigency. Late Lachhan Ram Bhagat was having only son-Nand Lal Bhagat and he was a brilliant student. Late Nand Lal Bhagat, grandfather of the plaintiffs was selected and given appointment in administrative service. Out of the family income and the contribution made by Nand Lal Bhagat, landed property at Old Commissioner Compound (Schedule-B) was purchased and a double storied house was constructed thereon. Late Nand Lal Bhagat was blessed with four sons and five daughters. The four sons of Late Nand Lal Bhagat were also having bright career. Basant Lal Bhagat and Santosh Lal Bhagat were in Government Service, whereas Mahendra Lal Bhagat was working as Personnel Officer in Tisco Limited, Jamshedpur. The youngest son-Ranjeet Lal Bhagat, who happens to be father of the plaintiffs, entered into judicial service and retired as District & Sessions Judge.

Late Nand Lal Bhagat amassed huge properties-agriculture and non-agriculture. In the year 1934, he was posted as Sub Divisional Officer, Hazaribagh. The properties, pertaining to Schedule-E, F, G & H, were acquired by him. On 20.4.1959, the property pertaining to Schedule-D, which is mainly in dispute between the parties, was purchased in the name of Mahendra Lal Bhaat (Defendant No. 8).

26. Since the plaintiffs have confined their interest to the extent of partition of Schedule-D property in this appeal, which is related to Issue No. V, I feel it desirable to discuss the facts and evidences available on record relating to Schedule-D property.

The plaintiffs have raised a point that the property under Schedule-D was purchased from the joint family fund and the contribution made by earning members of the family. It was submitted that Nand Lal Bhagat had also contributed to meet the consideration amount. There was a joint family, consists of Late Nand Lal Bhagat and his children. Therefore, the property, which the joint family had acquired, is coparcenary.

Needless to mention that every coparcener from the date of his birth acquires right in coparcenary property. The plaintiffs, being grandsons of Late Nand Lal Bhagat have acquired coparcenary right, which cannot be taken away by any other coparcener. Even their father has no right to relinquish or renunciate their coparcenary right from such property.

Learned counsel has submitted that Ranjeet Lal Bhagat (Defendant No. 9), who is father of the plaintiffs, since did not protect the interest of the plaintiffs, he has also been made party to the suit. In the year 1969, father of the plaintiffs was posted as Chief Judicial Magistrate, Gopalganj. In course of his employment, he always remained out from the district of Ranchi. Ranjeet Lal Bhagat, being the youngest brother, was always obedient and he was acting under the influence of his elder brother-Basant Lal Bhagat. The three brothers, namely, Basant Lal Bhagat, Santosh Lal Bhagat and Mahendra Lal Bhagat hatched out a conspiracy to eliminate Ranjeet Lal Bhagat from Schedule-D property and they had made out sketch plan according to their interest and wish to partition Schedule-D property. Ranjeet Lal Bhagat was put under impression that a family settlement is required for peace of the family and for that his consent is required and a power of attorney, drafted at Ranchi, was sent to Gopalganj for its execution. Ranjeet Lal Bhagat followed the instruction of his elders and executed power of attorney in favour of elder brother-Basant Lal Bhagat. Fraudulent intention was prevailing in the mind of Basant Lal Bhagat and rest of the brothers and they used the said power of attorney for the purpose of relinquishment made by Ranjeet Lal Bhagat in favour of Basant Lal Bhagat in respect of property under Schedule-D. There was misrepresentation of facts and fraud practiced by the defendants and, therefore, the plaintiffs could not be debarred from getting their coparcenary right in Schedule-D property and they have rightly claimed their share in the said property.

27. On the other hand, learned counsel appearing for the defendants have stated that no fraud was practiced nor there was any misrepresentation. It is incorrect to say that the father of the plaintiffs under the influence of Basant Lal Bhagat failed to protect the interest of the plaintiffs. It is not that only Ranjeet Lal Bhagat had given power of attorney to Basant Lal Bhagat, who was authorized to prepare deed of family settlement, rather rest of the brothers, namely, Santosh Lal Bhagat (Defendant No. 7) and Mahendra Lal Bhagat (Defendant No. 8) had also executed power of attorney in favour of elder brother-Basant Lal Bhagat. The aforesaid power of attorney has been marked as Exts. B, B/1 and C, executed by Ranjeet Lal Bhagat, Santosh Lal Bhagat and Mahendra Lal Bhagat, respectively. Therefore, the aforesaid brothers had given the authority to elder brother-Basant Lal Bhagat to act upon their behalf. The plaintiffs have not filed the deed of family settlement, rather the defendants have proved it as Ext. A. For execution of Ext. A, Basant Lal Bhagat had appeared for himself and on behalf of his three brothers (Defendant Nos. 7, 8 & 9) and his son-Pradeep Kumar Bhagat (Defendant No. 1). At the relevant point of time, grandfather of the plaintiffs-Late Nand Lal Bhagat was alive and he also appeared and signed the deed of family settlement (Ext. A).

28. I have considered the rival submissions and perused the relevant evidences and documents available on record. Father of the plaintiffs was a Judicial Officer and he was posted as Chief Judicial Magistrate, Gopalganj. It was not that he was unaware about legal consequences against execution of power of attorney which he had given in favour of elder brother-Basant Lal Bhagat. It is also not the fact that only Defendant No. 9 had given authority to elder brother-Basant Lal Bhagat, rather remaining two brothers-Defendant No. 7 and Defendant No. 8 had also authorized the elder brother to represent them and take appropriate decision for preparing deed of family settlement. According to the plaintiffs, Late Nand Lal Bhagat was also alive and being the head of the family, he had appeared himself and subscribed the settlement arrived at between the brothers and their family. Ranjeet Lal Bhagat is still alive. As per the evidence available on record, he has been living with the plaintiffs. He had every knowledge about the litigation prevailing in the form of Title Partition Suit No. 86 of 1988 and subsequent to F.A. No. 379 of 1991(R). He did not choose to appear either before the Trial Court or before the Appellate Court to raise his grievance or to say that he had executed a power of attorney either under misrepresentation or under fraud practiced against him. The admitted evidence on record further indicates that after the family settlement, another partition between Late Nand Lal Bhagat

and his sons had taken place in the year 1971. In that very partition, father of the plaintiffs appeared and acquired the share allotted to him. He was acquainted with the execution of the deed of settlement, but he did not raise his voice and the deed of settlement was given effect to. Defendant Nos. 1 to 5(a), Defendant No. 7 and 8 acquired respective portion of Schedule-D property settled in their favour. Thereafter, portion of the property, which was allotted to Late Nand Lal Bhagat, under partition held in the year 1971, was mutually partitioned amongst descendants of Late Basant Lal Bhagat and Defendant Nos. 7, 8 and 9. Again father of the plaintiffs did not make any claim in Schedule-D property. The admitted evidence on record suggests that some litigation cropped up between Ranjeet Lal Bhagat and Santosh Lal Bhagat and for that a money suit was filed in the year 1988, bearing Money Suit No. 25 of 1988. It has also come on record that Ranjeet Lal Bhagat has filed a Title (Partition) Suit No. 157 of 1987, but he did not pursue the same and withdrew it.

By referring aforesaid facts available on record what I mean to say is that father of the plaintiffs (Defendant No. 9) never challenged the deed of family settlement nor made any claim over Schedule-D property. In the circumstances, the argument advanced that deed of family settlement with respect to Schedule-D property was prepared by keeping the Defendant No. 9 under misrepresentation or by practising fraud against him has no leg to stand and the same stands rejected.

29. The next argument advanced was that father of the plaintiffs did not protect their interest in the coparcenary property. The documents and evidences available on record roaringly prove that Defendant No. 9 was not living as silent expectator in the family. On every occasion he had exercised his right and availed the share allotted to him. The property, pertaining to Schedule-B, situated at Old Commissioner Compound, acquired in the year 1934 by Nand Lal Bhagat, was partitioned between Late Nand Lal Bhagat and his four sons and they had been allotted their respective shares to which they had acquired and had been enjoying peaceful possession over the same. Schedule-C, which is part of Schedule-B property, has been left for common use, as it was not divisible. Certain specific arrangements were made for southern block of Schedule-B property in the partition held in the year 1968, but the brothers were not satisfied and they amicably decided to have their independent occupation. The four brothers, including father of the plaintiffs, did necessary modification and alteration to have their independent occupation in that southern block. It is admitted that lower portion was divided in two units and, accordingly, upper portion was also divided in two units and each unit was occupied by each brother, including Defendant No. 9, father of the plaintiffs. The Defendant No. 9 was always vigilant about his share in the property and he had been enjoying the portion allotted to him. The evidence led by defendants suggest that Defendant No. 9 before his retirement carried out necessary repair in the portion allotted to him, pertaining to Schedule-B property. He was all along taking care of the property fell in his share. The evidences adduced by the defendants further go to

show that Late Nand Lal Bhagat was having more trust on his youngest son-Ranjeet Lal Bhagat (Defendant No. 9). He was authorized to look after other properties, situated at Village Jaspur, Baxidih and Sahera, falling within Ormanjhi Block, described in Schedules-F, G & H. The defendants by adducing evidence have pointed out that accounts of agriculture income was placed by the Defendant No. 9 till 1971-72, but after the death of Nand Lal Bhagat, he had stopped placing details of amounts earned from agriculture income. Not only that he had sold portion of those property to different persons and the defendants have disclosed the names of purchasers and sale deed numbers. Those properties were sold by Defendant No. 9 without having consent from other coparcener. This fact has not been controverted by Defendant No. 9, who did not appear in the suit or in the appeal. The plaintiffs have also failed to discard that part of evidence adduced by the defendants. The admitted evidence on record is that Defendant No. 9 purchased six Kathas of land in the name of Plaintiff No. 1 in the year 1984 at Ashokpuram, within Mohalla Ashok Nagar. Admittedly, the plaintiffs were not having independent income at that point of time, because the Plaintiff No. 2 was a student and Plaintiff No. 1 enrolled as an advocate only in the year 1985. The plaintiffs and Defendant No. 9 constructed a house on the said plot, which is under exclusive occupation of the plaintiffs and Defendant No. 9. The Defendant Nos. 7 and 8 have also made averments in their written statement to the effect that the property situated at Ashokpuram, purchased by Defendant No. 9 in the name of Plaintiff No. 1, was purchased from their independent income as well as from the consideration amount which Defendant No. 9 had collected after selling the land pertaining to village Jaspur, Baxidih and Sahera. The Defendants have prayed to include that property for deciding their share, but it was not included in the schedule of property in the Trial Court.

30. Since the plaintiffs have confined their argument to the partition of Schedule-D property, I do not feel inclined to give opinion in respect of partition of other properties, but to answer the question that Defendant No. 9, father of the plaintiffs, had not protected the interest of plaintiffs, it was necessary to mention details of other properties acquired by Ranjeet Lal Bhagat.

Sum and substance is that Defendant No. 9 was always cautious and vigilant to have his share in the joint family property whenever partition had taken place. He had been taking extra interest, which is apparent from the evidence that he had sold some properties pertaining to village Jaspur, Baxidih and Sahera. In that view of the matter, the argument that the father of the plaintiffs had not protected the interest of the plaintiffs is also rejected.

31. It was argued, there was no dispute in the family. Therefore, creation of deed of family settlement for partition of Schedule-D property was unwarranted. Pradeep Kumar Bhagat (Defendant No. 1) was wrongly added as a party to that deed of family settlement. Though, the relinquishment alleged to have been made by Ranjeet Lal Bhagat was obtained by misrepresenting the fact, even then relinquishment/renouncement made by him shall not be binding upon the

plaintiffs. Relinquishment by any of the coparcener cannot be made in favour of any particular coparcener.

The property under Schedule-D was purchased from the income of Hindu Undivided Family (HUF) and the contribution made by earning members of the family. Since it is a joint family property, the appellants cannot be debarred from getting their share in the property and execution of deed of family settlement cannot take away their coparcenary right. According to Article 262 of Mulla Hindu Law, a coparcener may renounce his interest in the coparcenary property in favour of other coparceners as body, but not in favour of one or more of them. If he renounces in favour of one or more of them, the renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener or coparceners in whose favour the renunciation is made. He further referred Ext. 1/G and submitted that the defendants themselves have admitted that Schedule-D property was purchased from the contribution made by earning members of the family and also from the income of the joint family. Since it was a joint family property, the finding of the Trial Court is illegal and that requires to be set aside.

32. To answer these questions raised by the appellants, the pleadings of the parties and evidences adduced on their behalf are required to be discussed.

The plaintiffs have made out a case that their great grandfather-Lachhan Ram Bhagat was a tenure holder and he was having acres of acres of land within the district of Ranchi. No chit of paper either produced or proved by the plaintiffs to show that any of the property was ever recorded in the name of Lachhan Ram Bhagat. Since no document relating to property, if any, held by Lachhan Ram Bhagat has been brought on record, question of inheritance of such property by the descendants of Late Lachhan Ram Bhagat does not arise at all. It is also not indicated, as to what was the property left by Late Lachhan Ram Bhagat when he died in the year 1956. The pleadings and evidences available on record indicate that whatever the property was acquired by the family that was acquired from the era of Late Nand Lal Bhagat.

The properties pertaining to village Jamundag, Jaspur, Baxidih and Sahera found recorded in the name of Nand Lal Bhagat and that is not disputed by any of the party. The properties described in Schedule-B was also acquired in the name of Nand Lal Bhagat while he was in administrative service. It is not disclosed, what contribution was made by Lachhan Ram Bhagat or what amount from the joint family fund was utilized by Nand Lal Bhagat for purchasing Schedule-B property. The pleadings of the parties are completely silent about any contribution made by Lachhan Ram Bhagat in purchase of properties pertaining to Schedule-B. The pleadings of the parties are also silent about any joint family fund, created by the coparcener. It is not apparent what was the savings from the agriculture income and who had been maintaining the record.

Needless to mention, four sons of Nand Lal Bhagat were well settled and they were having their independent income. It is also admitted that all four sons of

Nand Lal Bhagat were residing with their family at the place of their postings. Again I would like to observe that aforesaid four sons of Late Nand Lal Bhagat had not been sending any amount from their earnings in any account as joint family fund. They were independently enjoying their earnings.

The case of the defendants is that the property pertaining to Schedule-D was purchased from their independent earnings and a coparcener has right to create separate property from his independent income. Article 220 of Mulla Hindu Law speaks about separate and self acquired property. A Hindu, even if he be joint, may possess separate property. Such property belongs exclusively to him. No other member of the coparcenary, not even his male issue, acquires any interest in it by birth. He may sell it or he may make a gift of it, or bequath it by will, to any person he likes. It is not liable to partition, and, on his death intestate, it passes by succession to his heirs, and not by survivorship to the surviving coparceners.

The expression ''male issue'' means and includes sons, son''s sons and son''s son''s sons.

It is settled law that a father, who is joint with his sons may sell his self-acquired property, even though such property may be immovable. The father may sell such property without the concurrence of the sons. He has authority to make unequal distribution of such property among his sons and he may also make a gift of it to one son to the entire exclusion of the other son.

33. I have already observed that pleadings and evidences are completely silent about any property possessed by Late Lachhan Ram Bhagat. The evidence on record is also silent that Nand Lal Bhagat and his four sons had acquired any ancestral property either left by Lachhan Ram Bhagat or their forefather. The story of creation of property commenced from the age of Nand Lal Bhagat. Even assuming it to be correct that Schedule-D property was purchased from the contribution of Nand Lal Bhagat and his four sons from their earnings, the property will be considered as their self acquired property. There is no evidence on record that joint family fund was used against purchase of Schedule-D property. The plaintiffs have placed reliance on a letter written by Mahendra Lal Bhagat along with its enclosures, which was marked as Ext. 1/G with objection. The said letter has been proved by the Plaintiff No. 1. There are three enclosures to the said letter, which have also been marked as Ext. 1/G. The first one appears to be a typed copy of the letter written by Mahendra Lal Bhagat to the Income Tax Officer, Ward-A, Salary Circle, Jamshedpur. The next one is copy of a letter issued to Mahendra Lal Bhagat from P. Nath, Income Tax Officer. The third one is a typed copy of the letter addressed to the Income Tax, Salary Circle, Jamshedpur by Mahendra Lal Bhagat. These enclosures to Ext. 1/G have got separate identity and these documents have not been proved in accordance with law. Plaintiff No. 1 in his deposition has not stated as to how and when these letters were typed, who had typed it and how the plaintiff could learn about preparation of these letters. Even the signature appearing on that document has

not been proved separately by the plaintiffs'' witnesses. The remaining two enclosures also appear to be typed copies and, those two enclosures do not bear the signature of executant. Legally, the aforesaid three enclosures have not been proved by the plaintiff and he has simply proved the letter written by Mahendra Lal Bhagat to Defendant No. 9. The identity of enclosures to Ext. 1/G are completely different and those letters have not been proved in accordance with law and the same should not have been marked as Ext. 1/G. Since enclosures of documents to Ext. 1/G have not been proved in accordance with law, the contents cannot be read in evidence. The Trial Court without having evidence has wrongly marked all the enclosures as Ext. 1/G.

Learned counsel has submitted that once the document is marked as exhibit, the party cannot raise objection at the stage of appeal. In this context, he has relied upon the decision of the Hon''ble Supreme Court, reported in Javer Chand and Others Vs. Pukhraj Surana, AIR 1961 SC 1655 : (1962) 2 SCR 333 .

I have gone through the judgment cited above, but the fact and legal proposition appearing in that case are not available in the case at hand. Learned counsel has also relied upon the judgment reported inGopal Das and Another vs. Sri Thakurji and OthersAIR 1943 83 (Privy Council) . The aforesaid letter with its enclosures has been marked as exhibit with objection. Marking of enclosures as exhibit by the learned Trial Court is wrong. The aforesaid documents should not have been given same exhibit mark i.e. Ext. 1/G. The document cannot be said to have been proved only by its presentation. Unless the document is not proved in accordance with law, it shall not be read in evidence. Since enclosures have not been proved in accordance with law, the contents cannot be read in evidence. The judgments cited above are not in that perspective and, therefore, the plaintiffs cannot take the benefit.

34. If for the argument shake or better appreciation of the matter, if I read the contents that goes to show, the property which was purchased in the name of Defendant No. 8-Mahendra Lal Bhagat, was questioned by Income Tax Department. To answer the queries made by Income Tax Department, explanation was extended by Mahendra Lal Bhagat. He had made it clear, though the property was purchased in his name, but it was purchased from the contribution made by all four brothers. To be more sure in his explanation for the purpose of getting relief, he has gone to the extent of saying that income of joint family was also used for purchasing the aforesaid property. Now, the enclosures to Ext. 1/G, which have not been duly proved in accordance with law, cannot be given much weightage compare to the evidence and documents, available on record.

It is indicated above that the evidence on record is completely silent about any joint family fund. Schedule-D property was purchased from contributions made by Nand Lal Bhagat and his four sons. The deed of family settlement was prepared in the year 1969 and it was acknowledged by Nand Lal Bhagat and his four sons, who were alive at that point of time. In that deed of family settlement, Pradeep Kumar Bhagat (Defendant No. 1), son of Basant Lal Bhagat, was also a party and he had been allotted half of the share in the property; one fourth share of his father-Basant Lal Bhagat; one fourth purchased by his father from Ranjeet Lal Bhagat (father of the plaintiffs), and remaining one fourth share each was given to rest two brothers-Santosh Lal Bhagat and Mahendra Lal Bhagat. This deed of family settlement is a registered document and that has also been given effect to. The parties to whom portion of Schedule-D property was allotted secured their independent and exclusive possession. They got their names entered in the record of municipal corporation and separate Holding Nos. 1458, 1458B and 1458C were allotted to them. They got the building plan approved and constructed a house thereon from their independent earning. At no point of time, father of the plaintiffs raised objection and he had acknowledged the exclusive possession and absolute right of Defendant Nos. 1, 7 & 8 over the portion of Schedule-D property.

35. Article 246(B) of Mulla Hindu Law speaks about family arrangement or family settlement and the weightage is given by Court to such family settlement. It is stated that to ensure peace and goodwill among the family members, the family settlement is being made. This does not rest on any special rule of Hindu Law, but flows from general principles and policy of law. It is governed by a special equity peculiar to itself and where the terms are fair, taking into consideration the circumstances of the case, the Court makes every effort to recognize and sustain it. K.V. Narayanan Vs. K.V. Ranganandhan and Others, AIR 1976 SC 1715 : (1977) 1 SCC 244 : (1976) 3 SCR 637 : (1976) 8 UJ 343 . The members of a Joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. It is not necessary that arrangement should be amongst all members of the family arrayed one against the other. The prime factor is that it should be in the interest of the family. A family arrangement or settlement occupies a position different from a commercial one. Such a settlement generally meets with the approval of the court, as such a settlement or arrangement is governed by distinct equitable principles, where the settlement is fair. Such a settlement should not be put to risk when it enures for the benefit of the family. A family arrangement must be entered into by all parties thereto. The concept of family arrangement has now been accepted in our country and the Supreme Court has generally taken a broad view of the matter and leaned heavily in favour of upholding any such arrangement. The enjoyment of properties by different members of the joint family, who have been put into possession pursuant to a family arrangement, operates as an estoppel against such member and cannot be jeopardized by a member resiling from the arrangement, more particularly when the arrangement had been entered into a considerable time ago. Smt. P.N. Wankudre Vs. C.S. Wankudre and Others, AIR 2002 Bom 129 : (2002) 3 BomCR 21 : (2002) 1 BOMLR 613 .

In the case at hand, the deed of family settlement was created with the consent and acknowledgment of Nand Lal Bhagat and his four sons. According to the defendants, the property was purchased from contributions of four brothers. According to the plaintiffs, Nand Lal Bhagat, father of the plaintiffs, had also contributed and joint family fund was also used. He had also raised a point that there was no need to create any deed of family settlement because the family was living under peace and there was no disturbance or annoyance between coparceners. In this context, it is necessary to mention here that prior to this deed of family settlement, partition between coparceners had taken place in respect of Schedule-B property in the year 1968 and the differences prevailing between the family members were the reason behind partition of Schedule-B property. Late Nand Lal Bhagat was a learned and wise man. To avoid future litigation with regard to Schedule-D property, the deed of family settlement was initiated by late Nand Lal Bhagat. During his lifetime, he made arrangement between four sons for Schedule-D property. According to the evidence on record, Ranjeet Lal Bhagat had got his contributions returned from Basant Lal Bhagat and the share of Ranjeet Lal Bhagat was acquired by Basant Lal Bhagat and Basant Lal Bhagat had given his one fourth share and one fourth share which he had purchased from Ranjeet Lal Bhagat to his son Pradeep Kumar Bhagat.

Needless to mention that Ranjeet Lal Bhagat till the date has neither challenged nor raised objection against execution of deed of settlement (Ext. A).

36. There is thin difference between joint family property and joint property. If the property is acquired with the contributions of the coparncers and the incomes or savings from joint family fund or from the ancestral property, that property will be a joint family property in which each and every coparcener has a right to claim. A joint property is being created by investment made by individuals from their independent earning.

It is clear from the evidence available on record that Schedule-D property was purchased in the name of Mahendra Lal Bhagat from the contributions made by four sons of Late Nand Lal Bhagat. In course of deposition, it was admitted that part of the contribution was also made by Nand Lal Bhagat.

I have already held that all the properties were created from the age of Nand Lal Bhagat. The property under Schedule-D was also purchased from the contributions made by Nand Lal Bhagat and his four sons and the aforesaid property was distributed by executing deed of family settlement in the year 1969 and on that very date of execution of deed of family settlement, Nand Lal Bhagat and his four sons were alive and they had participated and acknowledged the same. There is no evidence that any family fund was created or amount from that family fund was utilized for purchasing Schedule-D property. Therefore, I have no hesitation to hold that it was a joint property of Nand Lal Bhagat and his four sons to which they had partitioned during their lifetime according to their choice and will and that cannot be challenged by the descendants of any of the parties, who entered into that settlement.

In view of the discussions made above, Issue No. V in respect of Schedule-D property is decided in favour of the respondents/defendants and against the plaintiffs/appellants and the findings of the Trial court is hereby upheld. In course of argument, since the appellants confined their grievance with respect to partition of Schedule-D property in this appeal and they did not advance argument to challenge the finding of the Trial Court in respect of Schedule-C and Schedule-E of the plaint, the findings of the Trial Court in respect of Schedule-C and Schedule-E properties are also upheld.

37. The plaintiffs have initially sought partition for Schedules-C, D & E properties, but after considering the averments made in the written statement filed by the defendants, Schedules-F, G & H properties have been included to the plaint. To decide the unity of title and possession of the parties over the suit land, the Trial Court has framed Issue No. III. It is admitted case that Schedule-B property was partitioned in the year 1968. The family arrangement in respect of Schedule-D property was made in the year 1969, partition for land appertaining to village Jamundag, Dulmi, Bundu and Galan had taken place in the year 1971 by memorandum of partition and the parties have been enjoying their peaceful possession over their respective shares allotted to them. They have been coming in continuous possession over the same to the knowledge of each and every member of the family and also to the knowledge of whole world. Learned Trial Court has decided the issue in favour of the defendants with regard to Schedule-B, Schedule-D and the memorandum of partition which have taken place in the year 1971 in respect of Schedule-E. In addition to the findings given by the learned Trial Court, I feel it necessary to bring on record that Ranjeet Lal Bhagat (Defendant No. 9) has not challenged any of the aforesaid partition, which had taken place in compliance of the aforesaid partition and family settlement.

It is admitted case of the parties that the property under Schedule-C is part of Schedule-B property, which was partitioned in the year 1968. Schedule-C corresponds to Schedule-F of the partition held in the year 1968 with regard to Schedule-B property. Schedule-C property was indivisible, which was left for common use for all coparceners. The parties have admitted that the unit which was allotted to Nand Lal Bhagat in partition held in the year 1968 is now available for partition among the coparceners. The finding of the Trial Court with respect to Schedule-C property remained unchallenged when the Court has observed that the Commissioner would see as to how the share of this property can be partitioned equally to all coparceners. Needless to mention that southern block of Schedule-B property had been amicably partitioned among four sons of Late Nand Lal Bhagat.

Learned Trial Court on admission of the parties has held that there is unity of title and possession over Schedules-F, G & H and, thus, the properties are available for partition.

In view of admissions of the parties and observations made by the Trial Court, Issue No. III needs no interference.

38. The plaintiffs have taken a plea that they were minor at the relevant point of time and their interest was not protected by their father and, therefore, they have every right to claim their share in the property and for that partition can be reopened. The disability to sue is indicated in Section 6 of the Limitation Act, 1963 and the limitation for the person suffering from disability is indicated in Article 113 of the Limitation Act. It is averred in the plaint that the plaintiffs were minor at the time of aforesaid partition and family settlement. On the date of his deposition in Court i.e. on 13.5.1990, he was aged about 32 years, the suit was filed in the year 1986. Thus, it is clear that the suit was not filed within three years from the date on which the disability ceased, meaning thereby the suit was not filed within three years from the date on which the Plaintiff No. 1 attained majority. For counting the period of limitation, Article 113 of the Limitation Act shall prevail. Furthermore, the plaintiffs have not made any claim in the plaint that by virtue of disability he could not bring the suit within time and he had not taken leave from the Court at the time of filing of the suit. The Plaintiff No. 2 has not been represented by the Plaintiff No. 1 in the capacity of next friend or guardian and no leave was taken. No pleading in this regard is available. In that view of the matter too, the suit presented by the plaintiffs appears to be barred by law of limitation. Therefore, the finding of the learned Trial Court in respect of Issue No. IV needs no interference.

39. With the above observations, the findings of the Trial Court appears to be correct. Ranjeet Lal Bhagat (Defendant No. 9) neither appeared in the suit nor in the present appeal and he did not raise his voice. He had participated in those partition and family settlement and had acknowledged and accepted the exclusive possession acquired by the parties on the portion of the land partitioned. The Trial Court has rightly held that principle of ouster and adverse possession shall also apply in such circumstances in respect of Schedules-B, D & E properties. So far properties pertaining to Schedules-C, F, G & H are concerned, the issue has been partly decided in favour of the plaintiffs. Since neither the appellants nor the respondents have challenged the findings of the Trial Court in respect of Issue Nos. I, II, VII and VIII, the findings of the Trial Court is hereby upheld.

40. Issue No. VI relates to property acquired by Plaintiff No. 1 at Ashokpuram. Before adverting any opinion, it is made clear that no defendant has filed cross appeal being aggrieved by and dissatisfied with the findings given by the learned Trial Court in respect of Issue No. VI.

Substituted Respondent No. 7(a)-Mukul Bhagat has referred Order 41 Rules 22 and 33 of the Code of Civil Procedure and cited certain judgments and submitted, even after no cross appeal is filed in a suit for partition identity of every plaintiff may be considered as that of defendant and every defendant as the plaintiff. If the Court of Appeal finds it just and reasonable, the Appellate Court may decide the issue between the appellant and appellant and between the respondent and co-respondent.

The defendants have tried to bring it on record that property purchased in the name of Plaintiff No. 1 at Ashokpuram had been acquired from the earnings of Ranjeet Lal Bhagat and also from the joint family fund. It was contended that Ranjeet Lal Bhagat (Defendant No. 9) had sold the property pertaining to village Jaspur, Baxidih and Sahera and he had used the consideration amount for purchasing the property at Ashokpuram in the name of Plaintiff No. 1. From perusal of the lower court record, it is clear that the parties had not adduced evidence in this regard and the property recorded in the name of Plaintiff No. 1 at Ashokpuram has not been included in the plaint for its partition. Only Issue No. VI has been framed. In this appeal, no specific argument with regard to Issue No. VI has been raised by the respondents.

In the circumstances, the findings of the Trial Court with regard to Issue No. VI i.e. with respect to property situated at Ashokpuram, recorded in the name of Plaintiff No. 1, is hereby upheld.

41. In view of the observations and findings made above, judgment and decree dated 3rd September, 1991 passed by the learned Trial Court (decree signed on 13th September, 1991) is hereby upheld and F.A. No. 379 of 1991(R) stands dismissed.

42. F.A. No. 95 of 2007 preferred by Mukul Bhagat [Defendant No. 7(b)] and F.A. No. 107 of 2007 preferred by Saroj Bhagat [Defendant No. 1(a)] against final decree dated 17th March, 2007 passed by learned Sub Judge-V in connection with Partition Suit No. 86 of 1988 have become infructuous in view of the fact that the final decree was prepared in compliance of the judgment dated 9th September, 2004 passed by this Court in F.A. No. 379 of 1991(R).

Since judgment dated 9th September, 2004 passed in F.A. No. 379 of 1991(R) has been set aside by the Hon''ble Apex Court, the aforesaid final decree dated 17th March, 2007 has become infructuous. Consequently, F.A. Nos. 95 & 107 of 2007 have become infructuous.

Accordingly, F.A. Nos. 95 & 107 of 2007 also stand dismissed being infructuous.

43. In view of the order passed in F.A. No. 95 of 2007, I.A. No. 3135 of 2012 has become infructuous and the same stands rejected.

