



from Indian Army and is the son of defendant No.1 and brother of defendant No.2. It is averred that defendant No.1 has three daughters, namely Smt. Dharmo, Smt. Manki and Gina Devi. According to the plaintiff, defendants No.1 and 2, in connivance with each other, procured a judgment and decree dated 25.11.1989 in favour of defendant No.2, which is liable to be set aside.

3. The plaintiff asserts that in November 1989, the plaintiff and defendants entered into an agreement regarding division of joint family property and executed a deed of agreement, which was signed by the plaintiff and defendants and attested by witnesses. It is further stated that Plot No.1 was purchased from joint family funds in the name of defendant No.1, and the residential kothi was constructed with joint funds of the plaintiff and defendants. Defendant No.1 is stated to have expressed his intention to divide Kothi No.1 into two portions in his letter dated 11.11.1986 addressed to the plaintiff. The plaintiff claims that he spent about ₹20,000/- on renovation and partition by constructing a wall, thereby dividing the kothi into two portions, and that possession of the divided portions was given to the plaintiff and defendant No.2 accordingly.

4. The plaintiff further states that the parties had divided four items of joint family property marked as A, B, C, and D in the division deed. Under Head A, the plaintiff was allotted a house situated at Village Nehla, valued at ₹60,000/-, out of which the plaintiff paid ₹30,000/- to defendant No.2. The properties under Heads B and C were other land and houses, while the suit property is covered under Head D. Defendant No.2 allegedly expressed his desire to purchase the plaintiff's half share in Kothi No.1 for ₹2,60,000/-, and the plaintiff agreed to sell his share on certain conditions. Defendant No.2 was required to pay ₹26,000/- as



earnest money by 08.11.1989 and the remaining amount by 07.05.1990. The plaintiff pleads that although defendant No.2 paid the earnest amount, he failed to pay the balance, rendering the agreement void and restoring the earlier partition. The plaintiff alleges that in order to defeat his rights, defendants No.1 and 2 obtained the impugned decree fraudulently.

5. The defendants filed their written statement denying the plaintiff's case in toto. They denied existence of joint family funds, the purchase of the plot from joint funds, and any agreement of division as alleged. They contended that defendant No.1 purchased the plot in his exclusive name, constructed the house from his own income, and never consented to any division. The defendants asserted that defendant No.2 is the absolute owner in possession of the suit property pursuant to a valid compromise decree dated 25.11.1989, binding on all concerned including the plaintiff. They denied the plaintiff's right, title or interest in the suit property and prayed for dismissal of the suit.

6. From the pleadings of the parties, the learned trial Court framed the following issues:

1. Whether the plaintiff is owner in possession of 1/2 share of house in dispute as detailed in the head note of the plaint, if so its effect? OPD
2. If issue No.1 is proved, then whether the plaintiff is entitled to get the revenue entries/municipal entries corrected in his name as alleged? OPD
3. Whether the judgment and decree dated 25.11.1989 passed in Civil Suit No.777-C dated 25.11.1989 in favour of defendant No.2, is



wrong, illegal and misrepresentation and not binding upon the rights of the plaintiff? OPD

4. If Issues No.1 & 2 are proved, whether the plaintiff is entitled to any injunction as prayed for? OPD

5. Whether the plaintiff has no locus standi to file the present suit? OPD

6. Whether the suit is not maintainable in the present form? OPD

7. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

8. Whether the suit is time-barred? OPD

9. Whether the plaintiff has no cause of action to file the present suit? OPD

10. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

11. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD

12. Relief.

7. In support of his case, the plaintiff examined Ram Singh as PW1, Chhabil Dass as PW2, Parminder as PW3, Haridat as PW4, Ravi Shankar as PW5, Om Parkash as PW6, Suresh as PW7, Jaimal as PW8, Rakesh as PW9, Ramphal as PW10, Wazir as PW11, Ram Sarup as PW12, Beer Singh as PW13, Sardara Singh, Advocate, as PW14, Bal Mukand as PW15 and Sajjan Singh as PW16. Certain documents were also tendered in evidence.



8. Defendant No.1 appeared as DW1 and defendant No.2 as DW2 and they also produced documents in support of their defence.

Findings of the trial Court

9. The trial Court, after appreciating the entire oral and documentary evidence, held that the plaintiff had completely failed to establish his plea that Plot No.1 and the house constructed thereon were purchased or built out of joint Hindu family funds, or that any valid partition of the suit property had ever taken place. The Court noted that although the plaintiff relied heavily on an alleged agreement (Ex.PW5/2) said to record the division of joint family property and the arrangement regarding Kothi No.1, the said document was unregistered and amounted to an instrument of partition requiring compulsory registration, rendering it inadmissible in evidence. The Court further found that the plaintiff's version of partition and delivery of possession was not supported by any reliable evidence. The oral statements of witnesses were inconsistent, and even the plaintiff as PW16 admitted that no portion of the house was in his actual possession. The Local Commissioner's inspection also revealed that the plaintiff was not in possession of any part of the disputed property. The Court observed that the letter dated 11.11.1986 allegedly written by defendant No.1 did not prove any partition, nor did it show that the property was joint Hindu family property. On the contrary, the evidence established that the plot and the construction were in the exclusive ownership of defendant No.1, who was fully competent to transfer it in favour of defendant No.2. The Court also held that the plaintiff failed to show that the parties were governed by Hindu law so as to claim a coparcenary interest. Rather, being Jats governed by custom, no presumption of joint Hindu family property could be



drawn. Consequently, the compromise decree dated 25.11.1989 was held to be perfectly legal, valid and binding, and all the issues concerning the plaintiff's ownership, entitlement to correction of entries, challenge to the decree, injunctive relief, and maintainability were decided against him. The suit was accordingly dismissed.

Findings of the First Appellate Court

10. The learned First Appellate Court affirmed the judgment of the trial Court after a comprehensive re-appraisal of the entire evidence and held that the plaintiff had utterly failed to prove that the suit property was joint Hindu family property or that he had any share, title or possession therein. The Court relied on the plaintiff's own admissions that the plot in dispute had been allotted exclusively to his father, Major Thandi Ram, and that the plaintiff himself had been allotted a separate plot as an army officer, thereby negating the plea of joint acquisition or blending of self-acquired property into the joint family hotchpotch. The Court found that the plaintiff had produced no documentary proof of contribution to the construction of the suit house, and the oral testimony of PW9, PW10, PW11 and PW13 regarding partition or delivery of possession was inconsistent, uncorroborated and insufficient. It was also held that the unregistered deed Ex.PW5/2 relied upon by the plaintiff was inadmissible as it amounted to an instrument of partition requiring compulsory registration, and no permission for leading secondary evidence had been sought. The Court endorsed the trial Court's reasoning that the parties, being Jats from Haryana, were governed by customary law and not by Hindu coparcenary law, and therefore no presumption of joint Hindu family property could arise. It further held that the letters written by



defendant No.1 did not establish any actual partition or delivery of possession, and that the plaintiff was admittedly not in possession of any portion of the suit property on the date of filing of the suit. The appellate Court also concluded that a mere declaratory suit without seeking consequential relief of possession was not maintainable under Section 34 of the Specific Relief Act. Finally, the Court held that the plaintiff, having no right or interest in the property, could not impeach the compromise decree dated 25.11.1989, and since no fraud or illegality had been proved, the decree was valid and binding. Consequently, the appeal was found devoid of merit and was dismissed with costs, and the judgment and decree dated 10.12.1999 of the learned Civil Judge (Junior Division), Hisar were affirmed.

11. Aggrieved by the concurrent findings of the Courts below, the appellant has filed the present regular second appeal, which is contested by the respondents.

Submission of learned counsel for the appellant

12. Learned counsel for the appellant argued that the Courts below failed to correctly appreciate the evidence which, according to him, clearly established that the suit property was purchased and constructed out of joint family funds, as even DW-1 Major Thandi Ram, father of the plaintiff and defendant No.2, had admitted his signatures on various letters Ex.PW-16/A, PW-16/B, PW-16/C and PW-16/D addressed to the plaintiff, which disclosed that the property was to be distributed between the plaintiff and defendant No.2. It was further submitted that Ex.PW-16/A admitted by DW-1, the complaint Ex.PW-15/1 given by Major Thandi Ram to the police, and the compromise Ex.PW-15/2 all showed that the defendant himself treated the property as joint family property. It was argued that



DW-1 also admitted the compromise deed Ex.PW-15/2 and DW-2 Lt. Col. Partap Singh similarly admitted their signatures, proving joint acquisition. Counsel contended that once such evidence was on record, it stood established that the property was constructed from joint family funds. It was then submitted that, the moment it is proved that the appellant had half share in the suit property, the judgment and decree dated 25.11.1989 passed in favour of respondent No.2 behind the back of the appellant was clearly collusive and fraudulent, the appellant not having been impleaded as a party in that suit. Learned counsel further argued that in Civil Suit No.777 dated 25.11.1989 (Ex.P14), defendant No.2 in para 2 of the plaint himself admitted that the suit property was joint Hindu family property, and this admission, coupled with the letters written by Major Thandi Ram, clearly proved that the property was purchased from joint family funds while both brothers were residing together. It was contended that once the earlier decree was alleged to be fraudulent, the burden shifted to the respondents to prove that the suit property was not joint family property. Counsel argued that the compromise deed Ex.PW-15/2 stood duly proved by PW-15 Ram Singh, Clerk from SSP Office, Hissar, and PW-2 proved that the property was rented out by B & R Hisar, showing joint ownership. He submitted that the file noting dated 25.11.1989 at page 106 showed that the suit had been ordered to be registered for hearing on 27.11.1989, however, on the same day, without waiting for the date fixed, proxy counsels for both sides appeared and had the matter decreed in favour of defendant No.2. The absence of the real counsel and the unexplained manner in which the decree was passed showed fraud, and on this ground alone, the decree deserved to be set aside. Learned counsel emphasised that the admitted letters Ex.PW-16/A to PW-16/D,



admitted by DW-1, showed that the suit property was joint and that the appellant had half share. It was further argued that both the Courts below ignored vital documentary and oral admissions of DW-1 and DW-2, and wrongly held that the plaintiff was not in possession, whereas the appellant was in possession of half portion and possession need not be claimed in a joint property. Lastly, counsel submitted that the appellant had a pre-existing right in the joint property, which was purchased from joint family funds, and the findings of both courts below regarding custom and applicability of Hindu law were contrary to pleadings and evidence and therefore unsustainable in law.

Submissions of learned Senior Counsel for the respondents

13. Learned counsel for the respondents argued that the concurrent findings of both courts below are based on a correct appreciation of evidence and require no interference, as the plaintiff failed to prove that the suit property was joint Hindu family property or that any joint family nucleus existed from which it could be purchased or constructed. On the contrary, the evidence shows that separate plots were allotted to the plaintiff and defendant No.1 in their individual capacities as Army personnel, and both constructed their houses independently from their own funds. It was emphasised that the plaintiff himself admitted in cross-examination that the plot in dispute was allotted to defendant No.1, that the house was constructed by his father, and that he had no receipts, accounts, or documentary proof of having contributed towards the purchase or construction of the suit property. Counsel further submitted that the alleged deed of agreement dated 08.11.1989 (Ex.PW15/2) is neither registered nor stamped, was never proved in accordance with law, and is inadmissible, and even otherwise it is not a



memorandum of partition but an instrument requiring compulsory registration; the photocopy produced without laying foundation for secondary evidence cannot be relied upon. The alleged letters relied upon by the plaintiff merely show an expression of intention by defendant No.1 but do not establish that any partition ever took place or that possession of half share was handed over to the plaintiff; the plaintiff's own admission that he was not in possession of any part of the house demolishes his case. Counsel also relied upon the plaintiff's conduct, including the criminal complaints and disputes with family members, to show that the story put forth was an afterthought. It was contended that the consent decrees Ex.P142 and Ex.P143, under which defendant No.1 transferred the property to defendant No.2, are perfectly legal and valid, and the plaintiff, having no right or interest in the suit property, cannot challenge their registration or validity; moreover, the plaintiff himself benefited from a similar consent decree (Ex.D2) without raising any objection, and hence he is estopped from disputing the validity of such decrees now. The respondents argued that the plaintiff's suit was not maintainable as he was admittedly not in possession of the suit property and failed to seek consequential relief, attracting the bar under Section 34 of the Specific Relief Act, 1963. Lastly, counsel submitted that the parties are governed by customary law, not Hindu law, and there is no presumption of joint Hindu family or joint family property among Jats of Haryana, thus, the plaintiff failed to prove any custom entitling him to a share in the property and the findings of both courts below are fully justified.

**Findings of this Court**

14. Having heard learned counsel for the parties at length and having meticulously examined the entire evidence, the judgments of both courts below, and the submissions made in the present appeal, this Court finds no substance in any of the grounds urged by the appellant. The entire case of the appellant revolves around three broad aspects: (i) the nature of the suit property as Joint Hindu Family property; (ii) the allegation that the consent decrees dated 25.11.1989 and 02.12.1989 were obtained fraudulently and are illegal; and (iii) the evidentiary worth of the alleged deed of agreement dated 08.11.1989 and the various letters allegedly written by defendant No.1 to the appellant.

15. On the question whether the suit property constitutes Joint Hindu Family (JHF) property, the appellant has utterly failed to discharge the initial burden. The plaintiff himself, appearing as PW16, admitted that the plot in dispute was allotted to defendant No.1 individually by virtue of his Army status, in the same way a separate plot was allotted to the plaintiff himself. Once the allotment is individual and not ancestral, the presumption of joint family or joint family nucleus does not arise. The consistent evidence of DW1 (the father) and DW2 (defendant No.2) shows that the house was constructed by defendant No.1 from his own funds, the accounts of which were maintained by him. The plaintiff could not produce any receipt, account book, proof of contributing any amount towards the purchase or construction. His vague assertion that he “gave money to his father” is an unsubstantiated statement and has rightly been discarded by the courts below. The appellant relied heavily on the stray admission of DW1 in cross-examination that “he and his father constituted a joint Hindu family”, but such a bald statement,



without any pleading, proof of jointness, common mess, or joint income, does not automatically convert self-acquired property into joint family property. The law is well-settled that mere membership in a Hindu family does not make the property joint. What must be proved is blending of separate property into the joint family hotchpotch, something completely absent here. The courts below have also rightly noted that the parties are Jats of Haryana who are governed by customary law and not by the uncodified principles of Hindu law relating to coparcenary. The appellant has led no evidence whatsoever to show the existence of any custom under which he acquires a right in the self-acquired property of his father. Thus, the conclusion that the property is not joint Hindu family property stands firmly established.

16. Coming to the alleged deed of agreement dated 08.11.1989 (Ex.PW15/2), the arguments of the appellant do not withstand legal scrutiny. The document produced is only a photocopy, the original was never produced, the scribe was not examined, no foundational facts for leading secondary evidence were ever established and even otherwise, the document is unstamped and unregistered. More importantly, the document on its face is not a memorandum of past partition but an instrument proposing division of properties in a particular manner, a document that would compulsorily require registration under Section 17 of the Registration Act. The courts below therefore rightly held it inadmissible. Even if one were to read it for collateral purposes, it does not prove that any partition actually took place, or that possession was ever handed over to the appellant. The appellant's own admissions such as his admission that he was living separately from his father since 1966, that his ration card, voter card, electricity



connection, and tax payments were all at his separate residence, and that no portion of the suit house was ever in his possession, completely belie the plea of prior partition or possession.

17. The letters allegedly written by defendant No.1 (Ex.PW16/A to PW16/D) also do not assist the appellant. A careful reading of these letters shows that they contain expressions of desire or intention to settle disputes within the family, not proof of any actual partition or transfer. None of the letters record that half the house was handed over to the appellant, none mention delivery of possession, none show that the appellant ever resided in the suit house. At best, they show contemplation of some arrangement which never materialised, particularly when viewed in light of the fact that defendant No.1 subsequently transferred the property to defendant No.2 through consent decrees. The letters cannot override the admitted documentary position that the appellant never entered into possession and never contributed any amount towards construction.

18. The allegation that the consent decrees (Ex.P142 & Ex.P143) were obtained fraudulently also stands demolished. The appellant has placed no evidence whatsoever to prove fraud. The entire plea of fraud is premised on the appellant not being impleaded in the earlier suit, however, when the appellant has no legal right in the suit property, there was no requirement of impleading him. It has also come on record that the plaintiff himself secured a consent decree (Ex.D2) in his favour on the same date i.e.02.12.1989 and at that time, he never raised any objection that his own decree required registration or was otherwise illegal. Once the plaintiff accepted the validity of the same procedure in his own favour, he cannot be permitted to challenge the same process when it benefits defendant No.2.



Fraud must be specifically pleaded and strictly proved. Nothing on record suggests that defendant No.1 acted under any coercion, deception, or misrepresentation while suffering the decree. The lower appellate Court has also relied upon the plaintiff's conduct, including criminal complaints arising out of family disputes, to conclude that the plea of fraud is an afterthought.

19. The argument regarding admission in the plaint of the earlier suit also cannot advance the appellant's case. Even if defendant No.2, in an earlier suit, mentioned that the property was "joint", such admission cannot, in law, create title where none exists. Title in immovable property cannot arise from an admission contrary to the documents of allotment and construction. Further, the courts below rightly observed that such admissions are inadmissible for want of proof that the suit itself was genuine or contested; moreover, the appellant was required to prove his independent title, not rely on a stray statement.

20. Lastly, the finding that the plaintiff was not in possession of the suit property on the date of the suit is unassailable. The plaintiff never pleaded possession; never sought relief of possession and admitted in cross-examination that he had no possession. The Local Commissioner's report also supports this. Thus, the suit for declaration simpliciter was barred by the proviso to Section 34 of the Specific Relief Act, and rightly dismissed.

Conclusion

21. In view of the above exhaustive consideration of every point argued by the appellant, this Court finds that the findings recorded by both courts below are supported by evidence and law, are neither perverse nor illegal, and call for no



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interference. The appellant has failed to demonstrate any jurisdictional error, misreading of evidence, or perversity. Accordingly, the appeal stands dismissed.

22. Pending application(s), if any, also stands disposed of.

December 03, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.