Shri Sukhbir Singh and ors. Vs. Smt. Gaindo Devi and Others

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Court : Delhi

Decided On : Sep-26-2014

Judge : S.Ravindra Bhat

Appellant : Shri Sukhbir Singh and ors.

Respondent : Smt. Gaindo Devi and Others

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

04. 07.2014 Pronounced on:

26. 09.2014 + RFA (OS) 30/1974, C.M. APPL.2730/2014 SHRI SUKHBIR SINGH AND ORS. ..... Appellants Through : Sh. Pramod Kumar Seth and Sh. Vineet Seth, Advocate. Versus SMT. GAINDO DEVI AND OTHERS ..... Respondents Through : Sh. B.B. Gupta, Sh. Udyan Srivastava and Sh. Sarthak Ghonkrokta, Advocates. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA MR. JUSTICE S. RAVINDRA BHAT % 1. This appeal by the plaintiffs challenges a judgment and decree of a learned Single Judge of this Court in Suit No.643/1966 dated 07.06.1974. The impugned judgment dismissed the plaintiffs claim for partition, declaration and rendition of accounts.

2. The undisputed facts emerging from the pleadings are that Mare Singh, son of Pat Ram had six children three sons (Bharat Singh, first defendant; Om Mittar,

second defendant and Om Prakash, who predeceased Mare Singh) and three daughters (Chanderwati, mother of RFA (OS) 30/1974 Page 1 the Plaintiff Nos. 1 to 5 and wife of the sixth plaintiff; Kaushalya Devi, mother of third defendant in the suit and Vidyawati, mother of the fourth defendant in the suit). Mare Singh left behind a large estate, comprising several properties, including four houses two in Village Nangal Raya and two in Mohalla Tokriwalan, Pul Mithai, Delhi and considerable agricultural land within Village Nangal Raya. The plaintiffs, legal representatives of deceased Chanderwati laid claim to 1/5th share of the entire estate of Mare Singh, alleging that Chanderwati, his deceased daughter was entitled to that share of his estate. They also claimed that alienation made to the fifth defendant who was impleaded during the proceedings was not binding and that the property was one of the assets mentioned in the suit, sold by the second defendant Om Mittar. The defendants, i.e. the first two defendants - Bharat Singh and Om Mittar shall be referred to by their names; likewise Chanderwati, mother of the first five plaintiffs and wife of the sixth plaintiff would be referred to by her name.

3. The plaintiffs sought to argue that by customary law applicable to their community, the married daughter could claim a share in the coparcenary equal to that of the sons, and other male coparceners. Bharat Singh and Om Mittar filed separate written statements. Both of them denied that Chanderwati had any share on the ground that she had relinquished her share of 1/5th of the 1/3rd (falling to Mare Singh on notional partition before his death) of the coparcenary property. It was argued that sometime in March 1961, they had settled with Chanderwati and agreed to pay her money as well as bhat, i.e. RFA (OS) 30/1974 Page 2 consideration or gift at the time of festivals and on the occasion of marriage etc. in her family. Om Mittar stated that a sum of `10,000/had been paid at the time of settlement. Bharat Singh only stated that a sum of `2,000/- was paid as bhat to Chanderwati on the occasion of her daughters marriage.

4. In this state of pleadings, the parties went to trial; the suit was filed before the Sub-Judge, First Class, Delhi. After the constitution of this Court, the suit was transferred to its file. Issues had been framed earlier, but were subsequently amended on application of Order XIV Rule 7 CPC. The Court struck as many as

15 issues. During the trial, 5 issues (Issue Nos. 1, 2, 3, 4 and

5) were given up. After considering the matter, learned Single Judge summarized the points for decision as follows:

(a) Whether the parties were governed in matters of succession by Hindu Law or custom?. (b) Whether there was any relinquishment by Chander Wati of her share in the estate left by Mare Singh on receipt of consideration in the form of money etc. and the promise of Bhat being given at the weddings of her children by the two surviving brothers, Bharat Singh and Om Mitter?. (c) If there was no relinquishment how is the estate of Mare Singh to be divided?.

5. The parties led evidence both documentary and oral. The plaintiffs in support of their case relied upon the testimonies of 11 witnesses. Bharat Singh, the first defendant, relied on a testimony of RFA (OS) 30/1974 Page 3 11 witnesses and Om Mittar relied on the testimony of 4 witnesses. During the pendency of proceedings, Bharat Singh died and his legal representatives were substituted and brought on record. Besides the deposition of witnesses, the parties relied upon several documents, including the mutation records, rent receipts, revenue records, extracts of mutation register etc.

6. The learned Single Judge analysed the evidence led on behalf of the plaintiffs, particularly that of PWs-2, 3, 6 and 7 and held that the plaintiffs could not establish that customary law was applicable to the community to which Mare Singh belonged, nor did any documentary evidence support this assertion. He, therefore, concluded that:

.....I hold that it will be normal Hindu Law which would be attracted in matters of succession and Mare Singh should not be regarded as an absolute holder of the property left by his father Pat Ram. In other words in the hands of Mare Singh property left by Pat Ram was ancestral and the sons of Mare Singh were joint owners along with their father in the ancestral property. The effect of the above decision is that the plaintiffs, if at all entitled to claim a share in the estate left by Mare Singh, would get 1/5 share in the self-acquired property of Mare Singh and 1/5 of 1/3 share in the ancestral property.

7. Dealing with the defendants contention that Chanderwati had relinquished all her rights and share in the property, being a married sister of the defendants, learned Single Judge noticed that the evidence on record established that Chanderwati appeared before the Tehsildar in the mutation proceedings and stated that she gave up claims to the immovable property. The impugned order also noticed that this fact RFA (OS) 30/1974 Page 4 was noted in the mutation proceedings attested by the Tehsildar, D1/W-8, who was then working as Assistant Consolidation Officer, in 1961. The learned Single Judge also relied on the testimonies of DW1/9 and D-1/W-4. The learned Single Judge appreciated the discrepancy sought to be highlighted on behalf of the plaintiff, to undermine the defendants version with respect to Chanderwatis relinquishing all her share in the property. Agreeing with the plaintiffs contentions that mutation proceedings were not judicial proceedings, the Single Judge noticed all the same that they were good evidence of oral partition having been acted upon. Therefore, the impugned judgment relied upon the decision of the Supreme Court in Sahu Madho Dass v. Mukand Ram and Anr. AIR 1955 SC481that an oral or family arrangement, based upon an antecedent title vesting in the parties to such arrangement, will be valid. On the strength of these findings, learned Single Judge dismissed this suit.

8. The plaintiffs/ appellants argued that the impugned judgment is erroneous because it rejects their claim regarding the existence of the custom of the community. It is contended by the learned counsel that some of the documents (Ex.B-4), Jamabandi (Ex.B-3), Jamabandi 1947-48 (Ex.P-5 and P-7) proved the existence of a custom which governed the Raya Rajput community; and thus general law must not be found to be applicable. It was also urged in this context that the learned Single Judge fell into error in not relying on the testimonies of PWs-3, 6, 8 and 10. RFA (OS) 30/1974 Page 5 9. It was next contended and more importantly that the case set-up by the defendants Bharat Singh and Om Mittar with regard to an oral settlement or relinquishment was cooked up and the evidence on record was contradictory. Under no circumstances could such an assertion be said to have been proved. It was argued firstly that the written statement of Bharat Singh varied from the pleadings in the written statement of Om Mittar; while the former merely mentioned about his settlement and stated that he gave `2,000/- as bhat to Chanderwati, Om Mittar made a positive statement of

having paid `10,000/-. The allegations with regard to settlement itself were contrary to each other. Given this fact viewed alongside the fact that Bharat Singh did not depose during the trial, the learned Single Judge ought to have viewed the entire matter with scepticism and not proceed to readily accept the story of a settlement. Consequently, it was urged that the evidence with regard to what allegedly transpired before the revenue officials too was an afterthought. Despite a searching cross-examination of the plaintiffs witnesses, no admission could be elicited from them. On the other hand, the testimonies of D1/W4, DW-1/8; DW-1/9 and D-1/W-10 are in support of a settlement. Thirdly, argued learned counsel, the testimony of Anand Swarup, the third defendant did not support the case of his uncles, i.e. Bharat Singh and Om Mittar, as to the existence of a family settlement or as to Chanderwati being content with accepting the money in exchange for her reqlinquishing her share. Such being the nature of materials on the record, learned Single Judge could not have reasonably concluded that the defendants had proved a valid relinquishment to be enforceable in RFA (OS) 30/1974 Page 6 Court. That could only be through a written document or an instrument duly stamped and properly registered. In its absence, the Court could not infer the existence of any relinquishment to non-suit the plaintiffs legitimate claim to a share in the Hindu Undivided Family property. In this regard, learned counsel relied upon the judgment of the Punjab and Haryana High Court reported as Prithi v. Yatinder Kumar AIR1985P&H238 Reliance was also placed upon the decision reported as Somu Achari v. Singara Achari and Ors AIR1945 Mad 407 and Ram Sarup Rai and Ors. v. Charitter Rai and Ors. AIR1927 All.338.

10. Learned counsel for the successful respondent/defendants argued that the findings with regard to custom would be immaterial given the application of the Hindu Succession Act which came into force on 17.06.1956. Learned counsel especially highlighted Section 4(1)(a) which expressly overrides customs or usages in regard to matters for which provision is made in the enactment. He also relied upon the judgment reported as Commissioner of Wealth Tax v. Chander Sen AIR 1986 SC1753and the subsequent ruling in Yudhishter v. Ashok Kumar AIR 1987 SC558 and urged that the estate and properties of Mare Singh being ancestral even according to the plaintiffs, they could have been entitled to 1/5th share of his selfacquired properties and a 1/5th share out of his 1/3rd share if

Chanderwati had not relinquished her rights in favour of her brothers.

11. Urging this Court not to interfere with the findings of the learned Single Judge, the defendants counsel pointed out that there RFA (OS) 30/1974 Page 7 was overwhelming material, both documentary and through oral testimony of witnesses, clearly establishing that Chanderwati had in fact relinquished her share. He invited the Courts attention to Ex.D1/1 which reflected the Patwaris noting of 31.03.1961, regarding the heirs and legal representatives of Mare Singh. Learned counsel highlighted that on 07.10.1961, Chanderwati voluntarily made a statement which was duly recorded by the Tehsildar, on 25.07.1961, giving up all her right, interest and entitlement in favour of her brothers Bharat Singh and Om Mittar. It was submitted that this document was supported by none other than its author, i.e. DW-8, Sh. Sant Lal, whose testimony withstood the cross-examination on behalf of the plaintiffs.

12. Learned counsel also relied upon the testimony of D-1/W-10, Ram Narain, who had initially recorded the wishes of Chanderwati whose later statement was also taken into account by DW-8. Learned counsel also relied upon the statement of D-1/W-4 Jogi Ram, who had witnessed the entire revenue proceedings when Chanderwati gave-up her share. Likewise, the testimony of D-1/W-11, Rajender Kumar, S/o Bharat Singh, who was extensively cross-examined, was relied upon. Learned counsel for the defendants also argued that the testimony of Rajender Kumar supported the pleadings of Om Mittar and even the oral testimony of Om Mittar, D-2/W-4, both of them supported each other with regard to the payment of an amount of `5,000/contemporaneously and at the time Chanderwati relinquished all her share, which was recorded by the Settlement Officer, DW-8. RFA (OS) 30/1974 Page 8 13. Learned counsel argued that the variation in the pleadings of Bharat Singh and Om Mittar was of no consequence because the former mentioned about payment of bhat by him whereas Om Mittar in his written statement clearly mentioned having paid `10,000/- which was clarified as it had to be read along with his deposition, i.e. `5,000/- in cash at the time of recording the settlement and the other amount being the value of utensils and other valuables given to Chanderwati later.

14. Learned counsel argued that the Court leans in favour of family settlement once it is established that it is entered into voluntarily. He relied on the decision of the Supreme Court reported as Kale & Ors v Deputy Director of Consolidation and Ors AIR 1976 SC807in support of this submission.

15. The two questions which arise, therefore, for consideration of this Court are: (a) Were the plaintiffs entitled to any share in the estate of late Mare Singh, through Chanderwati; (b) Was a valid and binding family settlement proved during the proceedings, by which Chanderwati gave up her entitlement to such share in favour of the defendants (in the suit). Analysis and Findings Point (a) RFA (OS) 30/1974 Page 9 16. When Mare Singh died in 1960, the Hindu Succession Act, 1956 had come into force. The properties which devolved upon him on the death of his father, Pat Ram, were ancestral. With the advent of the Act, the properties became self-acquired in his hands, by virtue of Section 8, as clarified by the Supreme Court, in Commissioner of Wealth Tax v. Chander Sen (supra) to the following effect:

21. It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

22. In view of the preamble to the Act, i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under section 8 of the Hindu Succession would be HUF in his

hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs RFA (OS) 30/1974 Page 10 in class I of Schedule under section 8 of the Act included widow, mother, daughter of predeceased son etc.

23. Before we conclude we may state that we have noted the observations of Mulla's Commentary on Hindu law 15th Edn. dealing with section 6 of the Hindu Succession Act at page 924-26 as well as Mayne's on Hindu Law, 12th Edition pages 918-919 24. The express words of section 8 of The Hindu Succession Act, 1956 cannot be ignored and must prevail. The preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but included son of a predeceased son cannot be ignored.

The above ruling has been reiterated and applied in later judgments - Yodhishter v. Ashok Kumar, (1987) 1 SCR516 Sunderdas Thackersay & Bros. v. Commissioner of Income-tax, 1982 (137) ITR646 Commissioner of Income Tax v. P.L. Karuppan Chettiar, 1993 Supp. (1) SCC580 and Additional Commissioner of Income-tax v. M. Karthikeyan, 1994 Supp.(2) SCC112 17. Section 4 of the Act overrides all customs, texts, etc to the extent that they provide for anything contrary to what is contained in the Act. Such being the case, the respondent/defendants, in the opinion of this Court, are correct in contending that the custom sought to be proved by the plaintiffs (which according to them permitted married daughters to claim a share equal to that of the male coparceners) was of no relevance. In any event, in the view taken by this Court, that Section 8 of the Act prevailed, Mare Singhs daughters would have RFA (OS) 30/1974 Page 11 had a 1/5th share in his self-acquired properties, and 1/5th share in his share of the ancestral properties. This point is answered accordingly. Re Point (b) 18. The fundamental question on which the parties claims hinge, is whether Chanderwati entered into a family arrangement or settlement with her brothers, the defendants. The plaintiffs, i.e. her heirs assert that this was never so; the defendants, on the other hand, equally assert it to be true. There is nothing in

the plaintiffs evidence - oral or documentary- to show that such a settlement indeed took place. Nor can the Court expect the plaintiffs to agree to such proposition doing so would have destroyed the basis of their case. The defendants, on the other hand, in the written statements, contested the suit, and alleged that Chanderwati was given some money and movables, as a result of which she settled and relinquished her claim to any share. The question is whether the materials on record supports this claim.

19. The defendants rely on a document, Ex.D1/1, the extract of revenue records, i.e the Jamabandi to say that it clearly recorded Chanderwatis statement, which was noted and given effect to. The translation of the said extract, which is part of the record before the learned single judge, reads as follows:

Col.No.15 Sir, today, Bharat Singh states that his father is dead and We, Bharat Singh, Om Mitter, Suresh, Chander Wati d/o Mare, each three are the legal heirs in equal shares, RFA (OS) 30/1974 Page 12 Hence, the said event has been entered in the register and is submitted for favour of orders. Sd/- Narain Singh Patwari (in urdu) 31.3.61 Shajra Nasab relating to Mare Mare Bharat Singh Om Mittar Chander Wati Entries as compared with the previous papers are correct. Sd/- Ram Chander Girdwar (in urdu) 7.10.61 In the public gathering, Bharat Singh, Om Mitter, Smt. Chander Wati survivors of the deceased Mare identified by Dalu Ram Lambardar of the village having appeared verified the survivorship of the deceased Mare. Smt. Chanderwati states that she does not want to have any share in this hereditary, But its survivorship rights be got mutated in the name of my brothers namely Bharat Singh, Om Mitter, Sh. Dalu Ram Lambardar of the village verifies the above statement. Hence, the proprietory right of the deceased Mare in favour of Bharat Singh, Om Mitter in equal shares sanctioned as per the new entries. RFA (OS) 30/1974 Page 13 Place: Nangal Jalib Sd/ Sant Pal Revenue Officer 25.7.61

20. The settlement, recorded by the Tahsildar, the Revenue Officer, deposed to by Jogi Ram, D-1/W4, Sant Lal, DW-1/8 and DW-1/9, Dallu, the Lambardar. Ram Narain, D-1/W10 also deposed about the settlement. All these witnesses were cross-examined. The relevant portions of their depositions are extracted below:

D-1/W-4 CROSS-EXAMINATION OF JOGI RAM, S/O MUKH RAM, AGED75YEARS, OCCUPATION ZAMINDARS, R/O NANGAL RAYA, DELHI. XXXXXX XXXXXX XXXXXX Chandrawati, Jit, Bharat, Om, Dalu Lambardar, Narain and others whose names I do not remember at this time were present at the time of mutation. Tehsildar had sanctioned about 10 or 15 mutations on that day. Chandrawati had said:

I want to give the property to my brothers. I had taken what I wanted to take.

I was sitting at a distance from the Tehsildar. Smt. Chandrawati had not said what she had taken. It is incorrect that the mutation had been sanctioned within five minutes. It had taken about 20 to 30 minutes. It is incorrect that Jit Singh and Chandrawati had not gone for the attestation of the mutation. Smt. Chandrawati and Jit Singh RFA (OS) 30/1974 Page 14 had taken me with them. I do not remember who had called me.....

The relevant extract of cross-examination of Sant Lal, the Tehsildar, who recorded Ex. D-1, is as follows: CROSS-EXAMINATION OF SHRI SANT LAL, AGED55YEARS, S/o Shri Shiv Narain, Tehsildar, Land Management, New Courts, Delhi XXXXXX XXXXXX XXXXXX .....The persons whose statements were recorded by me were identified by Shri Dallu, Numberdar. I was acquainted with Dallu, Numberdar. Shrimati Chanderwati made a statement that she did not want a share from the property of her father, Mare, and that the mutation be sanctioned in the name of her brothers.....

XXXXXXX XXXXXX XXXXXX .....when she appeared before me, was not observing any purdah. I do not remember now whether she looked young or old and cannot give any other descriptions of her. In column No.8 the name of Shrimati Chandrawati was scored out by me and I initialled that cutting. Her name was scored out in view of her statement that she did not claim any share in the property. Patwari had suggested mutation in the name of Bharat Singh, Om Mittar and Shrimati Chandrawati in equal shares. If Chandrawati had not given up her rights and there had been no objection she may have been given an equal share with her brothers. No objection was raised before me by Bharat Singh, Om Mittar to the entries. The entries were read out to Bharat Singh, Om Mittar and

Chandrawati at the time of sanctioning the mutation. I do not remember to have asked Chandrawati as to why she was giving up her share and whether she had obtained any legal advice in RFA (OS) 30/1974 Page 15 the matter. I knew Dallu, Numberdar, at least for about an year before the sanctioning of the mutation as he had been appearing in number of mutation cases.....

The deposition of DW-8 was corroborated by Dallu, DW-9, the Lumberdar, in the following terms- in the cross examination by the plaintiffs:

CROSS-EXAMINATION OF Dallu, Lumberdar, aged 65 years, s/o Shri Sukhram, occupation Agriculture, r/o Village Nangal Raya, Delhi .....Chandrawati had said at the time of mutation that the property should go to the sons of Bharat Singh. Again said Chandrawati had stated that the property should go to her brothers and had not mentioned anything about Bharat Singhs sons. I was not present when the Patwari had entered the mutation. I only appeared before the Tehsildar. This is wrong to suggest that Chandrawati, wife of Jeet Singh, did not appear before the Tehsildar.....

D-1/W-10, Ram Narain, another independent witness, like D-1/W-4, who deposed about the settlement, is as follows:

CROSS-EXAMINATION OF RAM NARAIN, D-1/W10, aged 42 years, s/o Shri Taj Ram, occupation Business, r/o Village Nangal Raya, WZ-079, New Delhi .....I know the procedure in mutation. First, there is a registered document. This is in case if there is a sale. In case there is inheritance, then the heirs go and make their statements before the Patwari. The Patwari then places the papers before the Naib Tehsildar or the Tehsildar. Then the mutations are attested by him. The Revenue Officer concerned makes inquiry from the Lumberdar concerned. This inquiry from the Lumberdar is RFA (OS) 30/1974 Page 16 made in the open present..... XXXXXXX court XXXXXXX with others are also XXXXXXX .....Chander Vati had stated in my presence that whatever her share was should be given to her brothers. She did not specify her own share. I am not aware how much share Chander Vati had in the property of Mare Singh; her father. Chander Vati had stated to the Naib Tehsildar that she had taken whatever she wanted to take as her share. She would be content with

getting Bhat from other customary presents on ceremonial occasions. The share in the property of her father was stated by her as having been given by her to her brothers. Neither the Naib Tehsildar enquired from her nor did she tell him what exactly she had taken.....

21. The above extracts during cross-examination of the defendants witnesses show that apart from their own testimonies, as many as four independent witnesses deposed about the settlement; crucially, two of them were official witnesses, involved in the recording of Chanderwatis statement. Neither before the learned Single Judge, nor before this Court, were the plaintiffs/appellants able to point out any reason why the deposition of these witnesses is to be disbelieved. Now, the issue which the defendants had to establish- on the basis of the assertion in their pleadings- was whether a voluntary and enforceable settlement took place (evidenced by D-1) whereby Chanderwati relinquished her share and entitlement to immovable properties of Mare Singh. The document itself is a clear record of the fact that she did give up; the extracts of deposition of various witnesses establish that such relinquishment in fact took place. One RFA (OS) 30/1974 Page 17 needs hardly any authority to say that in civil cases, the standard of proof of any fact is preponderance of probabilities.1 Applying that standard of proof, it has to be held that the materials on record show that Chanderwati, the predecessor of the plaintiffs, willingly and voluntarily gave up her share in the immovable property.

22. The plaintiffs had repeatedly harped on certain inconsistencies in the pleadings in the written statement of Bharat Singh and Om Mitter. The former alleged that ` 2000/- was given by him to Chanderwati as bhat. At the first instance, this plea is seemingly at variance with what Om Mitter avers in his written statement, i.e that he gave ` 10,000/- to Chanderwati. Yet, what is to be noticed is that both brothers independently state, in their pleadings, about each of them having to give a different amount to Chanderwati; they do not mention a collective or total figure which both had to jointly pay. In other words, it is not their case that a total figure was agreed, which they were jointly liable to pay. Om Mitter deposes to having paid ` 5000/- and given the value of the balance in the form of articles, etc. These circumstances, in the opinion of the court, in no way

undermine the defendants stand that a settlement had taken place between them 1 Ram v. Jaswant Singh Chouhan, (1975) 4 SCC769 .. the definition of proved in Section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition, is that of a person of prudence and practical good sense. Proof means the effect of the evidence adduced in the case. Judged by the standard of prudent man, in the light of the nature of onus cast by law, the probative effect of evidence in civil and criminal proceedings is markedly different. The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction.

RFA (OS) 30/1974 Page 18 and Chanderwati, whereby she agreed to give up her share in the immovable properties of Mare Singh. The subsequent event of whether the amounts agreed to be paid to her, and whether both brothers are consistent as to what each of them or the other had to give her, ought not to be confused with whether a settlement occurred at all. The fact of settlement, as observed earlier, was proved through Ex. D-1 and the deposition of four independent witnesses. Their credibility could not be impeached in any manner; the Court was not shown any material to say that they were partisan. Therefore, the findings of the learned Single Judge, that a settlement took place between the defendants and Chanderwati, are affirmed by this Court.

23. The next question is whether in the absence of a written document, an entry in the revenue records could be treated as a valid relinquishment. The plaintiffs here argue that there can be no escape from the mandatory provisions of the Registration Act, which direct that for title or interest in immovable property to pass the document or instrument should be executed on stamp paper, and duly registered. Now, there can be no two opinions that mere entries in revenue records cannot confer title to immovable property; several judgments have decisively maintained this position2. The question is do the revenue records in this

case, confer title?. This court is of the opinion that the revenue records do not evidence passing of title, or create title- a vital consideration which has to be seen in each case; they are a 2 Corporation of the City of Bangalore v. M. Papaiah & Anr (1989) 3 SCC612(it is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law.

) RFA (OS) 30/1974 Page 19 record or evidence of a settlement that took place before its making, between Chanderwati and her brothers, i.e. the defendants. This distinction, i.e. whether the document creates a right, or merely records a past oral agreement, which settles disputes or matters inter se, between members of a family, all of whom have title, or claims to title, is to be kept in mind in each case where a family settlement is pleaded.

24. The Supreme Court has, starting from the decision in Madho Das (supra) to Kale (supra) and subsequently in Hansa Industries (Ltd) v. Kidar Sons (P) Ltd.3 repeatedly emphasized the principles which are applicable in cases involving family settlements. The following extracts from Kale (supra) briefly sums up the position:

9. A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour Family arrangements are governed by principles which are not applicable to dealings between strangers. The Court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements. 3 2006 (8) SCC531RFA (OS) 30/1974 Page 20 10. In other words to put the binding effect and the essentials of a family settlement in a concretized form, the matter may be reduced into the form of the

following propositions: (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family; (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence; (3) The family arrangements may be even oral in which case no registration is necessary; (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in Immovable properties and therefore does not fall within the mischief of Section 17(2) (sic) (Section 17(1)(b)?.) of the Registration Act and is, therefore, not compulsorily registrable; (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld, and the Courts will find no difficulty in giving assent to the same; RFA (OS) 30/1974 Page 21 (6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement. (emphasis added) In Sahu Madho Das (supra) the Supreme Court amplified the doctrine of validity of the family arrangement to the farthest possible extent, where Bose, J.

speaking for the Court, observed as follows:

54. .It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of

the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary. But, in our opinion, the principle can be carried further and so strongly do the Courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid in anticipation, future disputes which might ruin them all, and we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their RFA (OS) 30/1974 Page 22 shares as gifts pure and simple from him or her, or as a conveyance for consideration when consideration is present. (emphasis added) Ram Charan Das v. Girjanandini Devi 4 too re-states the same principle. In view of this established position in law, it is held that the lack of a written document evidencing relinquishment of Chanderwatis share would not undermine the defendants case regarding a binding settlement whereby she gave up her claim to a share in the immovable properties. As stated in Kale (supra) the settlement can be even oral; the subsequent document may be a mere record of the antecedent or prior transaction. In this case, the settlement is not created because of the statement recorded by DW-8, or the document Ex. D-1; they are merely recording what transpired when Chanderwati volunteered and said that she gave up or relinquished her claims in favour of her brothers. These, in the opinion of the Court, constitute all elements of a valid and binding family settlement, whereby the plaintiffs predecessor in title relinquished her share in the immovable properties of her father, late Mare Singh.

25. Before we part with the matter, the Court wishes to highlight that this case appears to be typical of the ills which have mired the legal system. The suit was filed before this Court was constituted; upon its setting up, the matter was

transferred to its file. Evidence was recorded for over 7 years; eventually the judgment of the learned single judge was delivered on 07.06.1974. On appeal, on the very first date of hearing, i.e 05-09-1974, the appeal was admitted; thereafter it 4 1965 (3) SCR841RFA (OS) 30/1974 Page 23 appears to have been kept in the list for regular hearing of appeals. By the time its turn for hearing came up, some parties to the original suit had died; they had to be substituted. This process continued almost indefinitely, almost all the original parties died; the appellant had to struggle to implead their heirs. Adjournments were sought and granted for various diverse reasons, such as unavailability of the party at the given address, failure to deposit process fee, request of counsel for more time, etc. This process consumed almost 20 years, between 0612-1993 and 05-01-2013. Ultimately, when this Bench was assigned the present appeal, the imbroglio was finally resolved with impleadment of all legal representatives. Another interesting aside is that in the 38 year saga of this appeal, not only two generations of litigants had to grapple with the matter; even two generation of judges had to deal with the appeal. This is brought home by the fact that at different points in time two sets of judges (Mr. Justice V.D. Misra and later, his son, Mr. Justice Sudershan Kumar Misra, the latter being part of the present Bench) and Mr. Justice Prithvi Raj and his son, Mr. Justice Pradeep Nandrajog, had occasion to deal with this appeal. These facts are highlighted to flag an important issue, which is the crying need for civil procedure reforms- poignantly underlined in this appeal, because a gargantuan share of the delay was due to the time consumed in bringing on record legal representatives of deceased litigants. RFA (OS) 30/1974 Page 24 26. In view of the above findings, this court is of the opinion that the appeal cannot succeed. It is accordingly dismissed along with the pending application without any order as to costs. S. RAVINDRA BHAT (JUDGE) SUDERSHAN KUMAR MISRA (JUDGE) SEPTEMBER26 2014 RFA (OS) 30/1974 Page 25