

(2016) 05 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1224 of 1988 (O&M)

Sukhbir Kaur

APPELLANT

Vs

Balwant Singh

RESPONDENT

Date of Decision : 25-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 23 Rule 3

Contract Act, 1872 — Section 215

Transfer of Property Act, 1882 — Section 52

Citation : (2017) 1 CivCC 555 : (2016) 2 LAR 704 : (2016) 4 PLR 593

Hon'ble Judges : Mr. Surinder Gupta, J.

Bench : Single Bench

Advocate : Mr. P.S. Punia, Senior Advocate with Ms. Harveen Kaur, Advocate, for the Appellant; Mr. H.P.S. Sandhu, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Mr. Surinder Gupta, J.—This is second appeal filed by Sukhbir Kaur, plaintiff against the judgment and decree passed by learned Additional District Judge, Faridkot whereby the judgment and decree passed by the then Sub Judge 1st Class, Gidderbaha, decreeing the suit of plaintiff and her father Dalip Singh for declaration that she is owner of land measuring 197 kanals 11 marlas as fully defined in head note of the plaint situated in village Channu, District Faridkot and that the judgment and decree passed in civil suit No. 553 of 04.08.1983 decided on 05.08.1983 is illegal and not binding on her right with consequential relief of possession of land measuring 166 kanals 1 marla, was set aside and her suit was dismissed with costs throughout.

2. Case of the plaintiff in brief is that suit land measuring 197 kanals 1 marla situated in village Channu, District Faridkot was joint Hindu family property of Dalip Singh. He had adopted Sukhbir Kaur after observing all the formalities and has been keeping and treating her as his daughter. The suit land was given by Dalip Singh to Sukhbir Kaur, out of love and affection and for the services

rendered by her. A year before filing of the suit (suit was filed on 26.08.1983), Dalip Singh also agreed to get the mutation of the suit land sanctioned in favour of Sukhbir Kaur. When Dalip Singh did not get the mutation sanctioned in her name, she filed suit bearing No.493 against Dalip Singh in the Court of Sub Judge, Girdderbaha on 19.07.1983 in which Dalip Singh plaintiff appeared in compliance of summons received by him on 10.08.1983 and admitted her claim, as a result of which judgment and decree dated 10.08.1983 declaring Sukhbir Kaur as owner of the suit land, was passed.

3. Defendant No. 1 Balwant Singh is the real maternal uncle of defendant No.2 Gurlal Singh-general attorney of plaintiff Dalip Singh. On coming to know of the suit filed by Sukhbir Kaur, they connived and conspired to defraud the plaintiff. In pursuance of their conspiracy, Balwant Singh defendant filed a suit on 04.08.1983 against Gurlal Singh as attorney of Dalip Singh alleging himself to be owner of 166 kanals 1 marla of land on the basis of alleged family partition. On the next day, both i.e. Balwant Singh and Gurlal Singh appeared in the Court and Gurlal Singh, as attorney of Dalip Singh, in order to deprive the plaintiffs of their right to own and possess the suit land fraudulently and collusively filed written statement in the Court admitting the claim of Balwant Singh, defendant No. 1. The Court, unaware of the true state of facts and pendency of previously instituted suit by Sukhbir Kaur against Dalip Singh regarding the suit land, passed the decree dated 05.08.1983 in favour of defendant No. 2 at the instance of defendant No. 1 and they got mutation of 166 kanals 1 marla sanctioned on the basis of decree passed by the Court.

4. Plaintiff has alleged that the decree dated 05.08.1983 passed in civil suit No. 553 dated 04.08.1983 was fraudulently obtained by defendant No. 1 in collusion with defendant No. 2 and is against law, facts, null, void, ineffective and inoperative against the rights of the plaintiff on the grounds pleaded in para 6 of the plaint as follows:-

"(i) That Gurlal Singh defendant had been appointed Mukhtiar-a-aam only to manage and look after the properties effectively. He had never been authorised even allegedly to suffer any decree in any manner. His mukhtiarnama had also been cancelled before that date and Gurlal Singh had been informed of the cancellation in the village and ultimately cancellation was got registered also.

(ii) That the factum of previously instituted suit No. 493 of 19.07.83 and pendency thereof was not brought to the notice of the court.

(iii) That the impugned decree is hit by the principle of lis pendens.

(iv) That there had never been any such alleged family partition (sic in) which any land might have been given to Balwant Singh, defendant.

(v) That Balwant Singh defendant was never in possession of any land by way of any such alleged family partition at any point of time.

(vi) That the decree is collusive.

(vii) That Balwant Singh defendant had no right in the suit land nor to any alleged partition.

(viii) That there had been a culpable haste and skipping over the procedures. These also are a pointer to the criminal and guilty intention of the defendants."

5. On the basis of mutation in his favour, defendant No.1 illegally and forcibly took possession of land measuring 166 kanals 1 marla. They were requested to admit the claim of plaintiff and her title over the suit land but in vain. Hence, this suit.

6. In the written statement filed by Balwant Singh defendant No. 1 (though it is mentioned as of defendant No. 2), he contested the claim of plaintiff, inter-alia pleading that plaintiffs have no locus standi to file the suit and have not given the particulars of fraud, misrepresentation, breach of trust etc. It was alleged that Dalip Singh constituted a joint Hindu family and land in dispute was also joint Hindu family property of Dalip Singh. In the family settlement between Dalip Singh and Balwant Singh, land measuring 166 kanals 1 marlas out of suit land was given to Balwant Singh and possession was also given to him. It was denied that Sukhbir Kaur was ever adopted by Dalip Singh or he ever treated her as his daughter. The story of adoption has been propagated by Sukhbir Kaur and her husband only to grab the property of Dalip Singh and his wife. The alleged adoption deed, if any, is forged and fabricated document. As Sukhbir Kaur was never adopted by Dalip Singh, the question of family settlement and bequeathing of entire land measuring 197 kanals 1 marlas on her does not arise and she has no locus standi to file this suit. The decree dated 10.08.1983 in favour of Sukhbir Kaur was against law and fact, illegal, void and ineffective against the rights of the defendants. Sukhbir Kaur or Dalip Singh were not in actual possession of the suit land on the day of institution of the suit i.e. 19.07.1983. In the suit filed by defendant No.1 Balwant Singh on 04.08.1983, claiming possession and title of land measuring 166 kanals 1 marla on the basis of family settlement with Dalip Singh, Gurlal Singh power of attorney of Dalip Singh admitted his claim on 05.08.1983 and a legal and valid decree was passed. Balwant Singh is son of Jang Singh, real brother of Dalip Singh, as such, there was no collusion between the defendants. Gurlal Singh defendant No. 2 being the attorney of Dalip Singh was fully authorised and competent to transfer his land by suffering the consent decree. His power of attorney was cancelled much after the passing of decree. All other averments of plaintiff were contested, controverted and denied.

7. Defendant No. 2 Gurlal Singh also filed separate written statement contesting the claim of plaintiff with the similar pleas as taken by defendant No. 1 in his written statement.

8. Plaintiff re-asserted his case in the replication and denied that Balwant Singh ever constituted joint Hindu family with Dalip Singh or any family settlement took place with him at any point of time.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the suit is not properly valued for the purpose of court fee? OPD
- (2) Whether the plaintiff has no locus-standi to file the present suit? OPD
- (3) Whether the suit is barred by Rule 3 Order 23 CPC? OPD
- (4) Whether the suit is not maintainable in the present form? OPD
- (5) Whether decree dated 5-8-83 passed in civil suit No. 583 dated 4-8-83 titled Balwant Singh v. Dalip Singh is null, void, ineffective and inoperative against the rights of the plaintiff? OPP
- (6) Whether the plaintiff is entitled to the declaration prayed for? OPP
- (7) Whether the plaintiff is entitled for possession of 166k-1m of land? OPP
- (7-A) Whether the suit is bad for non-joinder of necessary parties? OPD
- (8) Relief.

9. Learned Sub Judge 1st Class, Gidderbaha recorded findings on issues No. 1 to 7-A in favour of plaintiff and decreed the suit declaring plaintiff Sukhbir Kaur, owner of land in suit measuring 197 kanals 1 marla. The decree dated 05.08.1983 in favour of Balwant Singh declaring him owner of 166 kanals 1 marlas out of suit land was held as illegal, null, void, ineffective and inoperative against the rights of plaintiffs. Learned Sub Judge also allowed the decree for possession of land measuring 166 kanals 1 marla of land in possession of defendant No. 1. Learned Sub Judge while decreeing the suit, observed that Gurlal, who had suffered the decree on behalf of Dalip Singh in his capacity as his attorney, was not competent to make statement on behalf of Dalip Singh as the power of attorney was given to him for the management of the land of Dalip Singh which could be used for benefit of Dalip Singh and not to his detriment without his consent. Decree dated 05.08.1983, passed in civil suit filed by Balwant Singh on 04.08.1983, was held as fraudulent and that suit was hit by the principle of lis pendens as the suit already filed by Sukhbir Kaur regarding the same land, was pending on the date of filing of the suit by Balwant Singh. The adoption deed dated 27.06.1983 executed by Dalip Singh was also held as a Will of Dalip Singh vide which after his death, property owned by him has devolved upon plaintiff Sukhbir Kaur. It was observed that though Balwant Singh sued Dalip Singh through attorney Gurlal in the suit filed by him, no summons were ever issued or served on Dalip Singh and Gurlal Singh of his own appeared on 05.08.1983 and suffered a decree by making statement in the Court. Adoption of Sukhbir Kaur vide adoption deed was held as valid and adoption deed dated 27.06.1983 was held as memorandum of adoption. The decree in favour of Balwant Singh required compulsory registration and was also held as bad under Section 215 and 216 of Contract Act.

10. Not satisfied, Balwant Singh filed appeal which was accepted by the first Appellate Court i.e. Additional District Judge, Faridkot. Learned first Appellate Court, while setting aside the judgment and decree passed by learned Sub

Judge, observed as follows:-

(i) Power of attorney (Ex.D4) dated 01.09.1981 conferred power to alienate, gave statement in Court and the decree suffered by Gurlal Singh was a sort of alienation of property of Dalip Singh, as such, was an act within the purview of authority conferred on him under the power of attorney.

(ii) Decree dated 05.08.1983 is not hit by the principle of lis pendens. Rather the decree earlier in time operates as estoppel against plaintiff.

(iii) The suit of the plaintiff is not maintainable as the decree cannot be avoided by separate suit. Reliance was placed on the observations in case of N.K. Mohd. Sulaiman Sahib v. N.C. Mohd. Ismail Saheb and others AIR 1966 SC 792.

(iv) The decree did not require compulsory registration.

(v) Section 215 and 216 of the Contract Act cannot be looked into in this case being not pleaded.

(vi) Adoption of Sukhbir Kaur was illegal as the adoption of a female was not permitted under Hindu law at the time of adoption as per the adoption deed and ceremonies of adoption were also not proved. Moreover, in the educational record of Sukhbir Kaur, name of her natural father is mentioned.

(vii) while not disputing the legal proposition of law that adoption deed may be considered as a Will but it was observed that as per recital in the adoption deed, it cannot be considered as a Will in favour of Sukhbir Kaur, who is not proved to be adopted by him. It was also observed that plaintiff has waived her right which occurred to her vide decree dated 10.08.1983.

11. I have heard learned counsel for the parties and have perused the paper book and record of the Courts below with their active assistance.

12. The following substantial questions of law arise for determination in this appeal:-

(i) Whether the finding of first Appellate Court that adoption deed in this case was a Will of Dalip Singh, but Sukhbir Kaur cannot take any benefit of this Will as she is not proved to be his adopted daughter, is based on law and fact of this case?

(ii) Whether judgment and decree dated 05.08.1983 is a legal and valid decree suffered by Dalip Singh or the same is result of fraud and collusion between Balwant Singh and Gurlal Singh?

(iii) Whether Gurlal Singh was competent to suffer the decree on behalf of Dalip Singh, being his attorney?

(iv) Whether the judgment and decree dated 05.08.1983 required registration?

(v) Whether the suit is barred under Order 23, Rule 3 CPC?

(vi) Whether the respondents-defendants are competent to challenge the adoption deed executed by Dalip Singh?

(vii) Whether the decree dated 05.08.1983 was hit by the principle of lis pendens?

(viii) Whether the suit was bad for non-joinder of necessary parties?

13. Before proceeding further, it will be relevant to take note of the fact that defendant No.1 has claimed 166 kanals 1 marla of land owned by Dalip Singh on the basis of judgment and decree dated 05.08.1983 passed in his favour by then Sub Judge, Gidderbaha. Dalip Singh was owner of 197 kanals 11 marlas of land and he had suffered decree dated 10.08.1983 in favour of Sukhbir Kaur pertaining to his entire 197 kanals 11 marlas of land. There is no challenge to the claim of plaintiff Sukhbir Kaur over 31 kanals 10 marlas out of the suit land which by virtue of decree dated 10.08.1983 vest in Sukhbir Kaur, as such, her suit could not be dismissed by first Appellate Court in entirety. At the most, first Appellate Court could dismiss her suit partly but it proceeded to accept the claim of defendant No.1 with regard to 166 kanals 1 marla of land and dismissed the suit of plaintiff, thereby divesting her of her title over 31 kanals 10 marlas out of suit land.

(i) Whether the finding of first Appellate Court that adoption deed in this case was a Will of Dalip Singh, but Sukhbir Kaur cannot take any benefit of this Will as she is not proved to be his adopted daughter, is based on law and fact of this case?

14. Learned first Appellate Court agreed with this proposition of law that as to whether the adoption deed is a Will, is a question based on facts of each case. For this purpose, intention of the executor is to be seen.

15. It is a settled proposition of law that it is to be seen from the recital in adoption deed as to whether testator merely intended to give effect to his desire to adopt or he also made testamentary disposition in adoption deed to settle inheritance of his property after death. A Division Bench of this Court in case Mohammad Shaffi v. Tallai Ram and others, 1985(1) PLR 142, has observed in para 5 and 6 of the judgment as follows:-

"5. With respect to the learned Judge, we are of the view that Modan Singh's case AIR 1973 Punj and Har 122 does not lay down the correct law. The intention that is to be gathered from a document of the kind is as to whether the executor of the document merely intended it to be an adoption deed, in other words, merely intended to give effect to his desire to adopt a son or he also intended to settle his property upon him after his death.

6. If in an adoption deed the executor of the deed rests content by merely saying that so and so is being adopted by him as his son and shall be his son and after his death shall perform Kirya ceremony like a son and shall also succeed him like a son, then such a deed cannot be construed to be a deed whereby executor

intended to make a testamentary disposition of the property in favour of the adopted son after his death by mentioning that after his death he shall succeed like a natural son, he merely spells out one of the consequences of adoption that he was making but if, on the other hand, the executor of the deed specifically mentions that the said adopted son shall inherit his property, then such a document where adoption fails has to be construed as a document effecting testamentary disposition of the property in favour of the alleged adopted son. In the present case, a perusal of the document would show that the executor has expressed his intention of bestowing his property on his son with greater surety. This fact is made evident when he got stated in that said deed :

"As adoption was not formally reduced to writing and keeping in view that uncertainty of time, I want to pronounce the above said adoption openly in order to compensate for the services rendered, having in view that after my death above said Shafi may not be confronted with any difficulty in securing my property."

In this case, we are clearly of the view that the executor of the document in question clearly intended that after his death his entire property should go to Mohammad Shaffi."

16. In case of Krishna Rao v. Sundara Siva Rao and others AIR 1931 Privy Council 109, it was observed as follows:-

"In their Lordships" opinion the document does not purport to convey anything de presenti, and further, it cannot be read either as being itself intended as an act of adoption or as being an authority to adopt. The writer, a Brahmin and a karnam, must have been well aware that the document could not of itself constitute the adoption-a formal ceremony being essential for that purpose-and its terms refer to adoption in the past tense and cannot be read as an authority to adopt in the future. Moreover, it is reasonable to assume that the writer must have been fully aware of the fact, now admitted, that no actual adoption had taken place, and also to assume that his anxiety was to do all he could to secure the succession of defendant 2 whom he had brought up and treated as a son, to his office as karnam, which would open on his death. The writer was ill at the time and died about four months later. Their Lordships are of opinion that the last sentence of the document clearly refers to succession to the writer's entire property on his death, and has testamentary effect in favour of defendant 2, who is now dead, and is represented by the appellant. The document having been executed in the mofussil, is outside the Hindu Wills Act, and requires no formalities. While it is true that a will should be registered in Book No. 3, this point is insufficient, in their Lordships" opinion, to outweigh the terms of the document itself and the other surrounding circumstances."

17. In case of Sher Singh v. Parsanni Devi and others 2006 4 RCR(Civil) page 1, a Bench of this Court when confronted with similar question, relying on the observations of Privy Council in case of Krishna Rao v. Sundara Siva Rao (supra)

and observed as follows:-

"It is, thus, clear that where a deed of adoption is held invalid or cannot be read as deed of adoption, still it can act as testamentary disposition. It can be noticed that this, however, would depend upon the wording of the document. To similar effect is the view of our Court in *Ranjit Singh v. Garja Singh*, 1967 CLJ (Punjab and Haryana) 628. This was a case where the adoption of the appellants therein had not been established and this finding had been affirmed by the District Judge in appeal. The Courts below had also concurred that the adoption deed on its language and terms could not be read operating as a gift deed or a testamentary disposition. When the case came up in Second Appeal before this Court a learned Single Judge found some inconsistency in two decisions, namely, *Ishar Singh v. Surat Singh* (1923(4) Lahore 356 and *Shib Singh v. Suba Singh* AIR 1935 Lahore 658 and referred the matter to a larger Bench. The matter that required consideration was "Where the property is non-ancestral and the adoption is found as a fact not to have been proved, can a document as a deed of adoption, Ex.D-2 in this case, operate either as a gift or a testamentary disposition by its executant ?"

18. After discussing a number of judgments on the point, it was observed in para 16 as follows:-

"16. From the facts and the judgments, as noticed and brought about above, it is clear that the issue of treating the adoption deed to be testamentary disposition or gift etc. would depend upon the recital, the language used and the circumstances surrounding the execution of the deed itself. Thus, for determining the same, one has to see the recital in the deed and the circumstances surrounding the execution thereof. The language of the deed has been established on record and is not in dispute."

19. In case of *P. Venkatachalam Chetty v. P.S. Govindasawmi Naicker* AIR 1924 Madras 605, it was observed as follows:-

"A will is defined in section 3 of the Probate and Administration Act (V of 1881), as "the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death." This document which, as I have said, is described as a gift deed purports to dispose of part of a house. The relevant portions of the document are as follows:- "You shall yourself after my lifetime use and enjoy the two rooms built on the ground of the house Municipal No. 11.....I shall myself enjoy the rent in respect of those two rooms as long as I may be alive. You shall yourself use and enjoy after my lifetime that rent and that ground and the two rooms from son to grandson and so on in succession with power to gift, mortgage, exchange and sale. No one has any right to or interest in those rooms. To this effect is the gift deed document executed and given in respect of the aforesaid two rooms and their grounds." In form, it is deed of gift and not a will, but in fact it is a declaration of the intentions of the donor with respect to her property which she desires to be

carried into effect after her death, because there is no disposal of any immediate rights of possession or any immediate interest in the property. The fact that the document purports to reserve a life interest in the property to the donor is an argument against its being a will, but as was pointed out by the Privy Council in "Thakur Ishri Singh v. Thakur Baldeo Singh, (1884) 10 Cal 792 (P.C.)" no great attention need be paid to that, because it is a frequent thing in this country to find documents which are in fact wills in terms making clear that the person disposing of the property reserves a life or immediate interest in the property. The various things to consider in arriving at a decision as to whether a document is a will or a gift are discussed in that judgment in page 800. The document before their Lordships was very different to this, but there were certain matters in common between the two which were relied upon by their Lordships, and, in particular, the fact that the document in that case did not purport to give to anybody any possessory or present interest until the death of the donor. A clear instance of a document which should be held to be a gift or a deed of settlement and not a will, is to be found in the case of *Rajammal v. Authiammal* (1909) 33 Mad.304, where the donor gave to his wife and daughter-in-law, the latter of whom was claiming maintenance, some property and provided that property during his lifetime should be held by the donees for him, that they should receive Rs.5 per month until his death and that after his death they should have the property absolutely. It was held that was a deed of gift and not a will. We have to consider the proper interpretation of this document, and I have come to the conclusion that it is really a will and not a deed of gift, and I mainly base that view on the fact that the donee gets nothing until the death of the donor. It is true that the document was handed over to the donee, but I find nothing inconsistent with its being a will in that fact."

20. The execution of adoption deed by Dalip Singh and legal requirements to prove it as Will are duly proved and is not even disputed by the first Appellate Court, which has stressed on the facts and circumstances to record the finding that adoption of plaintiff Sukhbir Kaur was not valid. Learned first Appellate Court concluded that there was no intention of Dalip Singh to give his property to plaintiff and has observed in para 23 of the judgment as follows:-

"23. "It is a question of fact in each case whether an adoption shall tantamount to a will or not. The intention of the executant is always to be seen. In Ex.P2, the adoption deed, the relevant words are "mere Maran To Baad, Meri Sari Jaidad Di Malk Meri ukat Ladki Sukhvir Kaur Hi Howegi". The intention of these words is that Sukhvir Kaur was to get the property of Dalip Singh only as a daughter. When the factum of adoption is held to be not proved, the question of inheriting the property as a daughter does not arise. A reading of the adoption deed Ex.P2 shows that the adopter only wanted that it should be adoption deed. In other words, he merely intended to give effect to his desire to adopt and settle his property upon the adopted daughter after her (sic his) death. There is no intention to give the property to respondent No. 1 by virtue of will. Hence, I am of the view that Ex.P2 does not tantamount to will even."

21. A very vital question which arise for consideration is that Dalip Singh had in unambiguous terms testated that after his death, his entire property will be owned by his aforesaid daughter Sukhbir Kaur. He had no other son or daughter. The reference to Sukhbir Kaur was in clear terms as daughter as Dalip Singh was served by her and he died in her house at Chandigarh. Interpreting the words "Hun Jad Tak Mein Jiunda Rahanga, Apni Sari Jaidad, Chal Ja Achal Da Khud Malak Wa Kabaj Rawanga, Mere Maran To Baad, Meri Sari Jaidad Di Malk Meri ukat Ladki Sukhvair Kaur Hi Howegi" to mean that the testator intended to give his property to his daughter is only wholly erroneous and absurd. What Dalip Singh intended to say was that the above mentioned Sukhbir Kaur, whom he had addressed in the adoption deed as his daughter, will inherit his entire property after his death. It is apparent on perusal of the adoption deed that Dalip Singh was every cautious while getting scribed the memorandum of adoption (Ex.PW2/A). He not only wanted to create a documentary evidence regarding adoption of Sukhbir Kaur but was also interested in making arrangement for inheritance of his property after his death being fully aware of not having any living heir i.e. son or daughter and with his wife, he had already severed his relations. Though the first Appellate Court has also discussed this fact that the divorce of Dalip Singh with the wife was not valid but this is not question which call for any comment or observation in these proceedings as the only person to allege the same is his wife herself. Even otherwise, the fact to be seen from the point of view of the executor of a document and not from its legal angle as to whether the divorce with his wife taken by Dalip Singh was valid or not.

22. Though the defendants have raised the plea that the suit was joint Hindu family property and Dalip Singh constituted joint Hindu family but this point was neither pressed nor any evidence was led on this point. As per adoption deed/ Will of Dalip Singh, Sukhbir Kaur plaintiff No.1 had inherited his entire estate and whatever right in suit property vested in Dalip Singh, devolved upon Sukhbir Kaur.

23. In view of the above discussion of facts and circumstances, I feel no hesitation to hold that adoption deed in this case would operate as a Will and testamentary disposition of Dalip Singh under which he had bequeathed his entire property in favour of plaintiff Sukhbir Kaur.

(ii) Whether judgment and decree dated 05.08.1983 is a legal and valid decree suffered by Dalip Singh or the same is result of fraud and collusion between Balwant Singh and Gurlal Singh?

24. The second vital question which call for answer is the validity of decree dated 05.08.1983 suffered by Gurlal Singh in favour of Balwant Singh regarding 166 Kanals 1 marlas of land of Dalip Singh. This decree was not suffered by Dalip Singh, rather it was suffered by his attorney Gurlal Singh. On going through evidence on record, I find that fraud and collusion is apparent in suffering of this decree by Gurlal Singh, which learned first Appellate Court appears to have ignored and sidelined while giving attention to other irrelevant facts. The suit was

filed on 04.08.1983 claiming the property of his uncle by a nephew. Instead of making his uncle party in person, who was resident of same village where Balwant Singh was residing, he sued him through attorney residing in distant village Abul Khurana and the attorney rushed to the Court on the next day and suffered a decree. This extra-ordinary hurry itself reflects ill-intention, fraud, active planning and collusion of Balwant Singh and Gurlal Singh, which is sufficient to declare the decree dated 05.09.1983 as illegal, null, void and result of fraud.

25. As to whether the attorney i.e. Gurlal Singh was competent to suffer decree is a question which will be discussed in later paragraphs of the judgment. The very fact that the judgment and decree has been obtained with such haste shows the ill intention of respondents-defendants who wanted to divest Dalip Singh of his major share of the land i.e. 166 kanals 1 marla. Hon"ble Apex Court in case of Dr. Govinddas and another v. Shrimati Shantibai and others 1972 PLR 227 has observed that unusual haste is reflection of ill intention of a party. In this case, Sukhbir Kaur had already filed a suit against Dalip Singh, based on family settlement, on 19.07.1983, which was fixed for 10.08.1983. The case of the plaintiffs is that Balwant Singh on coming to know of the suit filed by Sukhbir Kaur rushed to Court in connivance with Gurlal Singh, attorney of Dalip Singh on 04.08.1983 and obtained the decree regarding 166 kanals 1 marla land owned by Dalip Singh on 05.08.1983 alleging that the same had been given to him by Dalip Singh in a family settlement. Dalip Singh unaware of the above judgment and decree, admitted the claim of Sukhbir Kaur in civil suit No. 493 of 19.07.1983 and on the basis of his admission, judgment and decree dated 10.08.1983 was passed and the plaintiff was declared owner of the land measuring 197 kanals 11 marlas, owned by Dalip Singh, under a family settlement. The defendants were not only in hurry in obtaining the decree, they also got mutation No. 4963 based on decree dated 05.08.1983, sanctioned in their favour with all promptness. A story has been propounded by Gurlal Singh that he had gone to Dalip Singh on 04.08.1983, who gave him written statement and asked him to appear and suffer the decree. A very basic question which arises for consideration is that Dalip Singh had executed a registered adoption deed dated 27.06.1983 in favour of Sukhbir Kaur. That adoption deed is also a testamentary document as already held above. As per the adoption deed, he had executed the Will regarding his entire property in favour of Sukhbir Kaur. She had also filed suit on 19.07.1983 seeking declaration with regard to the property owned by Dalip Singh. In these circumstances, there was no occasion or reason for Dalip Singh to ask Gurlal Singh to suffer decree of his property in favour of Balwant Singh. The entire version in this regard put forth by Gurlal Singh is nothing but a bundle of lies.

26. Learned Sub Judge has taken note of these facts while recording finding that judgment and decree dated 05.08.1983 was collusive. Learned first Appellate Court without looking into this aspect has held the judgment and decree dated 05.08.1983 as legal and valid and the finding recorded by learned first Appellate

Court is not sustainable in the eyes of law. In case of Santosh v. Jagat Ram and anr. 2010(3) SCC 251, Hon"ble Apex Court while dilating on the facts of the case that the plaint was filed and on that day, written statement was also filed, evidence (statement) of plaintiff and defendant was also recorded on the same day and thereafter, judgment and decree was also passed, observing that this by itself, was sufficient to raise serious doubt in the mind of the Court. In the facts and circumstances, Hon"ble Apex Court commented as follows:-

"To say that "we are surprised", would be an understatement. To support this perverse finding, the Appellate Court went on to record the findings regarding the Caveat and the statement of the appellant recorded in those proceedings (?). We are fully convinced that this was nothing, but a towering fraud played upon an illiterate and helpless widow, whose whole inherited property was tried to be grabbed by Daya Ram and/or the respondents herein."

27. It is proved on file that Dalip Singh was treating Sukhbir Kaur as his daughter, it is Sukhbir Kaur, who was looking after him in his last days. In order to secure the future of Sukhbir Kaur, he had executed a registered adoption deed, which was incorporating her testamentary declaration. Under these circumstances, it is not believable that he gave whole of the property to a relation to the exclusion of Sukhbir Kaur.

28. From the above discussion, I am of the considered opinion that the judgment and decree dated 05.08.1983 was result of fraud and collusion on the part of respondents-defendants.

(iii) Whether Gurlal Singh was competent to suffer the decree on behalf of Dalip Singh, being his attorney?

29. Learned Sub Judge while observing that Gurlal Singh was not competent to suffer the decree of the land of Dalip Singh in favour of Balwant Singh, has observed that the power of attorney was given by Dalip Singh for the management of his property and not to suffer a decree against him. He (Gurlal Singh) could use authority conferred on him in the power of attorney for the benefit of Dalip Singh and not to his detriment.

30. Learned first Appellate Court reversed the findings recorded by learned Sub Judge with the observation that under power of attorney, Gurlal Singh was conferred the power to alienate the property by sale, mortgage, transferring possession of the property in the manner he likes and to give statement in Court on behalf of Dalip Singh. "Suffering of decree is also a sort of alienation of property. The attorney was fully authorised to institute suit, defend the suit, making statement in the suit as well as alienate the property." The above observation recorded by learned first Appellate Court are not only misreading of evidence on record but also giving a wider misleading and wrong interpretation of the authority given to Gurlal Singh, who was appointed as attorney by Dalip Singh for the management of his property.

31. The deed of attorney executed by Dalip Singh in favour of Gurlal Singh is Ex.D4. It is in Gurmukhi script, English translation of which is as follows:-

"I, Dalip Singh son of Bhag Singh son of Ram Singh, am resident of village Channu, Tehsil Muktsar, presently resident of village Abul Khurana, Tehsil Muktsar.

I have my immovable property in village Channu, Muktsar. My age is 65 years. I am old and unable to manage my property to my satisfaction, as such, appoint Gurlal Singh son of Gurdial Singh son of Bhag Singh, resident of village Abul Khurana, Tehsil Muktsar as my general attorney and authorise him that for the management of my property, he can pursue cases from primary Court to Highest Court (Supreme Court) file replies, defend the cases filed by me or against me engage counsel, Sarpanch or attorney, eject the tenant from the land, take possession, harvest crop and take it to the market on my behalf, receive the money by making statement in the concerned department; sell; mortgage; gift or transfer the aforesaid land and transfer the possession in the manner he likes; execute sale deed; mortgage deed; gift deed on my behalf; appear before the concerned officer to make statement and receive money. The general power of attorney appointed by me can perform all the acts which I am competent to perform and all his acts will be considered as having been performed by me.

I have scribed this power of attorney in my disposing mind without any pressure, so, it can be used as evidence if so required. Dated: 01.09.1981."

32. Now, the question which calls for consideration is as to whether the above power of attorney authorise Gurlal Singh to suffer a consent decree of the land of Dalip Singh in favour of Balwant Singh and suffering of decree of 166 kanals 1 marlas of land of Dalip Singh in favour of Balwant Singh is an act of good management of his land for which the power of attorney was given to Gurlal Singh.

33. In case of Mt. Jan v. Mt. Fajjan and anr.1938 AIR (Lahore) 351; amongst other issues, one of the issue before the Court was as to whether power of attorney given for management of the property, wherein powers to sell and mortgage were also mentioned, authorised the attorney to sell the land. The arguments advanced on this point before the Court and the answer given by the Court are as follows:-

"2. The learned Counsel for the appellant has contended that "the power-of-attorney was really given to Mt. Fajjan for management of the property of the plaintiff as she was married and was not in a position to look after the land. The power to sell and mortgage was no doubt mentioned in the document but it was purely incidental to the power of management and was not meant to be exercised except when it was necessary for that purpose. Counsel relied in this respect on the law as laid down in Article 34 in Bowstead on Agency, Edition 8, which runs as follows:

Powers-of-attorney must be strictly pursued and are construed as giving only

such authority as they confer expressly or by necessary implication. The following are the most important rules of construction (1) The operative part of the deed is controlled by the recitals. (2) Where authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts.

3. Bearing in mind the above principles, the recitals in the power-of-attorney leave, I think, no doubt that the main object of the plaintiff was to entrust the management of the land to Mt. Fajjan, as she was married and was no longer in a position to manage it. It was obviously not the intention then to sell the property. If this had been so, the land would have been sold soon after the power-of-attorney had been executed. Mt. Fajjan has not given any explanation as to why the land was sold in the year 1934, some five years after the execution of the power-of-attorney. It is not suggested that there was any difficulty in connection with the management of the property, which necessitated the sale. The sale cannot therefore be defended unless it be held that the power-of-attorney gave unqualified authority to Mt. Fajjan to sell the property whenever she liked. After carefully considering the recitals in the document and the circumstances in which the document was executed, I feel no doubt that there was no intention to give Mt. Fajjan any general power to sell the land. In this aspect of the question the respondents cannot get any assistance from the provisions of Section 237, Contract Act. The sale deed makes reference to the power of attorney, the contents of which must be presumed to have been known to the vendee Abdul Aziz. For the reasons stated above, it seems to me that the recitals in the document taken as a whole show clearly that Mt. Fajjan was only authorised to sell the property when it was necessary for the purpose of the management, (for example, it might have been necessary to sell part of the property if the land was encumbered and the debt could not be discharged otherwise). The vendee however did not trouble to ascertain why the sale of the land was necessary and consequently he cannot be protected.

4. The evidence on the record shows that Abdul Aziz was living with Mt. Fajjan for many years and the sale appears to have been collusive; but even apart from that question it seems to me that the sale cannot be upheld because it was not within the real scope of the authority given to Mt. Fajjan by the power of attorney."

34. Similar proposition arose in the case of Krishan Kumar v. Nand Lal 2011 1 RCR(Civil) 970 and was answered by bench of this Court as follows:-

"7. Learned counsel for the appellant has vehemently argued that the learned first appellate Court has erred in observing that power to enter into a compromise or sell is different from power to transfer the suit property by way of consent decree. It is submitted that power to sell would include power to transfer the property by way of collusive decree. Although on 14.5.2010 case was adjourned on the request of learned counsel for the appellant to cite law in this regard but no precedent has been produced before the Court in support of the

aforesaid submissions.

8. It may be pertinent to mention that the relation between the donor of the power and the donee of the power is one of principal and agent and the expression "agency" is used to connote the relation which exists where one person has an authority or capacity to create legal relations between a person occupying the position of principal and third parties. The relationship has its genesis in a contract, where someone other than the person who has a right to act in respect of certain things has, under a contract of agency has the right to act on behalf of principal but the authority conferred by written instrument has to be strictly construed and for what the power of attorney authorises depends on its terms and purpose for which it is executed.

9. To my mind each recital in the power of attorney constitutes a separate power, for example, power to sell land, power to purchase land, power to appoint pleader, power to file suit, or appear and file written statement etc. All these powers are distinct and separate. Therefore, if a particular power is not conferred on the donee by the donor in the power of attorney, the said power cannot be exercised by donee as it would be out of the purview of the instrument itself.

10. In the background of the aforesaid observations, the judgment and decree suffered by defendant No. 1 in favour of defendant No. 2 in Civil suit No. 176 of 1988 by way of admission is patently illegal because the donor/plaintiffs had not empowered the donee/defendant No. 1 to transfer the suit property by virtue of a consent decree even if the donee/defendant No. 1 had the power to sell or to enter into a compromise in a suit because the sale of land is against a consideration and a compromise in suit is in writing and signed by the parties as provided under Order 23, Rule 3 of the Code of Civil Procedure, 1908 (for short "CPC") but a decree on the basis of admissions, which is governed by Order 12, Rule 6 of the CPC has altogether different connotations."

35. It is apparent from the above discussion and clearly established on record that Gurlal Singh had suffered the statement admitting the claim of Balwant Singh in the civil suit filed by him claiming title over 166 kanals 1 marlas of land owned by Dalip Singh, without obtaining the consent of Dalip Singh or acquainting him with all material circumstances. Section 215 of Indian Contract Act confers the right to the principal when agent deals on his own account without his consent to repudiate the transaction and is reproduced as follows:-

"215. Right of principal when agent deals, on his own account, in business of agency without principal's consent.- If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him."

36. Learned first Appellate Court discarded the application of above section to the present case with the observation that this is beyond pleading. In pleadings, the parties have not to plead the law but the facts. It is on perusal of the facts of the case that the Court has to see as to what particular provisions of law are applicable or not. The observations on first Appellate Court on this point are against the basic principles of law and are set aside.

37. Power of attorney in favour of Gurlal Singh was executed for the management of his property, as Dalip Singh because of his old age, was not in a position to look after the same. Gurlal Singh was none-else than nephew of Dalip Singh. Suffering of consent decree of a major chunk of land owned by Dalip Singh in favour of Balwant Singh, another nephew of Dalip Singh, in no manner, can be termed as an act performed for good management of the land. Though Dalip Singh had authorised his attorney to perform all the acts including defending of suit, filing reply, making statement, alienation of land etc. for the management of his land but he had nowhere authorised him to suffer a consent decree of his land in favour of anyone. It could not be made out as to how the suffering of decree of land measuring 166 kanals 1 marla was an act of good management of the land. The manner and haste in which this decree was suffered, affirms a clear, safe and unambiguous conclusion arrived by learned Sub Judge, that attorney had no power to suffer decree dated 05.08.1983, which on the face of it, is a result of collusion and fraud played by respondents-defendants. The above conduct of Gurlal Singh instead of being termed as a authority given to him by Dalip Singh under the power of attorney can be termed as act of fraud and infringement on the right of Dalip Singh in the suit property, which resulted in breach of trust and confidence reposed by Dalip Singh in Gurlal and the approach of learned first Appellate Court by terming it as an act performed by Gurlal under the authority, he derive from the power of attorney (Ex.D4) is perverse, against law and reflect the casual manner in which the observation was made, which are not tenable in the eyes of law.

(iv) Whether the judgment and decree dated 05.08.1983 requires registration?

38. Hon''ble Apex Court in cases of Phool Patti and another v. Ram Singh (Dead) through LRs and another 2015 1 RCR(Civil) 606 and K. Raghunandan and ors v. Ali Hussain Sabir and ors 2008 3 RCR(Civil) 699 has held that the consent decree creating right for the first time, without registration confers no right in favour of decree-holder. Balwant Singh being nephew of Dalip Singh, had no pre-existing right in the suit property and the same required registration as per the observations of Hon''ble Supreme Court in above referred cases.

(v) Whether the suit is barred under Order 23, Rule 3 CPC?

39. To find answer to this question, it is to be understood that there is a difference between a compromise decree and consent decree. A compromise between the parties pre-supposes bilateral understanding. A Bench of this Court in Chand Kaur v. Raj Kumar 1996 3 RCR(Civil) 512 (P&H), observed as follows:-

"7. The provisions of Order 23 of the Code postulate that it is only some forms of compromises or agreements which, subject to their being in writing and lawful, can be recorded by a Court and a decree passed in terms thereof provided they judiciously satisfy the Court of these ingredients. The minimum pre-requisite of a valid compromise is that it must emerge from a willing and voluntary act of the parties and an act which is forced on the parties loses the very essence of its being a valid and lawful agreement. The parties have to be ad idem with regard to the terms which emerge from a valid consent and terms which are lawful. The provisions of Order 23, Rule 3 of the Code cast a duty upon the Court that to record its satisfaction with regard to these various ingredients as a precedent to passing of a decree as the basis of such a compromise under Order 23, Rule 3 C.P.C.

8. Consistent views taken by various Courts by now have clearly spelled the conditions which normally must be satisfied for validly invoking the provisions of Order 23, Rule 3 of the Code and for passing of such a decree, which are as under:-

- (i) There should be a lawful agreement or compromise;
- (ii) This compromise has to be in writing and signed by the parties;
- (iii) The compromise must be recorded by the Court;
- (iv) A decree on such compromise can be passed so far it relates to the parties to the suit but may extend to a special matter which is not the subject-matter of the suit.

The Court has to record its satisfaction with regard to adjustment of the whole or part of the claim in terms of such lawful compromise.

9. The explanation to sub-rule (3) of Rule 23 of the Code further makes legislative intent more clear by specifying that an agreement or compromise which is void or voidable under the Indian Contract shall not be deemed to be lawful within the meaning of the rule. The purpose of effecting a compromise between the parties is to put an end to the various disputes pending before the Court of competent jurisdiction fully and finally."

40. When a decree is passed, based on the admission in pleading or otherwise, the provisions of Order 12, Rule 6 CPC are attracted and not of Order 23, Rule 3 CPC. It was also so observed in the case of *Rajinder and others v. Randhir and others* 2010 (2) PLR 154 (O&M); *Chand Kaur v. Raj Kaur* (supra) and *Punjab National Bank v. Rakesh Kumar* 2002 3 RCR.(Civil) 697.

41. The facts of the case *N.K. Mohd. Sulaiman Sahib v. N.C. Mohd. Ismail Saheb and others* (supra) are quite distinguishable from the facts of this case. In that case, the subject matter was not the application of Order 23, Rule 3A CPC, as such, learned first Appellate Court has wrongly placed reliance on the observations of that judgment.

42. Order 23, Rule 3A CPC bars a suit seeking setting aside of decree on the ground that compromise on which the decree is based was not lawful. No such plea is applicable to the decree passed under Order 12, Rule 6 CPC. The contention of learned counsel for the respondents and the conclusion drawn by learned first Appellate Court to this effect that this suit is barred by Order 23, Rule 3 CPC are not based on proper appreciation of law and facts of the case, as such, is discarded and the findings of learned first Appellate Court on issue No. 3 are reversed.

(vi) Whether the respondents-defendants are competent to challenge the adoption deed executed by Dalip Singh?

43. Adoption deed produced by the appellant-plaintiff is a registered document duly proved on record. Learned Sub Judge held the execution of the adoption deed as duly proved by Hazoor Singh PW2, Ajmer Singh PW3 and Surjit Singh, Advocate PW4. This adoption deed was held as memorandum of adoption, wherein Dalip Singh had recited that he adopted Sukhbir Kaur about 30 years back. This fact is also admitted that Dalip Singh was residing with Sukhbir Kaur and died in her house.

44. Learned first Appellate Court discarded the adoption on the ground that adoption of female was unrecognised in Hindu Adoption Law as per article 480 and 489 of Hindu Law by Mulla. The adoption deed is 27.06.1983 and as per recital in the adoption deed, Dalip Singh has taken Sukhbir Kaur in adoption about 30 years back i.e. prior to coming into existence of Hindu Adoption and Maintenance Act, 1956. Though learned Sub Judge has relied on the explanation regarding the continuation of name of natural father of Sukhbir Kaur in her education record, the first Appellate Court did not find it satisfactory.

45. While challenging the adoption deed, learned counsel for the respondents has relied on the observations in case of Lalitha v. Parameswari alias Ramabai and others 2001 AIR (Madras) 363 and M. Gurudas and others v. Rasaranjan and others 2006(8) SCC 367.

46. Here a question arises as to who can challenge the adoption and whether defendants have any locus standi to challenge the adoption. The first Appellate Court, while discarding the plea of plaintiff that she is adopted daughter of Dalip Singh, has looked into all the facts like nonperformance of required ceremonies; not giving of information/notice to entire village, producing of bahi entry of expenses of ceremony, calling the relatives etc. The fact of the matter is that adoption deed was executed by Dalip Singh. He had never challenged the adoption of Sukhbir Kaur. Balwant Singh or attorney of Dalip Singh had no locus standi whatsoever to challenge the adoption deed. Neither of the plea of Balwant Singh, if accepted, confer him any right, title or interest in the property of Dalip Singh by natural succession. In normal circumstances, adoption can be challenged either by natural parents or by adoptive parents or the child who has been given in adoption. A stranger lacks the authority to challenge the adoption

deed. It was also observed in case of Veerabhadrayya R. Hiremath (D) by L.Rs. v. Irayya A.F. Basayya Hiremath 2006 3 RCR(Civil) 165(Karnataka High Court).

47. As the respondents are not competent to challenge the adoption deed, the citations referred by learned counsel for the respondents are not helpful to him, in any manner.

48. Even if it may be believed for the sake of arguments that as per recital in the adoption deed and the evidence on record, the adoption of Sukhbir Kaur is not valid, still this fact do not weigh in favour of Balwant Singh in whose favour decree dated 05.08.1983 pertaining to 166 kanals 1 marla of land owned by Dalip Singh has been held to be result of fraud and collusion with defendant No. 2 Gurlal Singh, who was not having any authority or competence to suffer decree dated 05.08.1983 on behalf of Dalip Singh.

49. It has already been observed that the adoption deed dated 27.06.1983 was also a Will of Dalip Singh in favour of Sukhbir Kaur and she inherited the entire land of Dalip Singh under testamentary disposition.

(vii) Whether the decree dated 05.08.1983 was hit by the principle of lis pendens?

50. Learned Sub Judge while dilating on the point that as to whether decree dated 05.08.1983 in favour of Balwant Singh was hit by the principle of lis pendens, has observed as follows:-

"Regarding the rule of lis pendens in AIR-1970-SC-1717, it is held that "if the property was acquired pendente lite, the acquirer is bound by the decree ultimately obtained in the proceedings pending at the time of acquisition. This result is not adduced by reason of the earlier judgment." In 1975-PLR-21, it is held that according to the rule of lis pendens contained in Section 52 of T.P. Act, neither party to the litigation can alienate the land in dispute, so as to affect his opponent, the rule is based not on the doctrine of notice, but on expedience. The effect of this rule is not to annul the transfer but only to render it subservient the right of the parties to the litigation. According to the rule of lis pendens, whosoever purchases a property during the pendency of a suit is held bound by the judgment that may be made against the person from whom he derived his title, even though such a purchaser was not a party to the action or had no notice of the pending litigation. It is a rule of public policy for otherwise. Successive alienating will defeat the very purpose of litigation making it interminable."

51. The above findings were set aside by learned first Appellate Court with the observations in para 13 of the judgment, which read as follows:-

"13. The next ground of attack on the judgment and decree Ex.P4 in the case Balwant Singh v. Dalip Singh through his Mukhtiarlam Gurlal Singh, copy of the plaint of which is Ex.D.2 and copy of the written statement Ex.D.3 is that the said judgment and decree had been obtained during the pendency of the suit

titled as Sukhbir Kaur v. Dalip Singh which was instituted on 19-7-1983, and decided on 10-8-1983, whereas, the suit of the appellant Balwant Singh was instituted on 4-8-1983, and decreed on 5-8-1983, i.e. during the pendency of the first suit, therefore, the same is hit by the principle of lis-pendens under Section 52 of the Transfer of Property Act. However, the doctrine of lis pendens is not applicable and does not operate so as to defeat any right, existing before the date of the suit. Moreover, Section 52 of the Transfer of Property Act had been amended and the words kept alive and inactivity were later on deleted and in its place, the word pendency was substituted. From the careful reading of Section 52 of the Transfer of Property Act, I am of the considered view that the same is not applicable to Ex.P4. The authorities relied upon by the learned counsel for the respondent 1975-PLR-21, AIR-1970-SC-1717 are not applicable to the facts of the case. Therefore, the decree Ex.P4 is not hit by the provisions of Section 52 of the Transfer of Property Act."

52. Section 52 of Transfer of Property Act, 1882 reads as follows:-

"52. Transfer of property pending suit relating thereto.- During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[Explanation.- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

53. Perusal of the above Section clearly shows that the alienation of any property during the pendency of suit in which any right to that immovable property directly or specifically in question is transferred, is hit by the principle of lis pendens. As already held above that Dalip Singh had not alienated the suit property in favour of Balwant Singh, rather it was a fraud played by respondent-defendant No. 1 Balwant Singh in collusion with respondent-defendant No. 2 Gurlal Singh, attorney of Dalip Singh that they filed a suit and got the same decreed in favour of Balwant Singh on the next day of its filing to obtain the declaration that Balwant Singh under a family settlement became owner of the land measuring 166 kanals 1 marlas owned by Dalip Singh. The provisions of Section 52 of Transfer of Property Act when strictly construed, are not applicable

to the facts and circumstances of the case as there was no alienation during the pendency of the suit, rather the averment in the suit filed by Balwant Singh were that Dalip Singh had already settled the dispute with him and delivered possession of 166 kanals 1 marla to him. The decree dated 05.08.1983 do not alienate any property of Dalip Singh in favour of Balwant Singh, rather it declares Balwant Singh owner of the land measuring 166 kanals 1 marla on the basis of family settlement with Dalip Singh, which had taken place prior to the suit filed by Sukhbir Kaur on 19.07.1983. As already discussed, decree dated 05.08.1983 is illegal and bad in the eyes of law on account of fraud, collusion and other reasons discussed above, but is not hit by the principle of lis pendens. The first Appellate Court has rightly observed that the provisions of Section 52 of Transfer of Property Act are not applicable in view of facts and circumstances of the case and I do not find any reason to differ with the observations of first Appellate Court on this point.

(viii) Whether the suit was bad for non-joinder of necessary parties?

54. Learned first Appellate Court has also observed that Dhan Kaur wife of Dalip Singh is necessary party and suit is bad for non-joinder of necessary parties.

55. In this case, plaintiffs have not claimed any relief against Dhan Kaur. She (Dhan Kaur) had not come forward to get her impleaded as legal heir of plaintiff Dalip Singh. So far as her marital relation, divorce etc. with Dalip Singh is concerned, it is not a fact which call for discussion or consideration in this suit, as it is not a subject matter of this case. The observations made by first Appellate Court on this point are irrelevant and are struck down.

56. As a sequel of my above discussion, all the substantial questions of law framed in this case are answered in favour of appellants and the appeal is accepted with costs. Consequently, the findings of learned first Appellate Court reversing the findings of learned Sub Judge (trial Court) on all the issues are set aside. The judgment passed by first Appellate Court is perverse, illegal against facts and settled principles of law, as such, is reversed and that of learned Sub Judge dated 10.03.1986 is restored and affirmed. Respondent Balwant Singh has remained in possession of suit land and utilised its usufruct. It is quite unfortunate that this appeal has taken about 28 years for disposal. During this period, plaintiff No. 1 Sukhbir Kaur was deprived of suit land and to enjoy its usufruct, as such, she shall also be entitled to claim mesne profits of the suit land from respondent-defendant No. 1 Balwant Singh for the period after filing of this appeal till the delivery of possession of the suit land. The quantum of mesne profits will be assessed by the executing Court.