

happening in the case. Even otherwise, if the representative of the gram panchayat did not take proper interest in defending the suit filed against the gram panchayat, the gram panchayat should not suffer. Rules of procedure are mere hand-mades of justice. At the altar of procedure, substantive justice should not be sacrificed. Interpretation on the words "sufficient cause" used in Order 9 Rule 13 CPC which reads as follows :—"In any case in which a decree is passed *ex parte* against a defendant, he may apply to the court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit." should be liberal. If the defendant advances some cause for setting aside *ex parte* decree which does not seem to be false or frivolous, it should be accepted and *ex parte* decree set aside. There was no delay in filing the application for setting aside *ex parte* decree. If there was any delay, in the interest of justice, the same should be condoned under section 5 of the Limitation Act. It would bear repetition that the Gram Panchayat should not suffer merely because there was negligence on the part of its representative or its counsel.

(11) For the reasons given above, the *ex parte* decree is set aside as also the proceedings which culminated in the *ex parte* decree, on payment of Rs. 3000 as costs.

Revision is accordingly allowed.

S.C.K.

Before M.L. Singhal, J

KHAZANI,—Appellant/Plaintiff

versus

RAM KISHAN,—Respondent/Defendant

R.S.A. No. 427 of 1988

29th September, 2000

Punjab Custom (Power to Contest) Act of 1920—Code of Civil Procedure, 1908—Collusive decree in favour of the defendant on the basis of family settlement—Defendant has no antecedent, title, claim or interest even a possible claim or title in the property—Without registration of such a decree has no effect—Plaintiff has a legitimate right being the only child of her father—Family settlement must be bona fide—Plaintiff entitled to succeed to the entire property of her

father—Judgments and decrees of the Courts below set aside while decreeing the suit of the plaintiff.

Held, that family settlement must be *bona fide* one so as to resolve family dispute and rival claims. The family settlement cannot be said to be *bonafide* nor can there be said to be any dispute between the defendant and plaintiff's father *qua* this property, which was required to be resolved. In the property of plaintiff's father, defendant had no antecedent title. Whereas the family arrangement can be between persons, who have some antecedent title, claim or interest even a possible claim or title. Defendant became owner of the property for the first time due to decree dated 5th February, 1975. Decree dated 5th February, 1975 required registration. Without registration, it was of no effect. The decree purporting to have created right or title in the property for the first time required registration. It was a collusive decree suffered by plaintiff's father in favour of the defendant when there was no dispute between them and the colour of the dispute was given with a view to deprive the plaintiff of her legitimate right to look to this property being the only child of her father. Thus, the plaintiff is entitled to succeed to the entire property of her father as being his only child.

(Para 12)

Code of Civil Procedure, 1908—S.11—Res judicata—plaintiff filing civil suit against her father and the defendant—Trial Court dismissing the suit on the ground of locus standi—Another suit filed by plaintiff's father also not decided on merits as he died during the pendency of suit—plaintiff withdrawing suit with permission to file fresh one—Whether a fresh suit filed by the plaintiff is barred by res judicata—Held, no.

Held that there can be no question of applicability of *res judicata* because suit filed by the plaintiff herself was dismissed on the view that she had no right to challenge the family settlement devised by her father and the resultant decree during the life time of her father. Suit filed by plaintiff's father was not decided on merit as he died during the pendency of the suit. Question arose who should carry on the suit. Suit was permitted to be withdrawn. It was after withdrawal of that suit that the plaintiff filed this suit. After the death of her father, plaintiff had two options either to continue the suit filed by her father during his life time or she could file fresh suit in her own right. Filing of this suit by the plaintiff in her own right after the death of her father is not barred by *res judicata*.

(Para 9)

S.K. Bansal, Advocate,—for the appellant

H.S. Hooda, Senior Advocate with R.K. Arora, Advocate,—for the respondent

JUDGMENT

M.L. Singhal, J.

(1) Smt. Khazani is daughter of Roop Chand son of Ramji Lal. Roop Chand was owner of 1/2 share of the land as detailed in the heading of the plaint. Roop Chand transferred the land in suit in favour of Ram Kishan son of Prit Singh by means of judgment and decree dated 5th February, 1975. Smt. Khazani filed this suit for possession of 1/2 share of the said land as detailed in the heading of the plaint on the basis of will dated 6th December, 1974 executed by her father in her favour or in the alternative as daughter' of said Roop Chand, namely civil suit No. 79 of 1982 titled *Smt. Khazani vs Ram Kishan*. She challenged the judgment and decree dated 5th February, 1975 suffered by Roop Chand in favour of Ram Kishan defendant being of no effect on her rights as the subject-matter of the decree was of the value of more than Rs. 100, which could not be orally transferred even by a decree after 1955 as it violated the statutory provisions and such transfer could be effected by a registered instrument alone. Earlier, Roop Chand had filed suit for declaration to the effect that judgment and decree dated 5th February, 1975 titled "*Ram Kishan vs Roop Chand*" was illegal and not binding on his (Roop Chand's) rights. During the pendency of that suit, Roop Chand died on 15th August, 1981 leaving behind the plaintiff as his legal representative and that suit was withdrawn by her (Smt. Khazani), who was the legal representative of Roop Chand deceased the then plaintiff with permission of the court to file fresh suit. The question of "LR" was kept open. It is alleged in the plaint that plaintiff is the LR of Roop Chand deceased and entitled to inherit the land in suit according to the provisions of Hindu Succession Act after the death of Roop Chand and also Roop Chand had executed valid will dated 6th December, 1974 in her favour being his real daughter qua his estate. Ram Kishan obtained judgment and decree dated 5th February, 1975 by playing fraud upon the Court as well as upon Roop Chand. Ram Kishan told Roop Chand that he will manage his estate and asked him to get general power of attorney executed in favour of Ram Kishan. Judgment and decree dated 5th February, 1975 are illegal, null, void, *ab initio* and not binding on her rights being the daughter of Roop Chand. On the basis of judgment and decree dated 5th February, 1975. Ram Kishan got sanctioned mutation No. 2555 decided on 30th November, 1976. Roop Chand never appeared before the Mutation Officer. This mutation

was got sanctioned by playing fraud upon Roop Chand. Mutation No. 2555 is not binding on her and Ram Kishan has no right, title or interest in the suit land.

(2) Defendant Ram Kishan contested the suit of the plaintiff urging that the judgment and decree dated 5th February, 1975 was validly suffered by Roop Chand in favour of Ram Kishan. Roop Chand brought about family settlement. It was at that, family settlement that this land was devised on Ram Kishan. Smt. Khazani has no right to file this suit either under Hindu Law or under Customary Law. Under the provisions of Punjab Custom (Power to Contest) Act, 1920, a female is absolutely barred from contesting the alienation, effected by a male. Plaintiff was neither a coparcenar nor a reversioner, as such, the suit is not maintainable. Plaintiff has no *locus standi* to file this suit. She had filed suit previously on the same cause of action in which she had failed. Ram Kishan is not stranger to Roop Chand. He is the grandson of his real brother Kanhaiya. Roop Chand and Kanhaiya were the sons of Ramji Lal. Ram Kishan is son of Prit Singh son of Kanhaiya. Ram Kishan is owner in possession of the land in suit since its transfer in his favour by Roop Chand at family settlement, which was recognized in that judgment and decree. Plaintiff's suit is barred by time as decree dated 5th February, 1975 has been challenged after a long time. Roop Chand had never executed any will in favour of Smt. Khazani. If there is any will, the same is false and the result of misrepresentation. If there was any will, the same became infructuous due to the family settlement. Plaintiff's suit is barred by the rule of *res judicata*. Roop Chand filed suit against Ram Kishan challenging that decree which was got dismissed as withdrawn on 3rd November, 1981 by Smt. Khazani without being appointed as his LR/heir. Suit was filed at the instance of Smt. Khazani by her father.

(3) On the pleadings of the parties, the following issues were framed by the trial Court :—

- I. Whether the plaintiff has no *locus standi* to file the present suit ? OPD.
- 1-A. What is the effect of not getting the impugned decree registered ? OPP.
- 1-B. Whether Shri Roop Chand executed any will in favour of the plaintiff ? OPP.
- 1-C. Whether the impugned judgment and decree dated 5th February, 1975 in favour of defendant is illegal, null, void, *ab initio* and not binding upon the plaintiff as alleged in the plaint ? OPP.

2. Whether the plaintiff has no right to file the present suit under the Hindu Law as well as Customary Law ? OPD.
3. Whether the plaintiff has no right to challenge the alienation made by Roop Chand deceased ? OPD.
4. Whether the suit is time barred ? OPD
5. Whether the plaintiff is estopped by filing the present suit u/s 11 CPC as *res judicata* ? OPD.
6. Relief.

(4) Plaintiff's suit was dismissed,—*vide* order dated 12th March, 1987 passed by Additional Senior Sub-Judge, Panipat, in view of his findings, that Roop Chand had validly suffered judgment and decree dated 5th February, 1975 in favour of Ram Kishan. There was family settlement, devised by Roop Chand in favour of Ram Kishan in the year 1973. In pursuance of that settlement, possession was delivered to Ram Kishan and he was in possession since the year 1973 as owner. Ram Kishan had subsisting right in the suit property prior to the passing of the decree on the basis of family settlement having been arrived at between him and Ram Kishan in the year 1973, as such, the decree did not require registration. It was also found that there was no fraud or misrepresentation practised by Ram Kishan on Roop Chand in the culmination of that decree. Roop Chand had engaged one Shri Chand Ram, Advocate for him and he had thumb marked the written statement filed in suit No. 29 of 1975 and also made statement before the Court, which was thumb marked by him in the presence of Shri Chand Ram, Advocate admitting the claim of Ram Kishan. It was found that Smt. Khazani filed suit for declaration challenging that judgment and decree and during the life time of Roop Chand, in which she impleaded Ram Kishan and Roop Chand. In that suit, she alleged that the judgment and decree dated 5th February, 1975 was the result of fraud. In that suit, Ram Kishan and Roop Chand filed joint written statement denying the allegations of fraud asserting the validity of family settlement, on the basis of which, decree dated 5th February 1975 was passed. It was found that had the decree been obtained by fraud upon Roop Chand, Roop Chand and Ram Kishan would not have filed joint written statement denying the allegations of fraud and asserting the validity of family settlement and the consequential judgment and decree.

(5) Will was found to have been executed in favour of Smt. Khazani by Roop Chand. It was found that will shall have no effect. So far as judgment and decree dated 5th February, 1975 is concerned as when

Roop Chand died, subject matter of the judgment and decree dated 5th February, 1975 was not available for devolution on Khazani on the basis of that will or on the basis of natural succession; he having already dealt with it during his life time in the wake of family settlement. Plaintiff's suit was found barred by time as the validity of the decree could be challenged by Roop Chand during his life time but he did not challenge the same within the limitation period of three years and this suit which was filed in continuation of previous suit filed by her father was time barred. Plaintiff was found to have locus standi to challenge the decree and claim inheritance being legal heir of Roop Chand.

(6) Plaintiff went in appeal, which was dismissed by additional District Judge, Karnal *vide* order dated 28th October, 1987.

(7) Still not satisfied, Smt. Khazani has come up further in appeal to this Court.

(8) I have heard the learned counsel for the parties and have gone through the record.

(9) It may be mentioned at the outset that there was one Ramji Lal, who had two sons named Roop Chand and Kanhaiya. Roop Chand had one daughter name Smt. Khazani. Kanhaiya had sons named Prit Singh etc. Ram Kishan is the son of Prit Singh. Ram Kishan is thus the grand son of real brother of Kanhaiya. It may also be mentioned here that Roop Chand did not have any son. Ram Kishan filed suit No. 29 of 1975 against Roop Chand for declaration to the effect that he is owner in possession of 1/2 share of agricultural land measuring 161 kanals 16 marlas, which was decreed on the basis of written statement filed by Roop Chand and also the statement made by him before the Court. One Shri Chand Ram Advocate had been engaged by Roop Chand. He stated that Roop Chand had filed written statement in that suit, which was duly thumb marked by him. He made statement before the court, which was duly thumb marked by him in his presence. In the plaint of that suit, Ram Kishan had alleged that Roop Chand was the real brother of Kanhaiya, who was his grand father and Roop Chand's brother. Roop Chand had great love and affection for him, and as a result of love and affection for him, he devised family settlement in his favour on 31st December 1973 devising 1/2 share of land measuring 161 kanals 16 marlas in his favour and had delivered him possession thereof. He had further alleged that from that day onwards, he was in possession of the land as owner. In written statement, Roop Chand had admitted whatever had been stated in the plaint to be correct. It was in view of the admission made by Roop Chand in the written

statement supported by his counsel Shri Chand Ram and the statement made by him before the court admitting the claim of Ram Kishan as correct, which was again supported by his counsel Shri Chand Ram that the court decreed the suit of plaintiff Ram Kishan. There was thus no fraud or mis-representation practised upon Roop Chand by Ram Kishan. There is no evidence that any property of Roop Chand was to be managed by Ram Kishan and Ram Kishan suggested to him that he should execute power of attorney in his favour for the management of his property and he wanted to execute power of attorney in his favour whereas he manoeuvred this decree in his favour. Judgment and decree dated 5th February, 1975 was challenged by Smt. Khazani plaintiff during the life time of Roop Chand, in which she impleaded Roop Chand and Ram Kishan as defendants on the ground of fraud. Ram Kishan and Roop Chand filed joint written statement denying the allegations of fraud and asserting the validity of family settlement and the resultant decree dated 5th February, 1975. If Roop Chand had been the victim, he would not have filed joint written statement with Ram Kishan and defended the family settlement and resultant decree. During the life time of Roop Chand, Smt. Khazani had no right to challenge the family settlement and the resultant judgment and decree on the basis of fraud as it was Roop Chand who could challenge the family settlement and the resultant decree on the basis of fraud. During the life time of Roop Chand, she had no locus standi to challenge the family settlement and the resultant decree either under Hindu Law or under Customary Law. Under the provisions of Punjab Custom (Power to contest) Act of 1920, no person was entitled to contest the alienation of ancestral immovable property made by a right holder unless he was male reversioner falling within five degrees of descent from the common ancestor. Under Hindu Law, only a coparcenar can challenge the alienation effected by the karta of Joint Hindu family. A female is not a coparcenar. In Hindu Law, only males are coparcenars. Smt. Khazani could thus challenge the family settlement and the resultant decree after the death of Roop Chand and that too if Roop Chand had not challenged the said family settlement and the resultant decree during his life time. In this case, Roop Chand had filed civil suit No. 235 of 4th June, 1979 titled *Roop Chand vs Ram Kishan* for declaration and permanent injunction to the effect that decree passed in favour of defendant Ram Kishan and against him (Roop Chand) in suit No. 29 of 1975 was illegal, null and void, ineffective with consequential relief of permanent injunction restraining defendant Ram Kishan from interfering with his possession over the suit property. During the pendency of this suit, Roop Chand died. Application was made by his daughter Smt. Khazani to be brought on record as his LR. In this application, she had stated that Roop Chand

had died on 15th August, 1981. After his death, she is his only LR as being his daughter. In para 4 of the plaint, Smt. Khazani has averred that during the pendency of that suit, Roop Chand died on 15th August 1981 leaving behind the plaintiff as his LR and that suit was withdrawn by Smt. Khazani applicant, who was the LR of Roop Chand deceased then plaintiff with permission of the Court to file a fresh suit. The question of LR was kept open. To this para, the reply is that para 4 of the plaint is admitted regarding death of Roop Chand and withdrawing the alleged suit by the plaintiff but it is not correct that plaintiff has withdrawn the suit being the LR of deceased so the suit is liable to be dismissed. In this case, there can be no question of applicability of resjudicata because suit filed by Smt. Khazani herself namely civil suit no. 529 of 1976 titled *Smt. Khazani vs Roop Chand and Ram Kishan* was dismissed on the view that Smt. Khazani had no right to challenge the family settlement devised by her father and the resultant decree during the life time of her father. Suit filed by Roop Chand was not decided on merit as Roop Chand died during the the pendency of the suit. Question arose who should carry on the suit. Suit was permitted to be withdrawn. It was after withdrawal of that suit that Smt. Khazani filed this suit. Roop Chand died on 15th August, 1981. After his death, Smt. Khazani had two options either to continue the suit filed by her father during his life time or she could file fresh suit in her own right. Filing of this suit by Smt. Khazani in her own right after the death of her father is not barred by res judicata. It is not barred by the law of limitation. Inheritance to Roop Chand opened on 15th August, 1981 i.e. when he died and this suit having been filed in the year 1982 is quite within limitation. Prior to the death of Roop Chand, Smt. Khazani had absolutely no right to question family settlement and the resultant judgment and decree. In this case, there is no evidence that Roop Chand was victim of any fraud or misrepresentation, as such this decree is beyond the pale of challenge on the ground of fraud and misrepresentation. Learned counsel for the appellant challenged this decree on the ground that there could be no family settlement between Ram Kishan and Roop Chand qua the property of Roop Chand as Ram Kishan was not a coparcenar qua Roop Chand. Ram Krishan was the grand-son of Roop Chand's brother kanhaiya. Roop Chand had no son. As such, he was the sole owner of the property. Property in his hands could have been viewed as coparcenary property if he had a son, son's son or son's son's son. It was submitted by learned counsel for the appellant that since Ram Kishan was not a member of the family vis-a-vis Roop Chand, there could be no family settlement. If there could be no family settlement between them, Ram Kishan did not have any antecedent title in the property in the hands of Roop Chand. If Ram Kishan did not have any

antecedent title in the property in the hands of Ram Kishan did not have any antecedent title in the property in the hands of Ram Kishan, there could be no family settlement. With regard to property, in which one has antecedent title, there could be family settlement and such a family settlement does not require registration. It was submitted that the decree dated 5th February, 1975 could not vest Ram Kishan with any right title or interest in the property in the absence of registration. Such a decree required registration. In *Bhoop Singh Vs. Ram Singh Major and others*, (1) Special Leave Petition (C) No. 17474 of 1995 decided on 11th September, 1995, it was held that "Sub-Section (2) of section 17 of the Act engrafts exceptions to the instruments covered only by clauses (b) and (c) of sub-section (1) Clause (vi) relates to any decree or order of a court, except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding. Sub-section (1) of Section 17 mandates that the instrument enumerated in Clauses (a) to (e) shall be registered compulsorily if the property to which they relate is immovable property value of which is Rs. 100 or upwards. The exception engrafted in Clause (vi) of Section 17(2) is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs. 100 or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order. The Court should therefore, examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the Court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs. 100 or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable. "It was further held that "the legal position qua Clause (vi) of Section 17 (2) can be summarised as below" observed the Hon'ble Supreme Court in Bhoop Singh's case (supra) :-

- (1) Compromise decree if bonafide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration would not require registration. In a converse situation, it would require registration.

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- (2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs. 100% or upwards in favour of any party to the suit, the decree or order would require registration.
 - (3) If the decree were not to attract any of the clauses of sub-section (I) of Section 17, it is apparent that the decree would not require registration.
 - (4) If the decree were not to embody the terms of compromise, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.
 - (5) If the property dealt with by the decree be not the "subject matter of the suit or proceeding" Clause (vi) of sub-section (2) would not operate."

(10) In Bhoop Singh's case supra, Bhoop Singh was one of the defendants in the suit out of which the said Special Leave Petition arose. Plaintiffs were heirs of one Nand Ram, who is one of the five sons of one Jeevan Ram. Petitioner Bhoop Singh belongs to the branch of Rakha Ram, another son of Jeevan Ram, Ganpat was son of Nanha Ram still another son of Jeevan Ram. Bhoop Singh petitioner filed at one point of time suit No. 215 of 1973 which was disposed of on 6th April, 1973 as below :

"It is ordered that a declaratory decree in respect of the property in suit fully detailed in the heading of the plaint to the effect that the palaintiff will be the owner in possession from today in lieu of the defendant after his death and the plaintiff deserves his name to be incorporated as such in the revenue papers, is granted in favour of the plaintiff against the defendant, in view of the written statement filed by the defendant admitting the claim of the palintiff to be correct. Pleader's fee fixed Rs. 16. It is further ordered taht there is no order as to costs." It was held that this decree was of no effect as it was not got registered. It was held that the decree not having been registered, the same could not have conferred any right on the petitioner Bhoop Singh."

(11) It was submitted that this decree was of no effect when it was not got registered and when Ram Kishan was not a member of the family of Roop Chand; he being the grand-son of his brother kanhaiya.

(12) It was submitted that there was no dispute between Ram Kishan and Roop Chand qua the property of Roop Chand as Roop

Chand was in his own share while Kanhaiya or his branch was in its own share. Family settlement is intended to resolve some dispute. In *Parduman Singh and another vs Kartar Singh* (2) it was held that "scope of the term family arrangement or family settlement. These are (i) compromise or family arrangement is based on assumption that there is an antecedent title of some sort in the contesting parties; (ii) the arrangement acknowledges and defines what that title is; (iii) each party relinquishes certain claims to the property other than the one falling to his share; (iv) there is a recognition of the right of the other; (v) the family arrangement is arrived at to avoid conflicts among the joint family members on the issue of their rights in the property, and with a view to maintain peace and harmony in the family (vi) such arrangement is made either on account of the present disputes or future disputes among the joint family members; and (vii) that such family arrangement should be bona fide and terms thereof should be fair in the circumstances of the case." It was submitted that members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bonafide and the terms thereof are fair in the circumstances of a particular case. Courts will more readily give assent to such an arrangement than to avoid it." This submission was based on the observation made by their Lordships of Hon'ble Supreme Court in para 17 of *Maturi Pulliah and another v. Maturi narasimham and others* (3) It was submitted that in this case there was no dispute at all between Ram Kishan and Roop Chand. Roop Chand was well within his own 1/2 share of land measuring 161 kanals 16 marlas while kanhaiya or his branch was in the other 1/2 share. Ram Kishan manoeuvred family settlement with a view to grab Roop Chand's share of the property so that his share of the property did not pass on to his daughter Smt. Khazani. After all, why family settlements are devised? In *kale and others v. Deputy Director of consolidation and others*(4) the Hon'ble Supreme Court observed that "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. The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence. The family arrangement may be even oral in which case no registration is necessary. The registration would be necessary only if the terms of family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals

(2) (1996-1) PLR 772
(3) AIR 1966 SC 1836
(4) AIR 1976 SC 807

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 property and therefore is not compulsorily registrable. 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. Even if bona fide disputes, present or possible which may not involve legal claims are settled by a bonafide family arrangement which is fair and equitable, the family arrangement is final and binding on the parties to the settlement. Stress is on the word bonafide and dispute. "Family settlement must be bona fide one so as to resolve family dispute and rival claims. In this case, the family settlement cannot be said to be bonafide nor can there be said to be any dispute between Ram Kishan and Roop Chand qua this property, which was required to be resolved. In the property of Roop Chand, Ram Kishan had no antecedent title. Whereas the family arrangement can be between persons, who have some antecedent title, claim or interest even a possible claim or title. In this case, Ram Kishan became owner of the property for the first time due to decree dated 5th February, 1975. Decree dated 5th February, 1975 required registration. Without registration, it was of no effect. The decree purporting to have created right or title in the property for the first time required registration. It was a collusive decree suffered by Roop Chand in favour of Ram Kishan when there was no dispute between them and the colour of the dispute was given with a view to deprive Smt. Khazani of her legitimate right to look to this property being the only child of Roop Chand.

(13) It is, thus, clear that family arrangement family settlement is envisaged with a view to resolving a family dispute and rival claims by a fair and equitable division or allotment of property between the various members of the family. At the cost of repetition in this case, it must be said that there was absolutely no dispute between Ram Kishan and Roop Chand qua the property of Roop Chand. Colour of dispute was given by Roop Chand malafide with a view to divert this property to his own side and thus to deprive Smt. Khazani of her legitimate right to look to this property being the only child of Roop Chand. Decree

dated 5th February, 1975 was a sham transaction not intended to resolve any dispute. In fact, what to talk of dispute, there was not even scintilla or shred of a dispute between Ram Kishan and Roop Chand. Will or no will in favour of Smt. Khazani, Smt. Khazani is entitled to succeed to the entire property of her father as being his only child.

(14) In view of what has been said above, this appeal succeeds and is, accordingly, allowed. Judgments and decrees of the courts below are set aside and the suit of the plaintiff is decreed for possession of 1/2 share of land measuring 161 k 16m as detailed in the heading of the plaint and the judgment and decree dated 5th February, 1975 suffered in favour of Ram Kishan by Roop Chand is adjudged void and as of no effect so far as the rights of Smt. Khazani are concerned. No costs.

R.N.R.

Before Arun B. Saharya, C.J. & V.K. Bali, J

P.R.T.C. PATIALA THROUGH ITS MANAGING
DIRECTOR,—*Appellant*

versus

DHANI RAM,—*Respondent*

L.P.A. No. 1126 of 1990

7th November, 2000

Constitution of India, 1950—Art.226—Termination of services of a workman on account of misconduct—Labour Court finding no merit in the reference made to it—Appellant failed to show that any show cause notice was given to the workman or the report of the Enquiry Officer was disclosed to him—Labour Court failing to discuss evidence on merits of the controversy—No evidence at all led before the Enquiry Officer to prove the charges against the workman—Order of termination held to be illegal & arbitrary being non-speaking & without application of mind—High Court has jurisdiction to reappreciate the evidence where there has been a failure to deal with the evidence—Order of learned Single Judge ordering reinstatement of the workman with all consequential benefits upheld— However, order with regard to grant of interest on arrears of pay to the workman set aside.

Held that non-compliance of principles of natural justice as also passing of non-speaking order terminating the services of the workman