IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

FIRST APPEAL No. 124 of 1997

CNR No.: MPHC010005451997

BALCHAND MALAIYA & ORS.
Versus
AJIT KUMAR MALAIYA & ORS.

WITH

FIRST APPEAL No. 144 of 1997

CNR No.: MPHC010005621997

MAHENDRA KUMAR MALAIYA (DEAD) THROUGH LRS SMT. SULOCHANA MALAIYA AND OTHERS
Versus
AJIT KUMAR MALAIYA AND OTHERS

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Appearance:

Shri Ravish Agrawal - Senior Advocate with Shri Bhanu Pratap Singh- Advocate for the Appellants (in FA No. 144 of 1997)

Shri Alok Vagrecha, Shri Girish Kumar Shrivastava, Shri Greeshm Jain, Shri Samarth Shrivastava Shri Abhinesh Soni and Shri Divyanshu Dev and Ms. Shraddha Pandey- Advocates for the appellants. (FA No.124 of 1997)

Shri Avinash Zargar, Shri Akhilesh Jain & Shri Gouransh Bhurrak- Advocate for the respondents in both the appeals.

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(J U D G M E N T)

(Reserved on 10.09.2026)

(Pronounced on 14.10.2026)

These two appeals are filed challenging the judgment and decree dated 23-12-1996 passed in original suit RCSA No.20-A/1993 that was initially filed in December, 1959. This first appeal is being decided in the year 2026, which is 67 years after filing of the original suit before the trial Court.

2. During course of hearing of this appeal, it was contended by counsel for the appellants/defendants that on account of long pendency of this litigation, three generations of the family have suffered by the family being dragged into this litigation by one of the parties. Be that as it may be.

3. This case was extensively argued running over many days. There are almost 2,000 exhibited documents in the case and deposition of each witness runs into well over 50 pages each and the trial Court record runs into almost 6,000 pages. Looking to the extra-ordinarily large number of exhibits, the exhibits of defendants are also numbered in two groups/series by the Trial Court, one group is Ex. D/1-9 (numbered for example Ex. D 1-9/ D-1 and so on). The other group is Ex. D/10-16 (numbered for example Ex. D 10-16/D-1 and so on).

4. The matter arises from a partition suit filed by one of three brothers seeking partition of assets and businesses of a joint family which was initially running a business in the name and style of Hiralal Tikaram. The

dispute basically arises between three sons of deceased Tikaram who expired somewhere in the year 1915. The three sons succeeded properties by survivorship upon death of Tikaram in business being run by the family, which was later on diversified into number of businesses. These three sons of deceased Tikaram are Shiv Prasad Malaiya, Shobharam Malaiya, and Balchand Malaiya. The eldest son namely Shiv Prasad Malaiya expired in February, 1951 and after his death, the suit was filed for partition by his son Dashrath Kumar Malaiya in December, 1959. The suit was filed by legal representatives of deceased Shiv Prasad Malaiya along with plaintiff No.1 Dashrath Kumar Malaiya, impleading the two brothers of Shiv Prasad Malaiya namely Shobharam Malaiya and Balchand Malaiya as well as their children who were stated to be members of Hindu Undivided Family. The defendants are thus, grouped into defendants No.1 to 9 who are Shobharam Malaiya, his wife and children and the other group is defendants No.10 to 18, who are the youngest brother of deceased Shiv Prasad Malaiya, namely Balchand Malaiya and his wife, sons and daughters. Evidence was led separately by the two sets of defendants who represent the two different brothers and documents were also exhibited separately by the two groups of defendants.

5. The trial Court has passed a decree of partition by directing that the plaintiffs are entitled to get 1/3 share in the joint Hindu family properties mentioned in Schedule-A to the plaint and also to seek rendition of accounts of the income from properties and businesses mentioned in Schedule-A to the plaint. This decree passed by the trial Court has been separately challenged in two first appeals. FA No.124/1997 has been filed by Balchand Malaiya and his family members while FA No.144/1997 has been filed by legal representatives of Shobharam Malaiya.

6 Shri Ravish Chandra Agrawal, learned senior counsel representing the appellants in FA No.144/1997 has vehemently argued that the judgment and decree of the trial Court is vulnerable in as much as there was no existence of any joint family on the date of filing of the suit, which was in December 1959 and the trial Court has erroneously held that there is existence of a Hindu Undivided Family/joint family/coparcenary on the date of filing of the suit in December 1959. Learned counsel for the appellants has vehemently argued that there was partition between the three brothers Shiv Prasad, Shobharam, and Balchand on the date of Diwali of year 1941 i.e. on 20.10.1941**.** The Bahi-khata of 1939-40 mentions the last joint account of the family vide Exhibit D-272 and vide Exhibit D-280, 281, 283, and 287 the opening balance of Rs.2,93,574/- was split during the

year 1940-41 equally amongst the three brothers into three separate ledgers which leads to an accounting proof that the businesses were split three ways in the next year which matches the date 20.10.1941. It was further argued that thereafter separate and independent ledgers/accounts were maintained continuously and separation of account is itself proof of partition of business assets. He further argued that partnership deed Exhibit D1-9/D1 contains the recital that properties and businesses have been partitioned on 20.10.1941 and this partition deed is not in dispute. What is being disputed is that this partnership deed was only in name, just to get benefit in income tax liability by the family. However, it cannot be argued by the legal representative of the eldest brother, Shiv Prasad by filing a suit in the year 1959 that the partition which took place in the year 1941 was only nominal and not real.

7. It is argued that there was interruption in the joint family and severance of joint family status on 20.10.1941 itself. What might have remained is the actual physical partition and actual physical possession of the three brothers in their respective shares, but that does not continue joint family/coparcenary and interruption/severance of joint family status becomes complete in the year 1941.

8. Learned senior counsel referred to various intervening documents of 1940s to indicate that civil suits were filed, income tax returns were filed which all indicated that the three brothers carried on their businesses in individual capacity. He vehemently argued that the three brothers might have remained tenants-in-common in absence of actual physical partition of assets, but they ceased to have the status of joint tenants in the properties right from 20.10.1941.

9. It is further argued that on 18.07.1949, a document was reduced in writing which has been placed on record before trial Court as Exhibit P-1. As per the document Exhibit P-1, three separate lists have been prepared for the three brothers. This document Exhibit P-1 has to be seen in continuation of partnership deed Exhibit D1-9/D1 which categorically mentions that there are four businesses of the family and now the properties and businesses have been partitioned on 20.10.1941 due to incompatibility of females of the family with each other and the three brothers Shiv Prasad, Shobharam, and Balchand would now carry on the businesses in equal 1/3 share i.e. 5 annas and 4 pies each. When the document Exhibit P-1 is seen in continuation to the aforesaid partnership deed, it would be clear that the document Exhibit P-1 contains three distinct lists of properties which have fallen into the share of each of the three brothers. This document Exhibit

P-1 has been reduced into writing on 19.07.1949 which records a family arrangement arrived at on 18.07.1949 under counsel of a mediator named Ratanlal Malaiya, who was close relative of these parties. This Ratanlal Malaiya was a highly respectable person, being member of Constituent Assembly and was thereafter a Member of Parliament and later went on to become a Minister in Central Government. At the time of writing the document Exhibit P-1, Ratanlal Malaiya, who was the mediator/arbitrator between the three brothers, was a member of Constituent Assembly. He later went on to become a Member of Parliament and a Minister in the Central Government. In presence of this person Ratanlal Malaiya, the three lists were drawn, which conclusively establishes that there was partition on 20.10.1941. The partition dated 20.10.1941, so far as the immovable assets might have remained ambiguous, but upon reducing it in writing on 18/19.07.1949, it became final between the parties and the family arrangement gave a finality and quietus to the dispute of partition between the three brothers.

10. Learned senior counsel further argued that the eldest brother Shiv Prasad died in the year 1951, and thereafter a partnership deed Exhibit D 1-9/D-2 was signed by all three branches and plaintiff No.1 Dashrath stepped into the shoes of Shiv Prasad's 1/3 share. Thereafter, in the year 1952 the

middle brother Shobharam ceased to be member of the partnership firm and alteration of status took place and the name of firm which was Shiv Prasad Shobharam, Sagar, was changed to Malaiya Oil Mills, Sagar with effect from 05.02.1951. It is argued that the distribution of businesses also became final which got reduced into partnership businesses and the brothers and their legal representatives kept on being inducted and retiring from the partnership firms. However, the status of Joint Hindu Family got severed and interrupted in the year 1941, and at the most in the year 1949.

11. Learned senior counsel further argued that the Trial Court has held that in order of the Income Tax Appellate Tribunal, Bombay dated 10.10.1949 somewhat creates doubts on termination of joint family status, though it is not so and this document Exhibit D-55 has been wrongly construed by the Civil Court to be binding on Civil Court. Though this document does not conclusively mention that joint family exists but even if it is held so, then also it is settled in law that for purposes of Income Tax, the actual division is necessary and mere severance of status is not sufficient. However, in the present case, the Civil Court was required to adjudicate that whether there has been a severance of status and the Civil Court could not have blindly relied on some doubt cast on severance of status of joint family by an order passed by Income Tax Tribunal, which

was not binding on the Civil Court. It is also argued that for the purpose of taxation, mere disruption in joint family status is not sufficient and actual physical partition of assets must take place. The trial Court, which entertained the suit for partition, was first required to adjudicate that whether any disruption/interruption of HUF status has taken place which the trial Court erred in not considering. Learned Senior Counsel refers to Section 25-A of erstwhile ***Income Tax Act, 1922*** (for short 'Act of 1922') which mentions that in case of any claim by a member of Hindu Undivided Family that a partition has taken place, then the Income Tax Officer shall make such inquiry as he may think fit and if he finds that the joint family property has been partitioned among various members of family in definite portions, then he shall record an order to that effect. It is therefore argued that as per Section 25-A of Act of 1922, disruption of joint family status was not relevant, but actual physical partition was relevant. Learned Senior Counsel relied on judgment of the Hon'ble Apex Court in the case of ***Udayan Chinubhai v. CIT, AIR 1967 SC 762,*** to contend that an order under Income Tax law recording partition can be made only if the properties of joint family are partitioned in definite portions i.e. if the properties are physically divided. A mere division of interest in such properties is not enough. Learned Senior Counsel referred to para-7 of the aforesaid judgment which reads as under:

> ***"7.*** *But an order recording partition can be made only if the properties of the joint family are partitioned in "definite portions", that is, the properties are physically divided if they admit of such division, otherwise in such division as they admit of. In Gordhandas T. Mangaldas v. CIT [11 ITR 183] the High Court of Bombay held that Section 25-A contemplates a physical division of the joint family property : a mere division of interest in such property is not enough. Beaumont, C.J., in delivering the judgment of the Court observed at p. 195:*
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> > *"I think that the expression 'definite portions' indicates a physical division in which a member takes a particular house in which he can go and live, or a piece of land which he can cultivate, or which he can sell or mortgage, or takes particular ornaments which he can wear or dispose of, and that the expression 'definite portions' is not appropriate to describe an undivided share in property where all a particular member can claim is a proportion of the income, and a division of the corpus, but where he cannot claim any definite portion of the property…. No doubt the expression 'division in definite portions' will have to be construed with regard to the nature of the property concerned. A business cannot be divided into parts in the same manner as a piece of land; division may only be possible in the books. Special cases will have to be dealt with by the Income Tax Officer when they arise. If he comes to the conclusion, that, having regard to the nature of the property, what has been done amounts to a division in definite portions, he will record his finding under sub-section (1); If he comes to the conclusion that it does not, then he will have to go on assessing the family under sub-section (3)."*

12. Shri Agrawal, learned senior counsel, further argued that the document Exhibit P-1 is a family arrangement, and an arrangement between joint owners in a joint family property does not require registration. It was acted upon by all the parties. It is vehemently argued that it is duly admitted by evidence on record that the families of the three

brothers constituted three different HUFs in themselves, i.e. the families of Shiv Prasad represented by Dashrath being eldest male member, as well as other two brothers, Balchand and Shobharam. In the HUF of Dashrath, partition took place on 25.07.1971, in the HUF of Shobharam, partition took place in 1953 and in the HUF of Balchand, the youngest brother, partition took place in the year 1958. Therefore, all the members of the family have acted upon the document Exhibit P-1 of the year 1949. It is argued that Plaintiff No.1 Dashrath has admitted in his deposition that he has carried out partition in his HUF as per the document Exhibit P-1 with understanding between members of the family that if anything extra comes in the hands of the HUF or goes away from the hands of HUF, then this partition would be liable to be modified further. However, the three brothers have duly acted upon the document of the year 1949.

13. Learned senior counsel argues that the business partition was completed in the year 1949, whereas the partition of immovable assets also, which might have been somewhat ambiguous up to 1949, was reduced into writing by preparing three lists. In any event, lists in pursuance to past settlement do not require any registration. In this case, partition was effected in 1941 and the Schedule/lists of properties was reduced in writing in 1949. On this point, learned senior counsel relied on judgment of the

Hon'ble Apex Court in the case of ***Roshan Singh Vs. Zile Singh and Others, 2018 (14) SCC 814*** (decided on 24.2.1988).

14. Learned senior counsel argued that the arrangement/settlement vide Exhibit P-1 dated 18/19.07.1949 is being disputed by the plaintiffs only on the ground that it required further accounts to take place and the parties were to meet further by Diwali of the year 1949 and therefore the partition is not complete. It is argued that if this document Exhibit P-1 is minutely examined then it would be clear that the only thing which remained was that Shobharam and Balchand were required to get a separate factory established for the eldest brother Shiv Prasad, which would be an oil mill and soap factory containing two expellers but the building would be of such proportion that in case of need it can be extended up to four expellers. This factory was never constructed, but if something remained, then only some accounting disputes remained in view of the position that subsequently the two brothers, along with Plaintiff No.1 Dashrath Kumar, executed a partnership deed Exhibit D1-9/D-2 in the year 1959. Even otherwise, there is sufficient evidence on record to indicate that the question of third mill did not remain in dispute and the trial Court has erroneously held that since the separate mill for Shiv Prasad was never built, Exhibit P-1 cannot be enforced, which was erroneously held

amounting to unequal partition. Learned senior counsel argued that as per written statement of Defendants No.10 to 16, each brother was to get one mill, and in the earliest oil mill of the family i.e. Heera Oil Mill, the son of the eldest brother Shiv Prasad i.e. the Plaintiff No.1- Dashrath Kumar was inducted as a 50% partner, which is duly admitted in Para-11 of the plaint, which further gets corroborated by the partnership deed dated 20.10.1952 which can be seen from document Exhibit D1-9/D-8, mentioning that the name of the firm Shiv Prasad Shobharam has been altered as Malaiya Oil Mills and in this mill, Plaintiff No.1 Dashrath Kumar was given a 50% share. The learned senior counsel further relied to the deposition of Dashrath Kumar in Para-14, wherein he admitted the transfer of expellers to Malaiya Oil Mill in the year 1955 and admitted that expellers were received after the death of his father Shiv Prasad Malaiya in February 1951 that two expellers were received after the death of his father. It was argued that by mutual consent and conduct, instead of a new mill being constructed for Shiv Prasad, after the death of Shivprasad, in the existing Malaiya Oil Mill the Plaintiff No.1 got 50% share, which was a substitute arrangement in lieu of constructing a new mill for Shiv Prasad Malaiya. It is therefore argued that the parties continued entering into fresh business deals one after another well into the 1950s. The disputes might have remained pending between the parties, but these were mere disputes of

accounts of the businesses in which there were defined shares. The parties kept on entering into fresh agreements and partnerships which indicates that there was a disruption of HUF status and the parties were acting in their own right in individual capacity and were dealing with the businesses by protecting their individual rights, and no unpartitioned joint business remained after 20.10.1941. The only question of establishment of a separate mill for Shiv Prasad Malaiya, who was the father of Plaintiff No.1, also got a quietus in the years 1951–52 by creating a partnership firm for the running of Heera Oil Mill and then giving 50% share to Plaintiff No. 1 in the said oil mill. If something remains then the accounts of the said firms may require to be renditioned. However, a suit for rendition of accounts was filed by Plaintiff No.1 in the year 1960, which got dismissed in default of prosecution and was never get restored. Therefore, it is argued that nothing remained for the trial Court to entertain in the matter of partition and the partition suit itself was not maintainable as the partition amongst the family members had already taken place. He placed reliance on the following judgments :-

i. Mussamat Giraj Bai Vs. Sadashiv Dhundiraj [1916 TLW 114 (PC)]

ii. Kalyani Vs. Narayanan, 1980 Supp. SCC 298

iii. M/s Kalloomal Tapeshwari Prasad (HUF) Vs. Commissioner, 1982 (1) SCC 447

iv. Union of India Vs. M.V. Valliappan, 1999 (6) SCC 259

v. Murlidhar Kishangopal (firm), Indore Vs. CIT, AIR 1964 MP 224

vi. Chandradas Haridas Vs. CIT, 1960 SCC Online SC 186.

vii. Roshan Singh Vs. Zile Singh, 2018 (14) SCC 814

viii. Mehatrin Vs. Munga bai, 1985 MPWN 304.

ix. Manchand Gangaram Sethji Vs. Mallappa Mahalingappa, 1976 (2) SCC 429

x. Raj Gounder Vs. M. Sengodan, 2024 (12) SCC 350.

xi. Siragam Narayana Reddy Vs. Siragam Pedda, 2012 SCC Online AP 425.

15. Supporting the aforesaid contentions, Shri Girish Shrivastava, Shri Alok Vaghrecha, and Shri Greeshm Jain, learned counsel for the appellant in FA No.124 of 1997, supplemented the aforesaid arguments. It was argued by Shri Greeshm Jain, Advocate that coparcenary is a status and partnership is an agreement, and there is no presumption that HUF continued to exist. He further argued that what was conducted by Ratanlal Malaiya in the year 1949 can only be deemed to be an arbitration proceeding between members of the family and the remedy lay under the relevant provisions of the Arbitration Act, 1940 and hence, a suit for partition was not maintainable because the mandate of the arbitrator was never terminated.

16. He further relied on various applications filed under Order 41 Rule 27 CPC to submit that various relevant documents have been placed on record by way of these applications and these applications should be allowed and the matter be remanded back to the trial Court for fresh decision because the documents go to the root of the matter. He also relied

on certain applications for amendment in the plaint to bring the pleadings in the written statement of Defendant Nos.10 to 16 in line with the documents now being sought to be brought on record by way of different applications under Order 41 Rule 27 CPC. In sum and substance, he submits that the crux of these applications is that certain properties were purchased by the gifts made over by the father-in-law of Defendant No.10 Balchand Malaiya or from the own income or funds or Stridhan of the wife of Balchand Malaiya. By way of these applications, certain properties being in the exclusive ownership of Balchand Malaiya are required to be pleaded and pleadings in that regard are being proposed to be inserted.

17. Shri Girish Shrivastava, learned counsel for some of the appellants in FA No.124/1997 vehemently argued that disruption in status of HUF took place much prior to filing of the suit. Balchand had changed residence from the family home to Heera Mill premises in the year 1937 and in the year 1939, the middle brother Shobharam had also changed residence and left the family home. Partition took place in the year 1941 and assets were separated. From 1941 till 1949, there is no document on record to indicate that any joint family business existed. There is no Bahi-khata of HUF and on the contrary, in the year 1943 partnership was started and certain disputes might have arisen in the matter of profits or assets of this

partnership. However, that would amount to an accounting dispute or a dispute of rendition of account of this partnership. It is argued that by perusal of notice Exhibit D-7 sent by Balchand to Plaintiff No.1 on 05.11.1958, there is a notice of dissolution of partnership of Malaiya Oil Mill which was created in the year 1952. This was replied vide Exhibit D-9 and the dispute of dissolution of Malaiya Oil Mill became cause of action for filing of the suit, arising from the notice dated 20.05.1959 (Exhibit P-26). He argued that the only dispute remained of rendition of accounts which has been converted to a partition suit unnecessarily. He argued that the presumption of union is stronger in brothers and weaker in the case of cousins. To prove separation evidence of actual partition of joint estate by metes and bounds is not necessary and once the shares are defined there is severance of joint status. The parties may decide to live together and enjoy the property as tenants-in-common, but they cease to be joint tenants immediately from the time the shares are defined and thenceforth the parties held the properties as tenants in common. It is therefore, argued that the appeal be allowed and the suit for partition be dismissed because everything stands settled by document Exhibit P-1 dated 18/19.07.1949.

18. Shri Alok Vaghrecha, Advocate also argued for some of the appellants in FA No.124 of 1997. He argued that upon perusal of document

Exhibit D-11, it would indicate that the business was inherited by Dashrath Kumar from father and it did not devolve upon him by survivorship. He further argued that inter se partition of branch of Dashrath Prasad took place in the year 1971 which is evident from Exhibit D-17. He relied on various paragraphs of deposition of plaintiff No.1 Dashrath Kumar to indicate that the dispute stood settled as much as partition was concerned and only the dispute of rendition of accounts remained. This has been unnecessarily converted into a partition dispute and suit for partition was filed without any reason.

19. Countering these assertions, Shri Avinash Zargar and Shri Akhilesh Jain, learned counsel for the respondents in all these appeals represent the plaintiffs, which is the branch of eldest brother Shiv Prasad. They have vehemently argued that the suit for partition was duly maintainable and there was no prior partition between the members of the undivided Hindu family. It is stated that in the plaint proper pleadings were taken regarding existence of status of Hindu undivided family of the three brothers who were sons of Tikaram. The list of properties were also given. The father of plaintiff, namely Shiv Prasad, who was the eldest brother, was managing the entire property since 1940 and defendant No. 10 took over the management of Hira Oil Mill from Shiv Prasad in 1940. Vijay Oil Mill was

started by Balchand in 1943. Vijay Kumar, son of middle brother Shobharam, took up the management of Vijay Oil Mills in 1947. After death of Shiv Prasad, the youngest brother, Balchand, i.e. defendant no. 10, started managing the entire Hindu joint family property. In 1948 Balchand expressed his intention for partition, and one Ratanlal Malviya was made the mediator/arbitrator for that purpose. On 18/07/1949, houses and open plots were provisionally divided, and on 19/07/1949 the three brothers decided that they will prepare the accounts of all the businesses up to Diwali of 1949 so that partition may be finally affected and registered. However, the three brothers could not prepare proper accounts in spite of reminders being given by the mediator/arbitrator Ratanlal Malviya from time to time, and Balchand/defendant no. 10 sent letters to father of plaintiff Shiv Prasad that as partition has not been finally effected, therefore, he will become the full owner of Hira Mills from 10/11/1950. In his letter dated 31/03/1957 addressed to plaintiff no. 1, the mediator/arbitrator Ratanlal Malviya showed his inability to effect the partition. Therefore, all these documents indicate that partition in fact never took place and it always remained inconclusive. It was argued that though a partnership firm might have been created, but it is simplicitor conversion of HUF to partnership firm only to reap benefits of tax because upon conversion to partnership firm, the tax liability further got reduced. HUF in

fact continued, but it continued in the name of partnership firm only for the purpose of tax benefits.

20. He further vehemently relied on Para 6 of Exhibit P/1 to contend that businesses were never partitioned, and it was agreed that accounts of the businesses shall be settled up to Diwali of Samvat 2006, i.e. 1949. By placing heavy reliance on Exhibit P/53, it was argued that by this letter Balchand expressed his intention that he will run Hira Mills solely and it shows that since Balchand had taken some of the businesses in his hands, which was contrary to what had been agreed between the parties, therefore, any understanding that that could have been said to have arrived at in 1941 had failed and reduced to nullity. It was argued that properties were never introduced to partnership, and the partnership was only in the matter of share of profits arising out of the businesses being run by the family.

21. The learned counsel for the respondents have also argued that the arbitrator Ratanlal was a highly respected person not only within the family, but was a person of national stature, being member of Constituent Assembly, and in his deposition he categorically stated that he tried a lot for partition, but the same could not be done. He further admitted that the business is combined, and till date no final decision on partition has taken place. The learned counsel for the respondents has vehemently relied on various documents which are letters written by arbitrator Ratanlal Malviya

to the three brothers and their legal representatives, which reflect that partition remains inconclusive and that no conclusive partition has been arrived at on account of existing disputes between the three brothers or their legal representatives. Such letters are placed on record as Exhibit P/1 to P/55, which have been vehemently relied by learned counsel for the respondents/plaintiffs to argue that no actual partition took place and the partition always remained inconclusive between the members of the family, and there was no option left with the plaintiffs but to institute a suit for partition. Therefore, it is argued that the properties and businesses never got partitioned, therefore, the partition suit was in fact maintainable and it has rightly been held to be maintainable by the trial court. By placing reliance on documents Exhibit P/3, P/16, P/18, P/20, P/48, P/50, P/52, and P/53, which are the letters written inter se between the parties, so also the order of Income Tax Appellate Tribunal D1-9/D 55, it is argued that no partition actually took place.

22. Learned counsel for the respondents/plaintiffs have also raised a very emotional argument in stating that, in fact, the document Exhibit P-53 is of such an import and meaning that the father of plaintiff no. 1, who was the eldest brother Shivprasad, expired within 15 days of receipt of this letter Exhibit P-53. By this letter, defendant no. 10 Balchand had expressed intention to take over the control of Hira Oil Mills in his own hands and left

apart 5 businesses for the 2 brothers, namely Shivprasad, father of defendant no. 1, and Shobharam who was the middle brother. It is argued that the entire matter has arisen out of greed of defendants no. 1 and 10 who were the middle and younger brothers of his father, and out of such greed, all this matter has arisen. The partition remains unequal till the entire properties are divided by metes and bounds in 1/3 share between 3 branches of the family represented by 3 brothers Shivprasad, Shobharam, and Balchand.

23. It is argued that the document Exhibit P/1 dated 18/19-7-1949 is not a conclusive partition or even a family arrangement. If it was a conclusive partition or family arrangement, then it would have been comprising of all the properties. However, if the plaint is seen, then it would be clear that the plaint contains a number of properties which are not contained in the document Exhibit P/1. Therefore, the document Exhibit P/1 was not a conclusive document of partition or arrangement of all family properties by metes and bounds, and therefore, the suit for partition was maintainable even if Exhibit P/1 is taken at its face value and taken to be binding between the parties to the said arrangement.

24. Learned counsel for the respondents has further argued that there is presumption of jointness of Hindu family and there is a strong presumption in favour of Hindu brothers constituting a joint family. It is for the person

alleging disruption or severance of the status of jointness to establish it. The burden lies on the party claiming disruption in the joint status. The learned counsel for the respondents have relied on a number of judgments to buttress the point that there is a presumption of jointness in Hindu family, and the burden lies heavily on the person who projects disruption or severance of status of jointness of the family. It was further argued that if a person proves that there was nucleus with which the joint property could be acquired, then there would be presumption of the property being joint, and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased it with his own funds and not out of joint family funds. Learned counsel relied on the following judgments :-

i. Bharat Singh Vs. Bhagirathi, 1965 SCC Online SC 57.

ii. Shankarrao Dejisaheb Shinde Vs. Vithalrao Ganpatrao, 1989 Supp II SCC 162.

iii. Lachapeta Ramalaxmi Vs. Lachapeta Balanarsaiah, 2006 SCC Online AP 778.

iv. K.V. Narayanaswami Iyer Vs. Ramakrishan Iyer, 1964 SCC Online SC 277.

v. D.S. Lakshmaiah Vs. L. Balasubramanyam, 2003 (10) SCC 310.

vi. Bhagwati Prasad Vs. Dulhin Rameshwari Kuer, AIR 1951 SC 486.

vii. Kesharbai Vs. Tarabai Prabhakarrao Nalawade, 2014 (4) SCC 707.

viii. Shrinivas Krishanrao Kango Vs. Narayan Devji Kango, 1954 (1) SCC 544.

ix. Kochadai Naidu Vs. Ayyalu Naidu, 1980 Supp SCC 506.

x. Apoorva Shantilal Shah Vs. CIT, 1983 (2) SCC 155.

xi. Kalyani Vs. Narayanan, 1980 Supp SCC 298.

xii. Seth Gopaldas (HUF) Vs. CIT, 1984 Supp SCC 630.

xiii. Rampal Vs. Deputy Director Consolidation, 2015 SCC Online All 6105.

xiv. South Indian Lucifer Match Works Vs. CIT, 1961 (43) ITR 319.

25. In rejoinder submissions, Shri Ravish Chandra Agarwal, learned senior counsel has argued that correspondence between Balchand and plaintiff No. 1 Dashrath only show inter se dispute between Balchand and Dashrath with respect to some properties, and Shobharam was never part of this discussion, which shows that there was disruption of joint family because if there was no disruption of joint family, then Shobharam would also have been part of this discussion. The letters by Balchand even prior to 1949 are with respect of actual allotment or physical possession of immovable properties, but disruption of status had already been done in 1941. He further relies on Exhibit D-1, which is the partnership deed, to submit that it does not mention schedule of properties, and the recital clearly states that all the immovable and movable properties were partitioned in the year 1941. This was not a nominal partnership for tax purposes, but it was for real purposes. He argued that there was still need to divide properties in the year 1949 even if partition had taken place in the year 1941, because the movable assets, i.e. business assets, were pooled into partnership in the year 1943, but there was no formal understanding of immovable properties which was reduced to writing, and it was reduced to writing only in the year 1949. The document of the year 1949 does not infer that there was no partition in the year 1941. He further argued that Income Tax law cannot be brought in civil law. For the purpose of taking

benefit of tax, the considerations are different to infer disruption of jointness, but for the purpose of civil litigation, the considerations are different, and actual physical division and possession is not contemplated in civil law to infer disruption of status of joint family. It is therefore argued that the appeals be allowed, and the judgment of the trial court be set aside, and the suit filed by the plaintiff be dismissed.

26. This court has heard learned counsel for the rival parties at great length and perused the record.

27. A suit had been filed by plaintiffs who are legal representatives of eldest brother Shivprasad for partition and for accounts of joint family on the assertion that there was a joint family left behind by Tikaram who died in the year 1915 leaving behind him 3 sons, i.e. father of the plaintiff no. 1 and his two uncles who are defendants no. 1 and 10. It was mentioned in the plaint that earlier the business of the family used to be Kirana and food grains, and lot of properties were acquired. In the year 1940, the youngest brother Balchand took up the management of Hira Oil Mills, Sagar from his brother, Shivprasad who was father of Plaintiff No.1, in the year 1940. In the year 1943, Vijay Oil Mills was started which was in management of Balchand, and in the year 1947 Vijay Kumar, son of middle brother Shobharam, took up the management of that Mill. Balchand was carrying

out all the businesses which were started at Satna. In the year 1948, Balchand expressed intention not to remain as member of joint family, and a provisional partition took place on 18-07-1949, and on 19-07-1949, it was agreed that all the 3 brothers would prepare the accounts of the businesses so that partition may be finally affected and registered. The arbitrator chosen by the three brothers was one Ratanlal Malviya, who was close relative of all the parties, but he did not give his final adjudication for want of rendition of accounts of businesses. Various correspondences were referred in the plaint to indicate that on account of subsequent correspondences, it would infer that no partition took place, and correspondence went on up to filing of the suit in the year 1959, that there were disputes of partition between the parties. The plaintiff in the plaint related to certain oil mills which was the bone of contention between the parties, which are as under:

(1) Malaiya Oil Mills (formally known as Hira Oil Mills)
(2) Vijay Oil Mills
(3) Shrenik Oil Mills
(4) Mahendra Oil Mills
(5) Rajkumar Oil Mills

28. Apart from that, two shops, i.e. Shobharam Mahendra Kumar and Balchand Laxmichand, were also mentioned, and a plot known as Ambagad Wala plot with buildings attached thereto. Rajkumar Oil Mills is

a incorporated company in which the defendant no. 10 Balchand was the Managing Director, and plaintiff no. 1 had certain shares therein. It was averred in the plaint that three partnership deeds were executed on 18-11-1943, 01-9-1951, and 20-10-1952 which were only in the name and actually there was no partition, and these firms were constituted only to get income tax benefits, otherwise the businesses remained joint. Various averments were made as to the deliberation between the parties from time to time.

29. From a perusal of the plaint, it appears that the actual dispute remained between the branch of Shivprasad who was the plaintiff led by plaintiff No. 1 Dashrath Kumar S/o Shivprasad, on one side; while the branch of Balchand was on the other side. The plaint contained various lists.

> **List A** - related to whole of the movable and immovable properties which are 45 in numbers.
> **Supplementary List A** - showed the four boundaries of the properties mentioned in List A.
> **List B** - contained the list of properties in possession of plaintiff No. 1 Dashrath Kumar and other LRs of eldest brother, Shiv Prasad.
> **List C** - showed the properties in possession of middle brother Shobharam Malviya and his branch.
> **List D** - showed the properties in possession of defendant no. 10, Balchand and his branch.

30. The valuation of properties in the hand of branch of plaintiff was mentioned as Rs. 3.46 lakh, in the hand of branch of middle brother

Shobharam was mentioned as 12.65 lakh and in the hand of youngest brother Balchand was mentioned as 21.59 lakh, and therefore, it was projected before the trial court that the three branches are in possession of unequal shares.

31. The defendant No.1 Shobharam, who was the middle brother, filed written statement and opposed the suit. He stated that the entire properties shown in List A are not joint family properties. He stated that in the year 1949, the joint business came to an end and entire movable properties and businesses got partitioned. This took place in the Diwali day of the year 1941. The three brothers had equal share in the profits of partnership firm, but it was not a joint family, but it was a partnership firm and whatever proceeds the partnership firm was having and distributed to the three brothers became the exclusive property of each of the three brothers and ceased to be joint family income. It was further contended that Vijay Oil Mills was started in the year 1943. He denied that on the date of death of eldest brother Shivprasad, who was father of plaintiff No. 1, there was any joint family property. There was categorical assertion that immovable property got divided on the Diwali day of 1949, and after Diwali day of 1949, nothing remained to be divided. The entire partition got over, and only some disputes of accounting might have remained. Various averments

on each of the properties were made. It was contended that the original business, i.e. Kirana shop of Hiralal Tikaram, remained a common shop and not a shop of Hindu Undivided Family. It was common of all partners and not jointly owned by Hindu Undivided Family. Various averments were made regarding each of the different businesses, which only amounted to assertion that the businesses ceased to be joint and were separately owned after partition in the year 1941, by which the businesses were partitioned, and it was formally converted into partnership firm in the year 1943.

32. Defendants no. 10 to 16, representing the branch of youngest brother Balchand, filed a separate written statement and stated that there was disruption of joint family in the year 1941, and from that date Shivprasad, Shobharam, and Balchand ceased to be joint tenants, but became tenants-in-common and therefore, on the date of filing of the suit, these three brothers or their legal representatives, were not carrying out any joint family business. These properties contained in Schedule A to the plaint were denied to be properties of HUF/joint family, so also the values of the properties were denied. It was pleaded in the written statement that in or about the year 1937, differences arose between the three branches of the family, and therefore, defendant no. 10 firstly separated from the family residence and began to live and mess separately in some buildings attached

to Hira Oil Mills. Later in the year 1939, Shobharam also separated, and in the family home, only eldest brother Shivprasad and his family remained to reside. The disruption had started in the year 1937 itself, and it got completed on Diwali day of 1941, which further got formalized by executing partnership firm in 1943.

33. It was further pleaded that the first oil mill, named Hira Oil Mills was started by Balchand, defendant no. 10, in the year 1936, after having obtained expert training in oil technology at Kanpur. Oil mill was initially not a joint family business, and when separation took place in 1941, then the two elder brothers, Shivprasad and Shobharam, insisted that it be brought in the hotchpot of joint family property and because defendant no. 10 did not want to displease his brothers, he agreed that Hira Oil Mill be brought in the hotchpot and be run after Diwali 1941 as the partnership concern of the three brothers. He stated that all the businesses at Satna have nothing to do with the other two brothers because these are the sole properties of Balchand Malaiya, and the business at Satna was started by Balchand Malaiya from his own share. He denied that eldest brother Shivprasad was managing the entire affairs of the family till his death. He stated that there was no joint family either in the year 1948 or 1949, and it had ceased to exist in the year 1941. He stated that Vijay Oil Mills was

started in the year 1943. The defendant no. 10 stated that the main purpose of the plaintiff no.1 seems to be to get possession of Malaiya Oil Mills, but he is silent about the possession of the old family shop named as Hiralal Tikaram shop, which is in the possession of plaintiff no. 1. Detailed pleading in respect of each Oil Mill was made. It was stated that Vijay Oil Mill was started in 1943 after disruption of joint family status. Shrenik Oil Mill was started from the separate business of foodgrains being carried out by Balchand at Satna, and it was established somewhere in the year 1949. Mahendra Oil Mill was established by defendant no.1 Shobharam from his separate funds. Rajkumar Oil Mill is a private limited company. Therefore, it was argued that none of the other oil mills, apart from Hira Oil Mills, renamed as Malaiya Oil Mills, have been established from joint family property or joint family income, but have been established after partition of the businesses in the year 1941.

34. The main question that arises for determination before this Court is that whether there was any partition in the family in the year 1941 or in the year 1949, or whether the partition of businesses in the year 1941 remained a nominal partition only for tax purposes, or it was a partition creating irreversible disruption in jointness of businesses of family. If there is disruption of jointness of businesses in the family in the year 1941, then the

subsequent properties and businesses acquired by each of the members of family would be their individual properties derived from their individual shares in the income of their share in partnership, because then it would cease to be a joint business, but it would be a business conducted by partners and the proceeds from that business would be individual income of the partners, and would cease to be income of the joint family. There would be disruption of jointness and all properties that would be acquired from the income of the business after 1941 would be individual property of the person in whose name it has been purchased and there would be no presumption of the jointness of the properties.

35. From the pleadings and the evidence on record, it is clear that up to Diwali day of 1941, only one Oil Mill was there, i.e. Hira Oil Mill, which later on got renamed as Malaiya Oil Mills in the year 1951-52. The other oil mills have been established after 1941, and therefore, it is required to be seen that whether in the year 1941 there was any disruption in joint family status.

36. The document that has been placed on record to indicate a partition having taken place in the family in the year 1941 is a partnership deed dated 18-11-1943, (Exhibit D-1-9/D-1). This deed is admitted between all

the parties, and there is a dispute of interpretation of this deed that whether it is a nominal deed only to reap income tax benefits, or it is a real partition.

37. From a perusal of this deed, it is clearly mentioned therein that the family is a joint family carrying out four businesses as under:

(1) Hiralal Teekaram, Sagar;
(2) Hiralal Teekaram, Lalitpur;
(3) Shivprasad Shobharam, Hogganj, Sagar;
(4) Hiralal Oil Mill, Sagar.

38. It is also mentioned that some fields, villages, and house properties are also there, and on account of incompatibility of female temperament and differences of opinion in the management and supervision of business and domestic affairs, there has been an amicable settlement and partition of properties on 20-10-1941 in definite portions. The share of each of the brothers is shown as 5 aana, 4 pies.

39. Reading along with the said partnership deed if the ledger entries are seen, then as per ledger entry Exhibit D-1-9/272, the closing balance is Rs. 2,93,574/-. In the ledger Exhibit D-1-9/280, which is of the year 1940-41, Deepawali to Deepawali, which was the accounting practice at that time, the liability portion contains separate amount of Rs. 97,858/- against all the three brothers totaling to Rs. 2,93,574/-. It indicates that there was separation of capital between all these three brothers.

40. Exhibit D1-9/281, 283, and 287 indicate ledgers of Shivprasad, Shobharam, and Balchand in firm Hiralal Tikaram. It indicates that separate accounts of all the three brothers used to be kept from the year 1941 onwards.

41. The partnership deed Exhibit D-1, dated 18-11-1943, does not leave anything to doubt that there has been a disruption of jointness of Hindu family in mentioning that they have partitioned the businesses as well as the house properties and fields in villages. Clause 8 of this deed mentions that the income of the house property will be shared by each partner in proportion to the respective aforesaid share held by each of the partners in the firm. This partnership deed is not a disputed document, and Clause 6 of the partnership deed mentions that at the end of each accounting year, i.e. Diwali day, accounts of the firm shall be made up and profit and losses shall be distributed to the partners in proportion to their respective shares. Clauses 6 to 8 of this partnership deed are as under

> *"6. That proper books of accounts shall be kept and at the end of each Diwali year, accounts of the firm shall be made up and Profits & Losses of the year shall be ascertained, as the case may be, and distributed to the partners in proportion to their respective shares and adjusted to their respective accounts.*
> *7. That the profits or Losses of the share held by the joint family in the name of Balchand in the firm named and styled as Balehand Lakhmichand, Katra Bazar, Saugor, will hereinafter be shared by parties No. (1) (2) and (3) equally.*

8. That the Income of the house property will be shared by each partner in proportion to the respective aforesaid share held by each of us in the firm."

42. The aforesaid paragraphs 6 and 7 indicate that there was to be separate share of the incomes from business as well as from house properties and therefore, it is not so that it is only a partition of businesses, but it seems to be an outright partition of businesses as well as incomes from house properties. There is clear assertion in the partnership deed that other immovable properties are there which have been partitioned on 20-10-1941, but there is no clear assertion that which house property, which house or land property will fall to which person of the family. Therefore, it only indicates that actual physical possession of the immovable properties was postponed to be decided at some later date, because arrangement in that respect might have been inconclusive, but it was duly mentioned that incomes derived from house properties will be shared by each partner in proportion to their share, that means that income from the house properties would cease to be joint income of the joint family, but it would be an individual income of individual three brothers, of the three brothers separately in their individual capacity.

43. Apart from the partnership deed of 1943, another substantial development took place, whereby the three brothers filed a suit against one Seth Chhaganlal in the year 1943 registered as RCS-B No. 2 of 1943 before

Subordinate Judge Class II, Sagar, which was decided on 04-02-1944. Para 1 of the judgment, which is placed on record as Exhibit D1-9/D-110, mentions that the plaintiffs Shivprasad, Shobharam, and Balchand were formally members of a joint Hindu family and traded under the name and style of Hiralal Tikaram and they have now separated and constitute a registered firm under the same name. Issue no. 1 was framed as to whether the plaintiffs are partners of registered firm Hiralal Tikaram, and it was found proved by the trial court in response to issue no. 1. All the three brothers were plaintiffs in the suit and it clearly amounts to admission by all the three brothers that there has been a partition and they have now separated and constitute a partnership firm as partners. The father of plaintiff no. 1 had filed a suit as far back as in the year 1943 and admitted to severance of status, disruption of status of joint family as far back as in the year 1943, which was also found proved even in 1943.

44. The severance of status of joint family was not found proved by the trial court only on strength of document Exhibit D 1-9/55, which is an order of Income Tax Appellate Tribunal in Income Tax Appeal No.s 3780, 3781 & 3782 of 1948–49 arising from assessment years 1945–46, 1946–47, and 1947–48. These have been decided by Income Tax Appellate Tribunal (ITAT), Bombay Bench "B" on 10-10-1949. In this order, there is some

reproduction of a statement of Balchand recorded on 23-02-1945, whereby Balchand has stated as under:

> *"I am a partner in the above-said firm in the capacity of a member of the Hindu Undivided Family of Hiralal Tikaram."*

45. It was held by the ITAT that it appears that the assessee did not know that they were entitled to substantial relief as a result of constitution of firm w.e.f. 21-10-1941. The ITAT goes on to mention that the partners divided the business assets of the Hindu Undivided Family on 20-10-1941 and they constituted a firm on 20-10-1941. They were ignorant of the benefits due to them as a result of constitution of firm. The returns continued to be submitted as before.

46. The ITAT went on to hold that there seems to be no dishonesty of the assessee and therefore ruled in favour of assessee, directing the Income Tax Officer to register the firm for the assessment year 1945–46 onwards. The ITAT has recorded the finding that up to assessment year 1945–46, the returns seem to have been filed not as partnership firm because the assessee seems to be unaware of tax benefit. The ITAT has allowed tax benefits to be extended as per partnership firm from assessment year 1945–46 onwards. The statement of Balchand which has been quoted by the ITAT is the only fact that has been taken into account by the trial court in holding that the joint family still existed. The statement date of Balchand is 23-02-1945 and

the tax appeals are from assessment year 1945–46 onwards. The assessment year 1945–46 would translate to financial year 1944–45, which would have ended in March 1945. The statement of Balchand is dated 23-02-1945. There was no reason for statement of Balchand to have been recorded on 23-02-1945, by which date the assessment, the financial year had not ended, and the appeals are filed before the Income Tax Tribunal in the year 1948. Therefore, it is therefore impossible that this statement was recorded before the ITAT on 23-02-1945. The order of ITAT is utterly cryptic that before which authority these statements were recorded. The last paragraph of the order of ITAT mentions that the statement of Balchand has been pointed out by the Departmental Representative. It indicates that this statement was not before the tribunal. Then before which authority this statement was made is totally ambiguous and cannot be gathered from the order of ITAT. Even the ITAT allowed tax benefit as a partnership firm and did not disallow the tax benefits as a partnership firm and held that even if Balchand made the statement that there is Hindu Undivided Family, then it seems to be made in ignorance of tax laws. Therefore, this order of the Income Tax Appellate Tribunal does not lead to any presumption that there was no disruption of joint family status.

47. The relevant portion of the order of ITAT, whereby the ITAT has ultimately upheld the grant of tax assessment as per partnership firm is as under:-

> *"Till recently, it appears the partners of the firm did not know that they were entitled to substantial relief as a result of the constitution of the firm with effect from 21.10.1941. They divided the business assets of the Hindu Undivided Family on 20.10.1941 and they constituted a firm on 21.10.1941. They were ignorant of the benefits due to them as a result of the constitution of the firm. The returns continued to be submitted as before. Balchand also made the statement to which our attention was drawn by the departmental representative. It appears to us that there has been no dishonesty on part of the assessee. We, therefore, allow these appeals and direct the Income Tax Officer to register the firm for the assessment years 1945–46, 1946–47 and 1947–48."*

48. It is settled in law that as per Income Tax Act, it has to be a definite partition in definite portions which is different from Hindu law. In **Charandas Haridas v. CIT, reported in AIR 1960 SC 910**, it has been held as under:—

> *"**11.** The respondent suggested that the family could have partitioned the managing agencies among the members of the family by allotting them severally; but that would not have been possible without a dissolution of the managing agency firms and their reconstitution, which was not altogether in the hands of Charandas Haridas. It was also suggested that the managing agencies could have been allotted to Charandas Haridas while the others took some other property, or a receiver could have been appointed. No doubt, there were many modes of partition which might have been adopted; but the question remains that if the family desired to partition these assets only and no more, could they have acted in some other manner to achieve the same result? No answer to this question was attempted."*

49. The question of definite portion was interpreted by the Hon'ble Apex Court in **Udayan Chinubhai v. CIT, AIR 1967 SC 762** in the following manner:—

> *"**7.** But an order recording partition can be made only if the properties of the joint family are partitioned in "definite portions", that is, the properties are physically divided if they admit of such division, otherwise in such division as they admit of. In Gordhandas T. Mangaldas v. CIT [11 ITR 183] the High Court of Bombay held that Section 25-A contemplates a physical division of the joint family property : a mere division of interest in such property is not enough. Beaumont, C.J., in delivering the judgment of the Court observed at p. 195:*
>
> > *"I think that the expression 'definite portions' indicates a physical division in which a member takes a particular house in which he can go and live, or a piece of land which he can cultivate, or which he can sell or mortgage, or takes particular ornaments which he can wear or dispose of, and that the expression 'definite portions' is not appropriate to describe an undivided share in property where all a particular member can claim is a proportion of the income, and a division of the corpus, but where he cannot claim any definite portion of the property…. No doubt the expression 'division in definite portions' will have to be construed with regard to the nature of the property concerned. A business cannot be divided into parts in the same manner as a piece of land; division may only be possible in the books. Special cases will have to be dealt with by the Income Tax Officer when they arise. If he comes to the conclusion, that, having regard to the nature of the property, what has been done amounts to a division in definite portions, he will record his finding under sub-section (1); If he comes to the conclusion that it does not, then he will have to go on assessing the family under sub-section (3)."*

50. Therefore, the reasoning adopted by the trial court that the order Exhibit D55 D-55 passed by the ITAT Bombay infers no partition to have taken place in the year 1941 is clearly erroneous and cannot be sustained.

51. Therefore, in the considered opinion of this Court, it is clear that there was disruption in the Hindu Undivided Family and joint family status as on 20.10.1941, which was followed by constitution of partnership firm vide Exhibit D1-9/D-1, dated 18.11.1943, which is not in dispute. Even for the purpose of income tax benefits, though from the order of ITAT it appears that for some years the returns continued to be submitted on the basis of HUF, but ultimately the ITAT allowed the returns to be submitted as per partnership firm since the assessment year 1945–46, which translates to financial year 1944–45, which is immediately after constitution of partnership firm, which took place on 18.11.1943 and therefore, from the very next financial year, i.e. 1944–45, the income tax assessment was alone as per the modalities applicable to partnership firm.

52. The partnership deed Exhibit D-1 dated 18.11.1943 does indicate disruption of status of HUF, but there is nothing, which mentions that in what manner the immovable properties, i.e. houses and lands, etc., would be distributed, though the partnership deed mentions that even the proceeds from houses would be divided equally between the partners.

53. The counsel for the appellants had relied on the judgments in the case of **Musammat Girja Bai vs Sadashiv Dhundiraj 1916 SCC OnLine**

PC 31, ***Kalyani v. Narayanan, 1980 Supp SCC 298*** and ***Kalyanaswamy v. Bakthavatsalam, (2021) 16 SCC 543*** to argue that actual division of HUF is not sine qua non for disruption of joint status.

54. In the case of ***Kalyani (supra),*** it has been held that disruption on joint family status is the first step towards partition by metes and bounds and actual division of properties follows disruption of joint family status. Therefore, disruption of joint family status does not necessarily require partnership by metes and bounds. It has been held in the aforesaid case that disruption puts an end to coparcenary and the members of the joint family thereafter continue as tenants in common and not joint tenants. It has been held as under:-

> ***"10.*** *The next stage in the unfolding of the case is whether Ex. P-1 is effective as a partition. Partition is a word of technical import in Hindu law. Partition in one sense is a severance of joint status and coparcener of a coparcenary is entitled to claim it as a matter of his individual volition. In this narrow sense all that is necessary to constitute partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty. Such an unequivocal intention to separate brings about a disruption of joint family status, at any rate, in respect of separating member or members and thereby puts an end to the coparcenary with right of survivorship and such separated member holds from the time of disruption of joint family as tenant-in-common. Such partition has an impact on devolution of shares of such members. It goes to his heirs displacing survivorship. Such partition irrespective of whether it is accompanied or followed by division of properties by metes and bounds covers both a division of right and division of property (see Appovier v. Rama Subba Aiyan [(1886) 11 MIA 75 : 2 Sar*

> *218 : 8 WR PC 1] quoted with approval in Krishnabai Bhritar Ganpatrao Deshmukh v. Appasaheb Tuljaramarao Nimbalkar [(1979) 4 SCC 60, 68]). A disruption of joint family status by a definite and unequivocal indication to separate implies separation in interest and in right, although not immediately followed by a de facto actual division of the subject-matter. This may at any time, be claimed by virtue of the separate right (see Girja Bai v. Sadashiv [AIR 1916 PC 104 : 43 IA 151 : 18 Bom LR 621]). A physical and actual division of property by metes and bounds follows from disruption of status and would be termed partition in a broader sense."*

55. In the present case, as has already been discussed above, there was a separation of accounts and once there is a share of profits in members of the partnership firm and there is no single Karta keeping all the proceeds of the profits of the partnership firm, therefore, it cannot be said that there was existence of a Hindu Undivided Family (HUF). This question was considered by the Hon'ble Supreme Court in the case of ***Nanchand Gangaram Shetji v. Mallappa Mahalingappa Sadalge, (1976) 2 SCC 429*** in the following manner :-

> ***"37.*** *Reference has already been made to Ex. 316 an order dated June 20, 1950, of the Income Tax Officer showing that Defendants 1, 2 and 3 were being assessed on, the basis that each of them had 1/3rd share in the business. In a joint Hindu family business, no member of the family can say that he is the owner of one-half, one-third or one-fourth. The essence of joint Hindu family property is unity of ownership and community of interest, and the shares of the members are not defined. Similarly, the pattern of the accounts of a joint Hindu family business maintained by the karta is different from those of a partnership. In the case of the former the shares of the individual members in the profits and losses are not worked out, while they have to be worked out in the case of partnership accounts."*

56. The disputes which arose in the 1950s, though various correspondences have been placed on record between Balchand and Dashrath as well as with Ratanlal Malaiya, who was the Arbitrator to carry out partition by metes and bounds, but it appears that these disputes are not as regards the existence of joint hindu family to be still there, but as regards the physical division of properties. There is no single Karta of the family shown after 1941 and it appears that each one of the three brothers was keeping the shares of the profits to himself. There is nothing which has been established by any of the parties that any single person remained as Karta of the HUF, if there was an admitted and undisputed existence of HUF.

57. This physical division by metes and bounds seems to have taken place by the document Exhibit P-1, which was executed on 18/19 July, 1949. This document categorically contains three lists of properties, which have fell into the share of the three brothers: Shivprasad, Shobharam and Bhalchand. 14 properties fell into the share of Shivprasad, 11 properties fell into the share of Shobharam, and 9 properties fell into the share of Bhalchand. A note of Bhalchand dated 19.07.1949 states that some land area measuring 4.66 acres adjoining to the east of Hira Mills, which has been purchased from Ambadas Chandani would not be part of this

arrangement and he does not intend to make the said land as part of this arrangement.

58. This arrangement of 1949 has not been believed by the Trial Court on two grounds: i.e. firstly, that it is not a registered document and it seems to be a memorandum of partition; and secondly, that it itself mentions that the parties will sit together by Diwali of the year 1949 and then a final scheme will be worked out. However, when paragraph 1 of this document is seen, it categorically declares that immovable property has been divided as per List A. Paragraph 2 of this document relates to the establishment of a separate oil and soap factory for eldest brother Shivprasad. Paragraph 3 relates to the share in the shop Bhalchand Lakhmichand. Paragraph 4 relates to middle brother Shobharam not being responsible for profit and loss in business from the date of this document. Paragraph 4 relates to Bhalchand not entering into future trading without the consent of eldest brother Shivprasad. Paragraph 6 relates to the parties settling their accounts of businesses by Diwali of Samvat 2006 (i.e. 1949) so that the final stamp of approval can be given on the arrangement and it can be registered. Paragraph 7 further declares that the immovable property that has been divided as per list A on 18.07.1949, the three parties shall be deemed to be

in their separate possession from today and each party shall look after its own share of properties and recover the rent etc.

59. Therefore, paragraphs 1 and 7 of this arrangement clearly stipulate that it is a full and final arrangement/settlement so far as immovable properties are concerned. Paragraphs 2 to 6 of this document infer that the disputes regarding accounts of businesses remain to be settled. Paragraph 8 of this document, which is the last paragraph, mentions that till the accounts are settled, Hira Oil Mill and Vijay Oil Mill shall be looked after by defendant No.10 Balchand. The eldest and middle brothers, Shivprasad and Shobharam shall be entitled to call for scrutiny of accounts of the mills.

60. On a careful reading of this document, it can be easily gathered that it amounted to physical partition of properties so far as immovable properties are concerned and, only accounts of businesses remained to be settled, though the businesses had separated in the year 1941 itself, but its accounts remained unsettled. This seems to be because from the proceeds of business, certain new businesses were opened in the intervening period and the parties were quarreling among themselves for their shares in the subsequent businesses that had been opened with the proceeds of the partnership firm, which came into existence by partnership deed dated 18.11.1943 (Exhibit D-1-9/D-1).

61. The trial Court has not relied on this document on the ground that it is unregistered. This document has to be read in continuation with what happened in the years 1941 and 1943, which was the disruption of the status of jointness of the HUF. This document (Exhibit P-1) is the document of reducing the physical partition into writing, whereas the jointness stood disrupted in the year 1941 and at the most in the year 1943 when the partnership deed was executed. It has been brought on record that accounts were separated in the year 1941 itself. Also it has been brought on record, that the parties have thereafter acted in furtherance of this document, Exhibit P-1 and have entered into sale transactions and filed eviction suits against the tenants in their properties of their respective shares, which fell to them as per the document Exhibit P-1.

62. It has further been brought on record that there was subsequent partition in the respective branches of Shiv Prasad, Shobharam and Balchand, which has been duly established before the trial Court. The branch of Shobharam partitioned among itself in the year 1953. The branch of Balchand partitioned amongst itself in the year 1957. Even the branch of Dashrath, i.e., plaintiff branch, also partitioned amongst itself in the year 1970-71. The document of partition amongst the branch of plaintiffs is on record as Exhibit D10-16/D-17, which has been executed on 25.07.1972.

Therefore, it is clear that all the three branches have acted upon these three lists prepared in the document Exhibit P-1 of the year 1949. The plaintiff branch has also sold certain properties, which fell to their share vide Exhibit P-1 and one of the sale deeds is on record as Exhibit D-10-16/D-779, dated 29.02.1988. It is, therefore, clear that all the parties have acted upon this arrangement vide Exhibit P-1 carried out in July 1949.

63. The wealth tax return of plaintiff No.1 Dashrath was pointed out to this Court, which is Exhibit D10-16/D-10, which includes the properties in Exhibit P-1, which further indicates that Exhibit P-1 was acted upon by plaintiff branch. The properties fallen into share of his father vide P-1 were reflected by the plaintiff in his Wealth Tax return.

64. In the case of ***Ravinder Kaur Grewal v. Manjit Kaur, (2020) 9 SCC 706***, it has been considered by the Hon'ble Apex Court that whether a family settlement/arrangement requires compulsory registration or not. The disruption of jointness of family had taken place in the year 1941/1943 and therefore, this list prepared vide Exhibit P-1 in the year 1949 can safely be said to be memorandum of settlement containing something, which already took place in the year 1941/1943. The document, therefore, becomes only memorandum of family arrangement. It cannot become a document which created or transferred rights for the first time in immovable property.

65. In the aforesaid case of ***Ravinder Kaur Grewal (supra)*****,** it has been held by the Hon'ble Apex Court that once a party acts upon the terms of family settlement, then it is not open to the party to resile from the said arrangement. The parties to the family settlement are estopped from disowning arrangement already reached acted upon and recorded in the memorandum of settlement. Once the document does not for the first time create a right in favour of party in immovable property, then the said memorandum is only arrangement, which does not require registration. The Hon'ble Apex Court held as under:-

> ***"25.*** *Be that as it may, the High Court has clearly misapplied the dictum in the relied upon decisions. The settled legal position is that when by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangement ought to be governed by a special equity peculiar to them and would be enforced if honestly made. The object of such arrangement is to protect the family from long-drawn litigation or perpetual strives which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family, as observed in Kale [Kale v. Director of Consolidation, (1976) 3 SCC 119] . In the said reported decision, a three-Judge*

Bench of this Court had observed thus: (Kale case [Kale v. Director of Consolidation, (1976) 3 SCC 119] , SCC pp. 125-26, para 9)

> *"9. ... A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits."*

26. *In para 10 of the said decision, the Court has delineated the contours of essentials of a family settlement as follows: (Kale case [Kale v. Director of Consolidation, (1976) 3 SCC 119] , SCC pp. 126-27)*

"10. In other words to put the binding effect and the essentials of a family settlement in a concretised 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 arrangement 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) 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;*
>
> *(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.'"*

27. *Again, in para 24, this Court restated that a family arrangement being binding on the parties, clearly operates as an estoppel, so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same. In para 35, the Court noted as follows: (Kale case [Kale v. Director of Consolidation, (1976) 3 SCC 119] , SCC p. 136)*

> *"35. ... We have already pointed out that this Court has widened the concept of an antecedent title by holding that an antecedent title would be assumed in a person who may not have any title but who has been allotted a particular property by other party to the family arrangement by relinquishing his claim in favour of such a donee. In such a case the party in whose favour the relinquishment is made would be assumed to have an antecedent title."*

And again, in para 36, the Court noted as follows: (Kale case [Kale v. Director of Consolidation, (1976) 3 SCC 119] , SCC p. 137)

> *"36. ... Yet having regard to the near relationship which the brother and the son-in-law bore to the widow the Privy Council held that the family settlement by which the properties were divided between these three parties was a valid one. In the instant case also putting the case of Respondents 4 and 5 at the highest, the position is that Lachman died leaving a grandson and two daughters. Assuming that the grandson had no legal title, so long as the daughters were there, still as the settlement was made to end the disputes and to benefit all the near relations of the family, it would be sustained as a valid and binding family settlement."*

28. *While rejecting the argument regarding inapplicability of principle of estoppel, the Court observed as follows: (Kale case [Kale v. Director of Consolidation, (1976) 3 SCC 119] , SCC p. 138, para 38)*

> *"38. ... Assuming, however, that the said document was compulsorily registrable the courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it."*

And in para 42, the Court observed as follows: (Kale case [Kale v. Director of Consolidation, (1976) 3 SCC 119] , SCC p. 140)

> *"42. ... In these circumstances there can be no doubt that even if the family settlement was not registered it would operate as a complete estoppel against Respondents 4 and 5. Respondent*

1 as also the High Court, therefore, committed substantial error of law in not giving effect to the doctrine of estoppel as spelt out by this Court in so many cases."

29. *The view so taken is backed by the consistent exposition in previous decisions [Khunni Lal v. Gobind Krishna Narain, 1911 SCC OnLine PC 14 : (1910-11) 38 IA 87 : ILR (1911) 33 All 356; Hiran Bibi v. Sohan Bibi, 1914 SCC OnLine PC 28 : AIR 1914 PC 44; Sahu Madho Das v. Mukand Ram, AIR 1955 SC 481; Ram Charan Das v. Girja Nandini Devi, AIR 1966 SC 323; Tek Bahadur Bhujil v. Debi Singh Bhujil, AIR 1966 SC 292; Maturi Pullaiah v. Maturi Narasimham, AIR 1966 SC 1836; Krishna Beharilal v. Gulabchand, (1971) 1 SCC 837; S. Shanmugam Pillai v. K. Shanmugam Pillai, (1973) 2 SCC 312; Ram Gopal v. Tulshi Ram, 1928 SCC OnLine All 140 : AIR 1928 All 641; Sitala Bakhsh Singh v. Jang Bahadur Singh, 1933 SCC OnLine Oudh CC 148 : AIR 1933 Oudh 347; Kalawati v. Sri Krishna, 1943 SCC OnLine Oudh CC 156 : AIR 1944 Oudh 49; Bakhtawar v. Sundar Lal, 1925 SCC OnLine All 253 : AIR 1926 All 173; Awadh Narain Singh v. Narain Mishra, 1961 SCC OnLine Pat 99 : AIR 1962 Pat 400; Ramgowda Annagowda Patil v. Bhausaheb, 1927 SCC OnLine PC 64 : (1926-27) 54 IA 396 : AIR 1927 PC 227; Brahmanath Singh v. Chandrakali Kuer, 1960 SCC OnLine Pat 192 : AIR 1961 Pat 79; Bibi Aziman v. Saleha, 1962 SCC OnLine Pat 103 : AIR 1963 Pat 62; Kanahi Lal v. Brij Lal, 1918 SCC OnLine PC 19 : (1917-18) 45 IA 118 : AIR 1918 PC 70; Dhiyan Singh v. Jugal Kishore, (1952) 1 SCC 184 : AIR 1952 SC 145; T.V.R. Subbu Chetty's Family Charities v. M. Raghava Mudaliar, AIR 1961 SC 797; Rachcha v. Mendha, 1946 SCC OnLine All 65 : AIR 1947 All 177; Chief Controlling Revenue Authority v. Satyawati Sood, 1971 SCC*

OnLine Del 356 : AIR 1972 Del 171; Shyam Sunder v. Siya Ram, 1972 SCC OnLine All 149 : AIR 1973 All 382] referred to and duly analysed in the reported judgment in Kale case [Kale v. Director of Consolidation, (1976) 3 SCC 119] . The question formulated by the High Court, in our opinion, stands answered in favour of the appellants (plaintiff), in light of exposition of this Court in Kale [Kale v. Director of Consolidation, (1976) 3 SCC 119] .

30. *A priori, we have no hesitation in affirming the conclusion reached by the first appellate court that the document Ext. P-6 was nothing but a memorandum of a family settlement. The established facts and circumstances clearly establish that a family settlement was arrived at in 1970 and also acted upon by the parties concerned. That finding of fact recorded by the first appellate court being unexceptionable, it must follow that the document, Ext. P-6 was merely a memorandum of a family settlement so arrived at. Resultantly, it was not required to be registered and in any case, keeping in mind the settled legal position, the contesting defendants were estopped from resiling from the stated arrangement in the subject memorandum, which had recorded the settlement terms arrived at in the past and even acted upon relating to all the existing or future disputes qua the subject property amongst the (signatories) family members despite absence of antecedent title to the property concerned.*

31. *As regards the decision in Bhoop Singh [Bhoop Singh v. Ram Singh, (1995) 5 SCC 709] and Som Dev v. Rati Ram [Som Dev v. Rati Ram, (2006) 10 SCC 788] , the same dealt with the question of necessity to register any decree or order of a court governed by*

clause (vi) of Section 17(2) of the Registration Act, 1908 ("the 1908 Act"). In the present case, however, clause (v) of sub-section (2) of Section 17 of the 1908 Act is attracted. Section 17 as applicable when the cause of action arose (prior to amendment of 2001) reads thus:

> *"Part III*
>
> *Of Registrable Documents*
>
> ***17. Documents of which registration is compulsory**.—*
>
> *(1) * * **
>
> *(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—*
>
> *(i)-(iv) * * **
>
> *(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or"*

***32.** In our considered view, reliance placed by the High Court on the decisions of this Court will be of no avail to alter or impact the conclusion recorded by the first appellate court. As aforementioned, in Bhoop Singh [Bhoop Singh v. Ram Singh, (1995) 5 SCC 709] and Som Dev [Som Dev v. Rati Ram, (2006) 10 SCC 788] , the Court was dealing with the issue of compulsory registration of a decree or order of Court. In the context of the applicable clause (vi) in sub-section (2) of Section 17, the Court in Bhoop Singh [Bhoop Singh v. Ram Singh, (1995) 5 SCC 709] went on to hold as follows: (Bhoop*

Singh case [Bhoop Singh v. Ram Singh, (1995) 5 SCC 709] , SCC pp. 715-16, para 18)

> *"18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below:*
>
> *(1) Compromise decree if bona fide, 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.*
>
> *(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 (1) of Section 17, as was the position in the aforesaid Privy Council [**Ed.**: The reference is to Hemanta Kumari Debi v. Midnapur Zamindari Co. Ltd., 1919 SCC OnLine PC 41] and this Court's [**Ed.**: The reference is to Tek Bahadur Bhujil v. Debi Singh Bhujil, AIR 1966 SC 292; Maturi Pullaiah v. Maturi Narasimham, AIR 1966 SC 1836 and Ratan Lal Sharma v. Purshottam Harit, (1974) 1 SCC 671] cases, it is apparent that the decree would not require registration.*
>
> *(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case [Fazal Rasul Khan v. Mohd-ul-Nisa, 1943 SCC OnLine Lah 128] , 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, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated."

33. *In the present case, as noted earlier clause (v) of Section 17(2) is attracted, which pertains to execution of any document creating or extinguishing right, title or interest in an immovable property amongst the family members. Thus, the dictum in Kale [Kale v. Director of Consolidation, (1976) 3 SCC 119] is attracted in the fact situation of this case.*

34. *Considering the above, we have no hesitation in concluding that the High Court committed manifest error in interfering with and in particular reversing the well-considered decision of the first appellate court, which had justly concluded that document dated 10-3-1988 executed between the parties was merely a memorandum of settlement, and it did not require registration. It must follow that the relief claimed by the plaintiff in the suit, as granted by the first appellate court ought not to have been interfered with by the High Court and more so, in a casual manner, as adverted to earlier."*

66. In the case of ***P. Anjanappa v. A.P. Nanjundappa, (2026) 4 SCC 492***, it has been held that an unregistered partition deed can be relied upon for collateral purposes of proving severance of joint family status and explaining nature of possession. It has further been held that such

documents can be relied upon to prove disruption of joint family status and the subsequent separate possession and enjoyment of properties by the parties.

67. The other question which weighed with the trial Court in discarding Exhibit P-1 was that there is a recital in Exhibit P-1 that a separate mill shall be established for Shiv Prasad and that separate mill never was never opened and therefore, the full terms and conditions of this arrangement were never fulfilled and there cannot be unequal partition.

68. The dispute of separate oil mill, which was to be established for the eldest brother Shiv Prasad seems to be a dispute something different from the physical distribution of immovable properties. Counsel for the appellant has argued that looking to the deposition of PW-2 Dashrath, who is plaintiff No.1 himself, that in Malaiya Oil Mill in the year 1955, two expellers were installed, which were ordered by his deceased father, which is to be found in paragraph 29 of his deposition. He further stated that prior to 1950, four expellers were ordered which were installed in different mills in Damoh, Satna, and Sagar. He states in paragraph 31 that earlier in Satna, there was business in the name of Rewa Industries and land was purchased on which Shrenik Oil Mill was installed. He alleged that for installation of Shrenik Oil Mill, the money of joint family was invested. He admits in paragraph

33 that Vijay Oil Mill was installed at Damoh in 1943 and Rajkumar Oil Mill was installed at Damoh in 1954-55. In paragraph 40 of his deposition, he denies the suggestion that it was agreed that the third mill shall not be got constructed and handed over to his father and in exchange of that, his share would be 50% in Hira Oil Mill. Counsel for respondents stated that the partnership deed of Malaiya Oil Mill was executed in 1952 and additional expellers were installed in the year 1955 and therefore, the question does not arise to establish separate oil mill for the branch of Shiv Prasad, represented by Plaintiffs. It is seen that PW-1 in paragraph 147 of his deposition states that in the year 1948-49, the relations between his father and Balchand got strained and Balchand had handed over Hira Oil Mill to his father for some time, but he denied the suggestion that his father had forcibly taken possession of Hira Oil Mill. He further stated that the management of Hira Oil Mill was again restored to Balchand after 2-3 months. He admits that two expellers of Rs.21,000/- each were received after death of his father.

69. This deposition indicates that there was some dispute in management of Hira Oil Mill, later its name changed to Malaiya Oil Mill and it appears that the possession of this oil mill during the year 1948-49 repeatedly interchanged between Shiv Prasad, i.e. father of plaintiff No.1 and

Balchand, i.e., defendant No.10 and when the distribution of properties got finalized in 1949, then at that time, since the possession of Hira Oil Mill was with Balchand, so it was agreed that one more oil mill shall be got constructed and handed over to Shiv Prasad, i.e. father of plaintiff No.1.

70. It only indicates that there was some dispute of accounts of Hira Oil Mill, and nothing else. Different businesses had been set up from 1944 onwards up to 1955 and as already held above by this Court, there was already disruption of joint family business in the year 1941 and the Income Tax authorities had also permitted filing of return by partnership firm from financial year 1944-45. The partnership deed indicates that there was no single Karta of the family and the profits were to be divided amongst three brothers, who were partners of the partnership firm and who had ceased to be members of HUF/Joint Family/coparcenary.

71. The distribution of properties as per list prepared in 1949 vide Exhibit P-1 could not, therefore, be discarded by the trial Court only on the ground that a separate mill had not been handed over to father of plaintiff No.1 and on that basis it could not be held that the distribution by Exhibit P-1 amounts to be unequal partition. It was a dispute of proceeds of partnership firm and it could not be placed on the pedestal of dispute of

partition of HUF property or HUF business, which stood concluded and finalized by any interpretation latest on 18/19 July, 1949.

72. So far as the question of distribution of business and dispute of management of Hira Oil Mill, later changed to Malaiya Oil Mill is concerned, after execution of document Exhibit P-1, two different partnership deeds were executed. Firstly, Exhibit D10-16/D1, which is dated 05.06.1952, as per which Balchand, and Gulabchand son of Balchand as well as Dashrath, i.e. plaintiff No.1 are the partners in Shrenik Oil Mill. The second document is another partnership deed dated 20.10.1952 as per which it has been agreed that the oil mill at Damoh shall be owned by Shobharam, i.e. middle brother and Hira Oil Mill Sagar and Hiralal Tikaram be owned by Balchand, Gulabchand son of Balchand and Dashrath, i.e. plaintiff No.1.

73. Apart from this, the document Exhibit D-1-9/D-2 dated 01.09.1951 indicates that there was a partnership deed entered into between the two brothers Shobharam and Bhalchand as well as the plaintiff No.1, who is the son of eldest brother. It has been agreed by this deed that eldest brother Shivprasad Malaiya has died on 04.09.1951 and he has elected to join the firm with effect from 05.09.1951 in place of his deceased father, and the firm is carrying out five businesses, which are as under:-

1. Heera Oil Mills, Sagar and Vijay Oil Mill, Damoh
2. Hiralal Teekaram Shop at Sagar
3. Shivprasad Shobharam Shop
4. Hiralal Teekaram Shop at Lalitpur
5. 5 annas and 4 pies share in Bhalchand Lakshmichand firm.

74. The firm was renamed as Shivprasad Shobharam and plaintiff No.1 was inducted as 1/3rd share holder of 5 annas and 4 pies. The document Exhibit D 1-9/D-4 indicates that the name of the firm was changed to Malaiya Oil Mills, Sagar and in place of Shobharam, now Gulabchand Malaiya, who is son of Balchand Malaiya, was inducted. Later on, the name of this firm was registered and the registration certificate is also on record.

75. As per partnership deed dated 20.10.1952 (Exhibit D10-16/P-2), the agreement was arrived at between Balchand, Gulabchand son of Balchand, and Dashrath (Plaintiff No.1) that the oil mill at Damoh shall be owned by Shobharam, which was earlier under the fold of firm Hira Lal Tika Ram and the firm shall be renamed as Malaiya Oil Mill, Sagar and Plaintiff No.1's share shall be 8 annas in a rupee, i.e. 50 percent.

76. This document of 05.01.1952 indicates that earlier his father was having 1/3 share in the firm and now the share of the plaintiff was

increased to 50 percent, which gives rise to the possibility that some arrangement was reached between the family members, whereby the share of the Plaintiff No.1 was enhanced to 50 percent in the earlier firm upon retirement of Shobharam from the said firm, who separated from the said firm after separating Vijay Oil Mills Damoh from the firm.

77. Therefore, it appears that the dispute of separate oil mill got settled upon execution of these subsequent partnership deeds that have been dealt with above in this judgment. If the issue of separate oil mill had not been settled, then there was no reason for the plaintiff No.1, to have entered into subsequent partnership deeds with his uncles, i.e. Shobharam and Balchand.

78. Indeed, the plaintiff No.1 had filed a suit for rendition of accounts in the partnership firm, which was later on dismissed in default of prosecution. This suit, RCS-B No. 6 of 1961 was dismissed as abated vide order dated 23.1.2001, and no further remedy seems to have been availed by the Plaintiff No.1 or his legal heirs against this order. Even if any remedy has been availed, that would not have any bearing on the dispute of partition.

79. In teeth of the partnership deed dated 05.01.1952, the force of letter Exhibit P-53 gets wiped off, whereby Balchand had stated that it is he who

will now run Hira Oil Mills solely. This letter Exhibit P-53 has been written on 15.09.1951, but shortly thereafter, different partnership deeds have been executed between the Plaintiff No.1 and his uncles during 1951 and 1952 that have been discussed in detail above, which means that the dispute which arose from the letter Exhibit P-53 got settled between the parties.

80. It cannot be disputed that if different branches of the family are partners in different businesses, then there are bound to arise differences and these differences will arise continuously. Any business which is running would always have frictions and differences between partners. These are natural during course of running of any business by many partners. This may explain the subsequent letters written up to 1959 by Balchand between Balchand (Defendant No. 10) and Dashrath (Plaintiff No. 1) and Ratanlal Malviya, who was the arbitrator. These are continuous disputes and the language of these letters cannot be inferred to mean that the dispute of partition still survives and the HUF still survives. Amplifying these accounting disputes, the suit for partition was filed.

81. Now the question arises that whether the suit being filed for many properties, but the list vide Exhibit P-1 only for some of the properties, it can be said that the partition was for complete properties or it was for some of the properties.

82. To consider this question, the deposition of the mediator, Ratanlal Malviya (PW-1) has been perused. He admits that he is related to all the branches of family, but further admits that his relation with Plaintiff No.1 is very close and he stays at house of Plaintiffs whenever he visits Sagar, and on date of deposition also (14.4.1975), he has stayed in the house of Plaintiff No.1. He cryptically states in paragraph-39 that the partition of immovable properties was final vide Exh. P-1, but "decision" was not final.

83. One more relevant fact is that earlier this witness was examined on 03.4.1974 also, but thereafter his deposition was cancelled by the Trial Court because one of the minor defendants was not properly represented on that date. Thereafter, his deposition was recorded afresh on 14.4.1975. However, on 03.4.1974, this witness had categorically stated that the partition as per Exh. P-1 was final and all the three brothers took separate possession as per Exh. P-1. When this part of deposition was confronted to him on 14.4.1975, he admitted having stated so, which is recorded in para-41 of his deposition dated 14.4.1975.

84. The deposition of plaintiff No. 1, Dashrath has also been seen. In paragraphs 86, 87, and 88 of deposition of PW-2 Dashrath Kumar, it has been brought on record that he had filed a suit against one Rajjilal for recovery of rent of one of the properties in the list Exhibit P-1 against a

tenant in the property. In paragraph 89 of his deposition, he stated that out of his own will, he had written in the plaint of that suit that he is the sole owner of the house property, which fell to the share of his father as per list Exhibit P-1.

85. In paragraph 220 of his deposition, the plaintiff No.1 says that he has seen Exhibit P-1 document and whatever had been decided by Ratanlal Malviya, the same was admitted by the three brothers. Whatever property fell into the share of his branch, he has already got possession. In paragraph 221, he admits that he has sold certain property and he has sold the property in capacity of the sole owner.

86. In para 8 of his deposition, he submits that immovable property of the joint family was partitioned by list Exhibit P-1. He states in para 8 that only plot of Ambardas had not been partitioned in which his uncle Balchand had objection, though that plot was also purchased from joint family funds. Therefore, in para 8 of his deposition he admits that except plot of Ambardas, the joint family immovable properties were partitioned vide list Exhibit P-1.

87. PW-2 Dashrath (Plaintiff No.1) further submits in his deposition in para-72 that accounts were written daily. However, in para-73, he feigns ignorance about the balance on the date of death of his father. In Para-75,

when confronted with partnership deed, Exh. D 1-9/D-2, he admits signing it, but then retracts saying he signed it, but does not remember where he signed it. In para-85 of his deposition at page-241 of Paperbook-II, he states that he has kept the sale proceeds of four properties, which he claims to be joint family properties. Most importantly, in para-220, he admits that Ratanlal Malviya had carried out partition of immovable properties which was acceptable to all the three brothers. He further admits that he got possession on the properties falling to his share. Some of these properties have been sold by him and he has kept the sale proceeds (para-221).

88. In para-264 he (plaintiff) admits that in one Firm i.e. Balchand Lakhmichand, Balchand Malaiya separated from the firm and he was inducted in place of Balchand. He clarified in para 266 that this might be because it was as per the 1949 partition.

89. Therefore, it cannot be stated by the plaintiff that any immovable property of the family remained to be dealt with by Exhibit P-1. Even Exhibit P-1 does not say so and there is objection note of Balchand on that document Exhibit P-1 relating to plot of Ambardas, which corroborates the deposition of plaintiff No.1 Dashrath Kumar. If any other properties are there in the plaint, then in teeth of admitted document Exhibit P-1, it cannot be said that these properties were also joint family properties.

90. Therefore, this Court is of the considered opinion that the properties had already been partitioned. There was severance of joint family status on 20.10.1941 and the separate possession and physical partition of immovable properties took place in July 1949 vide Exhibit P-1. The business had already been converted into partnership firm and the partnership firms continued to be reconstituted time and again after it being first constituted in the year 1943 and these re-constitutions continued up to the year 1952, which indicates that in the matter of businesses, only the rendition of accounts remained to be carried out, which is a continuous dispute, which arises in every business and it cannot be said to be a dispute of partition of joint family property, because the disruption / severance of joint family status took place in the year 1941 itself.

91. So far as the applications for amendment and applications for taking additional documents on record by the legal heirs of defendant No.10 Balchand are concerned, the same are also taken up. By these applications, an amendment is sought that various properties in the list Exhibit P-1, which have fallen to the share of other parties, are in fact self-acquired properties of Balchand or certain properties, which have fallen to the share of Balchand were in fact self-acquired properties of Balchand, which should never have been subject matter of family arrangement Exhibit P-1.

92. The suit was filed in the year 1959 and prior to that date, nothing had been stated by Balchand that some of these properties dealt with in Exhibit P-1 are of his sole ownership. His only objection is noted in the document Exhibit P-1 in relation to plot of Ambadas, which has not been made subject matter of document Exhibit P-1.

93. This Court has gone through the statement of Balchand, who was DW-1 for defendants No.10 to 16. In the last line of paragraph 249 of his deposition, he states that he has accepted the settlement Exhibit P-1, though it was erroneous, because he wanted to settle the matter and wanted to avoid future disputes.

94. In para-274 of his deposition, he states that the rents of the immovable properties used to be divided equally between the brothers, which further establishes that there was no single Karta of HUF and the proceeds from the properties were being divided, which indicates severance and destruction of HUF status. Although in paragraph 291 of his deposition, he states that the proceeding as per Exhibit P-1 carried out on 18 and 19 July, 1949 is invalid and is not acceptable to him, but again in paragraph 300, he states that till today he wishes that whatever was agreed vide Exhibit P-1 should be given finality. Therefore, though defendant No.10 Balchand states that he was not agreeable to the

settlement/arrangement Exhibit P-1, but he wishes that it should be given effect to and he had accepted that arrangement. After having accepted that arrangement in the year 1949 and signed it without any objection, now in the suit, defendant No.10 Balchand or his LRs cannot say that they were not agreeable to the family arrangement Exhibit P-1, or that it was unjustified towards Balchand and his family members. Therefore, no reasons are made out to allow the amendment application or to take the additional documents on record to challenge Exhibit P-1 at this distance of time, which is 77 years after it had been executed.

95. This Court is of the considered opinion that there was already a partition and severance of joint family status in 1941 and actual division of immovable properties took place in 1949, which became final between the parties.

96. Various dispute of accounts in the partnership business remained, indeed the dispute of distribution of profits from the partnership business also seems to have survived, but those disputes cannot be said to be disputes of partition of Joint Hindu Family property, because no such Joint Hindu Family remained in existence.

97. The family arrangement/settlement embodied in Exhibit P-1 is final and binding on the parties. Accordingly, properties not included in that arrangement cannot be treated as joint family or HUF properties.

98. Therefore, in the considered opinion of this Court, the judgment of the trial Court deserves to be set aside, and the suit of the plaintiff deserves to be dismissed.

99. If any challenge to the dismissal order dated 23.1.2001 in relation to suit for accounts filed by the Plaintiff No.1 i.e. RCSB 6 of 1961 (New No. RCSB-12 of 1999) is pending, then this judgment shall not come in way to seek rendition of accounts.

100. Accordingly, the appeals are **allowed**. The impugned judgment and decree passed by the trial Court is set aside and the suit filed by the plaintiff is dismissed. No orders as to cost.

(VIVEK JAIN)
JUDGE

nks/MISHRA/rj