2007 (Annexure P-2) adding entry 152 in Schedule 'B' to the VAT Act, whereby tax is sought to be levied on sale of sugar imported from outside the State of Punjab. As a necessary consequence and to correct the mischief created with the issuance of notification No. S.O.52/P.A. 8/2005/S.8/2007, dated 5th November, 2007 (Annexure P-1), we further hold that the words "manufactured in the State of Punjab" used in entry 49 in Schedule 'A' as substituted,—*vide* notification (Annexure P-1), to be violative of Articles 301 and 304(a) of the Constitution of India, as the same creates discrimination in the levy of tax on the sale of sugar brought from outside the State as against manufactured within the State of Punjab.

(27) The writ petitions are disposed of in the manner indicated above.

R.N.R

Before Satish Kumar Mittal, J.

GURCHARAN RAM,—*Plaintiff/Appellant*

versus

TEJWANT SINGH (DEAD) THROUGH L.Rs & ANOTHER,— *Defendant/Respondents*

R.S.A. No. 3312 of 1984

21st January, 2008

Code of Civil Procedure, 1908—Dispute between brothers-Family settlement—Defendants in actual possession of portion of house which fell to their respective share—Courts below ignoring evidence available on record-Courts below drawing a totally wrong and perverse conclusion from evidence available on record resulting into grave injustice to plaintiff—Courts below finding that family settlement was not acted upon either during life time of father or even after his death—Two brothers already taking possession of portion of their respective share in house—No reason for plaintiff to give consent for sanctioning of mutation with regard to agricultural land in favour of all three brothers—Findings of Courts below set aside & suit filed by plaintiff decreed.

Held, that both the Courts below have recorded a perverse finding to the effect that the family settlement was not acted upon either during the life time of Parshotam Dass or even after his death. While recording this finding not only the evidence available on record was misread and ignored, but in the facts and circumstances of the case and from the available evidence on record a wrong conclusion was drawn by misreading or ignoring the evidence available on record. Firstly, the Courts below have totally ignored the evidence available on record which clearly indicate that the defendants are in actual possession of the portion of the house, which fell to their respective share in the family settlement.

(Para 15)

Further held, that both the Courts below have ignored the important piece of evidence i.e. the contents of the family settlement, in which it was categorically laid down that in case, plaintiff did not pay the monthly amount to Parshotam Dass as mentioned in the family settlement, Parshotam Dass will take possession of the suit land and will manage the same till his death, but after his death, only plaintiff Gurcharan Ram will be owner of the same and the other two brothers i.e. the defendants in the suit will have no right, whatsoever with that land. In view of this clause, the agricultural land was not mutated in favour of plaintiff Gurcharan Ram immediately after the family partition.

(Para 15)

Further held, that merely on the basis of the mutation entires, it cannot be said that the defendants have become owners of the suit land in equal shares. In the instant case, the family settlement has been duly proved. As far as defendants are concerned, they have taken possession of the portion falling to their share in the house, situated at city Sangrur. Merely because in the revenue record, name of father continues after the said family settlement and after his death, mutation of inheritance was sanctioned in favour of three brothers, it cannot be held that the said family settlement was not acted upon, particularly when a finding has been recorded by the first appellate Court that the plaintiff is in exclusive possession of the agricultural land situated in

village Balian. The trial Court has reached to the conclusion that the family settlement was not acted upon, only on the basis of the finding that the plaintiff has failed to prove his exclusive possession on the agricultural land. The first appellate Court has committed grave illegality while confirming the said finding even though it reversed the finding regarding possession and held that the plaintiff is in exclusive possession of the suit land.

(Para 16)

Further held, that the mutation proceedings do not bear the signatures of the plaintiff. Therefore, it cannot be said that the mutation was sanctioned with the consent of the plaintiff. There was no reason for the plaintiff to give consent for sanctioning of the mutation with regard to the agricultural land in favour of all the three brothers, particularly when the other two brothers had already taken possession of the portion of their respective share in the house situated in city Sangrur. The Courts below have drawn a totally wrong and perverse conclusion from the evidence available on record which has resulted into grave injustice to the plaintiff. Therefore, I set aside the finding recorded by the Courts below that the family settlement dated 27th July, 1954 was not acted upon either during the life time of Parshotam Dass or even after his death.

(Para 17)

Limitation Act, 1963—Art. 58—Suit for declaration with consequential relief of permanent injunction-Plaintiff claiming himself to be owner in exclusive possession of disputed property-Starting point of limitation is not date of sanction of mutation but it is date when title and possession of the plaintiff was actually threatened by defendant—Such suit is governed by Article 58 of the Limitation Act, which provides a limitation of three years from date when right to sue first accrues.

Held, that both the Courts below have illegally dismissed the suit of the plaintiff on the ground of limitation. It has been held by the Courts below that when the mutation was sanctioned on 7th February, 1962 in favour of all the three brothers, the plaintiff should have

instituted the suit within three years from the said date, when his right was effectively invaded and jeopardized, as provided under Article 113 of the Limitation Act.

(Para 18)

Further held, that in a suit for declaration with consequential relief of permanent injunction, where the plaintiff claims himself to be owner in exclusive possession of the disputed land/property, the starting point of limitation is not the date of sanction of the mutation, but it is the date when the title and possession of the plaintiff was actually threatened by the defendant. Such suit is governed by Article 58 of the Limitation Act, which provides a limitation of three years from the date when the right to sue first accrues.

(Para 19)

Further held, that the plaintiff was in exclusive possession of the suit land without any interference of defendants, therefore, the right to sue accrued to the plaintiff when the defendants actually threatened to take forcible possession and not when the mutation was sanctioned in their favour. Therefore, both the Courts have wrongly held that the suit of the plaintiff was time barred only on the ground that the starting point of limitation was date of sanction of mutation in favour of the defendants. Even in Article 113 of the Limitation Act, the limitation is three years from the date when the right to sue accrues.

(Para 19)

R.K. Battas and R.D. Gupta, Advocates, *for the appellant.*

M.L. Sarin, Senior Advocate, with Jaspal Singh, Advocate, *for respondent No. 1.*

JUDGMENT

SATISH KUMAR MITTAL, J

(1) This is a plaintiff's Regular Second Appeal against the judgments and decree passed by both the courts below, whereby his suit for declaration was dismissed, whereas while finding him to be

in possession of the suit property, a decree for permanent was passed in his favour.

(2) In the present appeal, the dispute is about 16 Bighas 4 Biswas of agricultural land and two kacha houses situated in village Balian. The said property alongwith one pacca house (a Kothi) situated in Sangrur city (erstwhile Capital of Jind State) was owned by one Parshotam Dass. He was having three sons, namely Gurcharan Ram (plaintiff), Tejwant Singh and Tek Chand (defendants). Plaintiff Gurcharan Ram was illiterate and was residing in village Balian whereas his other two brothers were literate and were in Government service. During his life time, in the year 1954, Parshotam Dass partitioned his property among his three sons in a family settlement. The agricultural land and the kacha house situated in the village were given to the plaintiff and the pacca house situated in Sangrur was given to defendants No. 1 and 2. The said family settlement was subsequently got written on 27th July, 1954, which was duly thumb marked and signed by Parshotam Dass and his three sons and was attested by the witnesses. Three copies of the family settlement were prepared and handed over to all the three brothers, which were duly signed by all the parties. According to the family settlement, all the three sons took possession of their respective share of the property, which fell to their share. Thereafter, on 4th December, 1960, Parshotam Dass expired. After his death, mutation of inheritance with regard to the agricultural land measuring 16 Bighas 4 Biswas situated in village Balian was sanctioned in favour of all the three brothers. The pacca house situated in city Sangrur throughout remained in possession of the defendants, the two brothers, in equal shares, which they got in the family settlement and they raised further construction in their respective portion, after obtaining permission. Plaintiff Gurcharan Ram never claimed any share in the house situated in Sangrur. Similarly. Tek Chand (defendant No. 2), one of the brothers, did not stake any claim in the agricultural land and the kacha house situated in the village. However, in the year 1980, when defendant No. 2 by taking advantage of the entries in the revenue record started claiming a share in the agricultural land and tried to oust the plaintiff from the same, he filed the present suit for declaration and permanent injunction, claiming himself to be owner in possession of the suit land

under the aforesaid family settlement dated 27th July, 1954, Ex. PA and Ex. PC.

(3) Tek Chand (defendant No. 2) did not contest the suit and admitted the claim of the plaintiff. However, Tejwant Singh (defendant No. 1) vehemently contested the suit. He denied if during the life time of Parshotam Dass, any family settlement took place in between the parties. The thumb impression of Parshotam Dass on the alleged settlement was disputed. It was alleged that even if there is any family settlement, the same was never acted upon and it is inadmissible in evidence for the reason of its being not registered and having not properly stamped. It was further alleged that after the death of Parshotam Dass, the mutation of inheritance in respect of the agricultural land was sanctioned in favour of all the three brothers in equal shares. The said mutation was sanctioned in presence of the plaintiff, therefore, by his act, he is debarred from instituting the present suit, challenging the said mutation. According to him, disputed property situated in village Balian and the pacca house situated at Sangrur, which were owned by their father Parshotam Dass, were joint property of all the three brothers, after the death of their father. It was denied that the plaintiff was in exclusive possession of the agricultural land. It was also alleged that the suit filed by the plaintiff was time barred.

(4) On the pleadings of the parties, the following issues were framed :—

(1) Whether the plaintiff is exclusive owner in possession of the suit land on the basis of alleged partition deed effected on 27th July, 1954 ? OPP

(2) Whether the plaintiff is entitled to declaration and injunction prayed for ? OPP

(3) Whether the suit is barred by time ? OPD

(4) Whether the plaintiff is estopped from filling the suit by his act and conduct ? OPD

(5) Whether the plaintiff has become owner of the suit land by way of adverse possession ? OPP

(6) Whether the defendants are estopped from challenging the ownership of the plaintiff as pleaded in the amended plaint ? OPP

(7) Relief.

(5) The trial court, after taking into consideration the evidence led by the parties, came to the conclusion that a family settlement dated 27th July, 1954 was executed between the parties. It has been proved that the said family settlement was signed by all the three sons and thumb marked by their father Parshotam Dass. The thumb impression of Parshotam Dass on the said family settlement has been proved by Diwan K.S. Puri, handwriting and finger prints expert. It has also been found that the family settlement is admissible in evidence and the same does, not require any registration because it does not create any interest in the property, but the same recognize the pre-existing rights of the parties. In this regard, reliance was placed upon the decision of the Supreme Court in **Kale and others** *versus* **Deputy Director of Consolidation and others, (1).** However, the trial court came to the conclusion that the said family settlement was not acted upon either during the life time of Parshotam Dass or even after his death. It was also held that the suit filed by Gurcharan Ram is barred by limitation, as the cause of action accrued to the plaintiff, when mutation of inheritance with regard to his agricultural land was sanctioned on 7th February, 1962 in favour of the three brothers. It was also held that since the mutation of inheritance was sanctioned in the presence of the plaintiff, which he never challenged by filing an appeal or revision till filing of the suit, the plaintiff was estopped from filing the present suit by his act and conduct. It was also found that the plaintiff was not in exclusive possession of the suit land, but he was cultivating the same as a co-sharer, on behalf of both the defendants and himself. It view of these findings, suit of the plaintiff was dismissed.

(6) Feeling aggrieved against the aforesaid judgment and decree of the trial court, the plaintiff filed appeal. The first appellate court

(1) AIR 1976 S.C. 807

affirmed the findings recorded by the trial court on the issue of not giving effect to the family settlement as well as the issue of limitation. However, the first appellate court partly allowed the appeal, while coming to the conclusion that the plaintiff is in possession of the suit land, therefore, he is entitled to the relief of permanent injunction to protect his right, unless he is ousted therefrom in due course of law.

(7) Against the said judgment and decree, the plaintiff has filed this regular Second Appeal.

(8) Shri R.K. Battas, learned counsel for the appellant, submitted that in the facts and circumstances of the case, the following two substantial questions of law arise for consideration :

(1) Whether in the facts and circumstances of the case, from the evidence available on the record, both the courts below have drawn a wrong conclusion to the effect that family settlement Ex. PA and Ex. PC, the execution of which has been duly proved and which was found to be admissible in evidence, was not acted upon after its execution till the death of Parshotam Dass and even after his death ?

(2) Whether mere sanction of mutation would commence the period of limitation, though a person himself is in possession of the suit land and no one has tried to interferer with his possession till immediately before the suit ?

(9) Learned counsel for the appellant submitted that in the present case, in the year 1954, in the family settlement Ex. PA and Ex. PC, the land measuring 16 Bighas 4 Biswas and two kacha houses situated in village Balian fell to the share of the plaintiff, who was an illiterate person, engaged in agriculture occupation and a big house situated within the city of Sangrur, the then Capital of Jind State, fell to the share of two literate brothers i.e. defendants in the suit, who were in Government service. The agricultural land in dispute and a kacha house were given to the plaintiff because he was illiterate and the big house situated in city Sangrur was given to the other two brothers,

because they were literate and were in Government service. At the time, the defendants had agreed to take the said house because its value was more than the agricultural land situated in the village. Learned counsel submitted that the said family settlement was duly signed by all the three brothers and thumb marked by their father in the presence of the witnesses. Though the execution of the said family settlement and thumb impression of Parshotam Dass had been denied by defendant Tejwant Singh, but as a fact, both the courts below have come to the conclusion that execution of the family settlement has been duly proved by the plaintiff. Tek Chand (defendant No. 2) one of the brothers, has admitted that under the said family settlement, the plaintiff has exclusive right on the suit land. Learned counsel contended that in spite of these facts, the courts below came to a perverse conclusion that the said family settlement was not acted upon in the revenue record, either during the life time of Parshotam Dass or even after his death. The said conclusion was arrived at in view of the fact that in the Jamabandi for the year 1958-59 (which was prepared after consolidation), the plaintiff was not recorded as owner in possession of the suit land. It was observed that in case, the plaintiff was put in possession of the suit land under the family settlement, then his name would have been recorded in the Jamabandi, Secondly, the said conclusion was arrived in view of the fact that after the death of Parshotam Dass on 4th December, 1960, the mutation of inheritance of the suit land was sanctioned on 7th February, 1962 by, A.C. IInd Grade, in the presence of the plaintiff, in favour of all the three brothers in equal shares, and after sanction of the said mutation, the suit land was shown in joint ownership of all the three brothers in the Jamabandi for the year 1965-66, 1970-71 and 1975-76. These facts also show that even after the death of Parshotam Dass, the family settlement was not acted upon. The said conclusion was arrived at by the trial court on the basis of observation that there is no evidence, which proves the exclusive possession of the plaintiff on the suit land Learned counsel for the appellant submitted that both the courts below have wrongly ignored an important fact, which has been proved on record i.e. under the family settlement, both the defendants had taken possession of the respective portion, which fell to their share in the house situated in city Sangrur. It has come in evidence that after taking possession of their respective share in the house at Sangrur, both

the brothers got their names entered in the record of the Municipal Committee and their portions were given separate Municipal Numbers in the municipal record. They got electric and water connections in their names separately and they made further improvements in the house as owners, after obtaining prior permission. This fact clearly shows that the family partition was actually acted upon, but taking the benefit of sanctioning of the wrong mutation regarding possession of the land, defendants want to take undue advantage of the situation. Learned counsel further submitted that both the courts below have not taken into consideration the contents of the family settlement Ex. P.A and Ex. P.C. In the said family settlement, it has been categorically stated that Parshotam Dass has partitioned the entire property owned and possessed by him among his three sons with their consent and has delivered repective possession to them. In the said document, it has been further stated that plaintiff Gurcharan Ram would pay a sum of Rs. 5/- per month as maintenance, Rs. 30/- at the time of Lohri and Rs. 30/- on other festival to his father. In case, he fails to do so, Parshotam Dass would have right to take the possession of abovesaid agricultural land and house situated in Balian and to enjoy the benefit of the same till the time of his death. It has been further mentioned that plaintiff Gurcharan Ram will never raise any objection of any kind during the life time of Parshotam Dass. However, after his death, he can manage the agricultural land and house situated at Balian. Regarding defendants Tek Chand and Tejwant Singh, it has been mentioned that they have no concern with the agricultural land and house situated at Balian, nor they will have any concern with the same after the death of Parshotam Dass. It has also been mentioned in the family settlement that Parshotam Dass would have no right to mortgage or sell the agricultural land house, fallen to the share of plaintiff. However, he can give the same on lease/rent as per need. Learned counsel submitted that both the courts below did not notice these facts, mentioned in the family settlement, which clearly reveal that till his death, Parshotam Dass gave a right to the plaintiff regarding managing of the suit land, but it has been specifically stated that after the death of Parshotam Dass, the plaintiff will have all the rights to manage the land, as he has got the suit land in his share in family settlement. Learned counsel further

pointed out that both the courts below, by mis-reading the evidence, have wrongly come to the conclusion that the plaintiff was present at the time of sanction of the mutation of inheritance by the A.C. IInd Grade and he had consented to the sanction of mutation in favour of all the three brothers. Actually, there is no evidence to the effect that the plaintiff was present at the time of sanction of mutation and he had given consent for the sanctioning of mutation in favour of all the three brothers. Learned counsel further submitted that when the first appellate court has reversed the finding of the trial court regarding the possession of the plaintiff on the suit land, while coming to the conclusion that he was in possession of the suit land, then this fact proves the stand of the plaintiff that under the family settlement, he was in possession of the suit land. This fact also proves that contrary to the entries in the revenue record, the plaintiff remained in actual physical possession of the suit land. This fact proves that family settlement was duly acted upon. Therefore, the conclusion drawn by both the court below to the effect that the partition was not acted upon is wholly perverse and contrary to the evidence available on record and the said finding is liable to be reversed. Learned counsel submitted that it is well settled that this court in Regular Second Appeal can interfere in a perverse finding of fact, which is contrary to the evidence on recorded.

(10) Learned counsel further argued that in the present case, both the courts below have erred in law while holding that the suit filed by the plaintiff is barred by limitation as in view of Article 113 of the Limitation Act, the same should have been filed within three years of the sanction of mutation on 7th February, 1962, whereas the suit was filed on 18th February, 1980. Learned counsel submitted that the courts below have wrongly taken the starting point of limitation as the date of sanctioning of the mutation, whereas in a suit for declaration of title with injunction, limitation starts from the day, the title and possession of the plaintiff is threatened. Learned counsel submitted that such suit is governed by Article 58 of the Limitation Act, which prescribes the limitation of 3 years when the right to sue first accrues i.e. when the infringement of the right claimed by the plaintiff is threatened. Learned counsel submitted that the plaintiff filed the instant suit, when the defendants actually started interfering and threatening his possession on

the suit land. In support of his contention, learned counsel relied upon the decision of the Privy Council in **Bolo** *versus* **Mt. Kohlan (2),** a decision of the Supreme Court in **Rukkmabai (Mst.)** *versus* **Lala Laxminarayan (3),** a Division Bench decision of this Court in **Niamat Singh** *versus* **Darbari Singh etc., (4)** and another Division Bench decision of this Court in **Ibrahim** *versus* **Smt. Sharifan (5).**

(11) On the other hand, learned counsel for defendant-respondent No. 1 submitted that both the courts below have recorded a pure findings of fact, which does not require any interference in this Regular Second Appeal. Learned counsel submitted that there is overwhelming evidence available on the record, which indicates that the alleged family settlement was never acted upon. Learned counsel further submitted that mutation of inheritance of the suit land was sanctioned on 7th February, 1962 by A.C. IInd Grade in presence of the plaintiff and the plaintiff was fully aware of the same. In spite of that, he did not file the suit within a period of three years, in view of Article 113 of the Limitation Act. Therefore, both the courts below have rightly held that suit is barred by limitation and no interference is required in the said findings also.

(12) In **Rohini Prasad** *versus* **Kasturchand, (6),** it was observed by the Supreme Court that where the mis-reading of the evidence by the appellate court leads to miscarriage of justice or its finding is based on no evidence and is perverse, the High Court will be within its jurisdiction to interfere in the finding of fact in the second appeal. Again in **Kulwant Kaur** *versus* **Gurdial Singh Mann, (7),** while defining the scope of interference by the High Court in the finding of fact recorded by the courts below, it was held that "In a second appeal a finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of

(2) AIR 1930 P.C. 270
(3) AIR 1960 S.C. 335
(4) 1956 PLR 461
(5) AIR 1980 P&H 25
(6) (2000) 3 SCC 668
(7) (2001) 4 SCC 262

perversity involved therein, the High Court will be within its jurisdiction to deal with the issue." It was held that perversity itself is a substantial question of law. In **Hafazat Hussain** *versus* **Abdul Majeed (8),** it was held that non-interference by the High Court in concurrent finding of fact recorded by the lower courts is not an absolute rule universal application. The finding recorded by the trial court as well as the first appellate court can be shown to be not only vitiated due to perversity of reasoning, but also due to some mis-reading of the material on record. Again, the Supreme Court in **Hero Vinoth (Minor)** *versus* **Seshammal, (9)** held that general rule is that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence ; (ii) the courts have drawn wrong inference from proved facts by applying the law erroneously ; or (iii) the courts have wrongly cast the burden of proof. Thus, it was held that there is an exception where this Court will interfere in the second appeal, where it is found that the conclusion drawn by the lower courts is erroneous being contrary, based on inadmissible evidence or arrived at by ignoring material evidence.

(13) In view of the above settled position of law, I have examined the contentions raised by learned counsel for the parties and have perused the record of the case.

(14) In my opinion, the submission, made by learned counsel for the appellant-plaintiff regarding the perversity of the finding that the family settlement Ex. PA and Ex. PC, the execution of which has been duly proved, was not acted upon after its execution, either during the life time of Parshotam Dass or even after his death, deserves to be accepted. In the present case, it is undisputed position that Parshotam Dass was having three sons i.e. plaintiff and defendants No. 1 and 2. The plaintiff was illiterate and he was living with his father in village, doing the agriculture work and looking after the land. The other two brothers, the defendants in the suit, were literate and were in Government service. They never participated in cultivation of the land. Undisputedly,

(8) (2001) 7 SCC 189
(9) (2006) 5 SCC 545

Parshotam Dass was owning the agricultural land (land in dispute) and a kacha house in village Balian ; and a pacca house (Kothi) in Sangrur city, the then capital of Jind State. In the year 1954, he partitioned his property among his sons. The agricultural land and the kacha house situated in village Balian was given to the plaintiff and the pacca house (Kothi) situated in Sangrur city was given to the defendants, the other two brothers, who were in Government service. In the said family partition, possession of the respective share in the property falling to the share of three brothers was given to them. To acknowledge the said partition, family settlement Ex. PA and Ex. PC was written, which was thumb marked by Parshotam Dass and signed by all the three brothers. As per the family settlement, plaintiff Gurcharn Ram was to pay Rs. 5 per month as maintenance and Rs. 30 on two festivals, to his father Parshotam Dass and in case, he fails to do so, Parshotam Dass was having the right to take possession of the aforesaid agricultural land and house situated in village Balian and enjoy the benefits of the same till the time of his death, but after his death, the said agricultural land and the house situated in village Balian, had to go to plaintiff. It was specifically provided that after the death of Parshotam Dass, even the other two brothers, namely Tejwant Singh and Tek Chand, will have no concern with the said land and house. Defendant No. 2 admitted the execution of the said family settlement as well as the claim of the plaintiff. However, defendant No. 1 denied the execution of such family settlement. He even denied his signatures as well as thumb impression of his father on the family settlement Ex. PA and Ex. PC. He also took the stand that the land and houses owned by Parshotam Dass were never partitioned and after his death, all the three brothers inherited the agricultural land, kacha house in village Balian and the house in city Sangrur, in equal shares, but the stand taken by defendant No. 1 was found to be incorrect. It was held by both the courts below that defendant No. 1 had signed the said family settlement, the execution of which has been duly proved. It was also held that the family settlement was duly thumb marked by Parshotam Dass. It was further held by both the courts below that the said family settlement is admissible in evidence and in view of the decision of the Supreme Court in

Kale and others *versus* **Deputy Director of Consolidation and others, (10),** the same does not require any registration. In spite of this finding, the courts below held that the said family settlement was not acted upon either during the life time of Parshotam Dass or even after his death. This findings was recorded by the courts below on the basis of Jamabandi for the year 1958-59 (Ex. D11), the mutation of inheritance (Ex. D8), sanctioned on 7th February, 1962, whereby the agricultural land was mutated in favour of all the three brothers in equal shares, and the Jamabandis for the year 1965-66 (Ex. P2), 19/0-71 (Ex. P1) and 1975-76 (Ex. D9). The trial court recorded a finding that from the aforesaid revenue record entries, it was established that after the family partition, the plaintiff did not come in exclusive possession of agricultural land, which according to the family settlement had fallen to his share. On the basis of these revenue entries's a finding was recorded that the plaintiff had failed to prove his exclusive possession of the agricultural land. Though the first appellate court affirmed the finding of the trial court to the effect that the said family settlement was not acted upon on the same reasoning, but reversed the finding of the trial court regarding possession of the plaintiff on the suit land. The first appellate court, while finding the plaintiff to be in exclusive possession of the suit land and, partly allowed the appeal and decreed the suit for permanent injunction.

(15) In my opinion, both the courts below have recorded a perverse finding to the effect that the family settlement was not acted upon either during the life time of Parshotam Dass or even after his death. While recording this finding, not only the evidence available on record was mis-read and ignored, but in the facts and circumstances of the case and from the available evidence on record, a wrong conclusion was drawn by mis-reading or ignoring the evidence available on record. Firstly, the courts below have totally ignored the evidence available on record (Ex. PW7/A to Ex. PW 7/D and Ex. PW 12/B), which clearly indicate that the defendants are in actual physical possession of the portion of the house, which fell to their respective share in the family settlement. They have not only obtained water and electric connections in their respective portions in their name, but they

(10) AIR 1976 S.C. 807

have also made improvements and raised further constructions by obtaining permission from the Municipal Committee. It is also not disputed that in the Municipal record, they are recorded owners in possession of the portion of the house situated at Sangrur. This fact itself establishes that the family settlement was duly acted upon, as both the defendants got the portion of their respective share in the house at Sangrur. Defendant No. 1 could not explain how he came in possession of the portion of the house situated at City Sangrur, which fell to his share. It is admitted position that at no point of time, the plaintiff claimed or asserted any share in the house situated at Sangrur. Defendant No. 1 Tejwant Singh, when appeared as DW. 8, has admitted that he and his brother Tek Chand (defendant No. 2) were residing in the house at Sangrur and his brother Gurcharan Ram (plaintiff) never staked any claim in the said house. This is the important evidence, which has a great bearing on the adjudication of the present dispute, which has been over-looked by the courts below. Both the courts below have come to the aforesaid conclusion that the family settlement was not acted upon either during the life time of Parshotam Dass or even after his death, only on the basis of the fact that in the revenue record, Parshotam Dass was recorded as owner in possession of the agricultural land and after his death, the mutation of inheritance with regard to the said land was sanctioned in favour of his three sons. It has been observed by the courts below that the plaintiff could not explain as to why his name was not entered in the revenue record as owner in possession qua the agricultural land, when he got the same in the family settlement. Both the courts below have ignored the important piece of evidence i.e. the contents of the family settlement, in which is was categorically laid down that in case, plaintiff did not pay the monthly amount to Parshotam Dass, as mentioned in the family settlement, Parshotam Dass will take possession of the suit land and will manage the same till his death, but after his death, only plaintiff Gurcharan Ram will be owner of the same and the other two brothers i.e. the defendants in the suit will have no right, whatsoever, with that land. In view of this clause, the agricultural land was not mutated in favour of plaintiff Gurcharan Ram immediately after the family partition.

(16) Secondly, the courts below have acted illegally and perversely, while giving much weightage to the mutation of inheritance (Ex. D8) and coming to the conclusion that the family settlement was not acted upon. It is well settled, as has been held by the Supreme Court in **Mahila Bajrangi** *versus* **Badribai (11),** that the mutation proceedings before the revenue authorities are not judicial proceedings and do not decide title of immovable property between the parties, which can only be decided by the civil court. Again, the Supreme Court in **Suraj Bhan** *versus* **Financial Commissioner (12),** has held that an entry in the revenue records does not create right on a person, whose name appears in the record of rights. The entries in the revenue records or jamabandi have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competitive civil court. So, in my opinion, merely on the basis of the mutation entries, it cannot be said that the defendants have become owners of the suit land in equal shares. In the instant case, the family settlement has been duly proved. As far as defendants are concerned, they have taken possession of the portion falling to their share in the house, situated at city Sangrur. Merely because in the revenue record, name of father continues after the said family settlement and after his death, mutation of inheritance was sanctioned in favour of three brothers, it cannot be held that the said family settlement was not acted upon, particularly when a finding has been recorded by the first appellate court that the plaintiff is in exclusive possession of the agricultural land situated in village Balian. The trial court has reached to the conclusion that the family settlement was not acted upon on the basis of the finding that the plaintiff has failed to prove his exclusive possession on the agricultural land. The first appellate court has committed grave illegality while confirming the said finding, even though it reversed the finding regarding possession and held that the plaintiff is in exclusive possession of the suit land.

(17) Thirdly, the courts below have recorded a finding that the mutation (Ex. D8) was sanctioned in the presence of the plaintiff and

(11) (2003) 2 S.C.C. 464
(12) (2007) 6 S.C.C. 186

it was sanctioned in favour of all the three brothers with his consent. This finding is also contrary to the evidence available on the record. Actually, the Lambardar of the village was present at the time of sanction of the mutation by A. C. IInd Grade. The appellate was neither present nor signed the mutation proceedings sanctioned by A. C. IInd Grade ; and the appellant was not present even at the time of sanction of the mutation. When the Patwari entered the mutation, he gave all the details that there is a family settlement between the brothers and according to the said family settlement, the agricultural land and house in village Balian fell to the share of the plaintiff but in absence of the plaintiff, A.C. IInd Grade sanctioned mutation on the basis of inheritance. The mutation proceedings do not bear the signatures of the plaintiff. Therefore, it cannot be said that the mutation (Ex. D8) was sanctioned with the consent of the plaintiff. In my view, there was no reason for the plaintiff to give consent for sanctioning of the mutation with regard to the agricultural land in favour of all the three brothers, particularly when the other two brothers had already taken possession of the portion of their respective share in the house situated in city Sangrur. The courts below have drawn a totally wrong and perverse conclusion from the evidence available on record, which has resulted into grave injustice to the plaintiff. Therefore, I set aside the finding recorded by the courts below that the family settlement dated 27th July, 1954, Ex. PA and Ex. PC, was not acted upon either during the life time of Parshotam Dass or even after his death.

(18) Regarding the second substantial question of law raised by learned counsel for the appellant-plaintiff, I am of the opinion that both the courts below have illegally dismissed the suit of the plaintiff on the ground of limitation. In this case, it has been held by the courts below that when the mutation was sanctioned on 7th February, 1962 in favour of all the three brothers, the plaintiff should have instituted the suit within three years from the said date, when his right was effectively invaded and jeopardised, as provided under Article 113 of the Limitation Act. Both the courts below have taken the view that the starting point of limitation was the date of sanction of the mutation,

which was sanctioned on 7th June, 1962 in presence of the plaintiff. However, the case of the plaintiff is that the starting point of limitation to file the instant suit for declaration as well as permanent injunction is the date the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit i.e. when the title and possession of the plaintiff was actually and unequivocally threatened.

(19) It has been found as a fact by the first appellate court that the plaintiff is in exclusive possession of the suit land, therefore, his suit for permanent injunction has been decreed. Hence, in a suit for declaration with consequential relief of permanent injunction, where the plaintiff claims himself to be owner in exclusive possession of the disputed land/property, the starting point of limitation is not the date of sanction of the mutation, but it is the date when the title and possession of the plaintiff was actually threatened by the defendant. Such suit is governed by Articles 58 of the Limitation Act, which provides a limitation of three years from the date when the right to sue first accrues. The word "right to sue" has been interpreted in various judgments while observing that "there can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted." Every threat by a party to such a right, however, ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat as to compel him to file a suit. Plaintiff filed the instant suit when the defendants actually started interfering and threatening his possession on the suit land. In the present case, the plaintiff was in exclusive possession of the suit land without any interference of defendants, therefore, the right to sue accrued to the plaintiff when the defendants actually threatened to take forcible possession and not when the mutation was sanctioned in their favour. Therefore, both the courts have wrongly held that the suit of the plaintiff was time barred only on the ground that the starting point of limitation was the date of sanction of mutation in favour of the defendants. Even in Article 113 of the Limitation Act, the limitation is three years from the date when the right to sue accrues.

(20) The word "right to sue" camp up for interpretation as early as in the year 1930 by Their Lordships of Privy Council in **Bolo** *versus*

Mt. Kolan, (supra), where it was observed that there can be no right to sue until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted. A Division Bench of this Court in Niamat Singh versus Darbari Singh etc. (supra) has held that if an adverse entry in the revenue record is made against a person who is in actual physical possession of the property and if he continues to retain property despite the said entry, he is under no obligation to bring a suit. If, however, his rights are actually jeopardised by the actions or assertions of the defendant then he may take proceedings within the prescribed period. Similarly, another Division Bench of this Court in Chinto and another versus Narinjan Singh and another (supra) held that time begins is run under the law of Limitation the moment the right to sue fully accrues or the moment the right to commence an action comes into existence. If there is a condition precedent to the right of action the cause of action does not accrue, and the limitation does not begin to run until that condition is performed. Further, a Division Bench of this Court in Ibrahim versus Smt. Sharifan (supra) has held that in the suit for declaration of exclusive ownership of agricultural land, half of which had been mutated in name of the defendant, starting point of limitation under Article 58 of the Limitation Act is the date when the defendant actually threatened to take forcible possession of the suit land and not when the mutation was sanctioned in favour of the defendant. The trial court has not relied upon these judgments, while observing as under :—

> "I have considered these authorities. In all these authorities a proposition of law is laid down that regarding adverse entry in the revenue papers against a person who is in actual possession of the property, time begins to run not from the date on which adverse entry is made on the revenue papers but on the date there is a fresh denial of the plaintiff right, if an adverse entry is made against a person who is in actual possession and is continued to retain the said property despite this entry in the revenue papers, he is under no

obligation to bring this suit. But all these authorities are hardly applicable to the facts of the case in hand. There is no evidence that plaintiff was in actual possession of the property in dispute from 1954 uptil, 1960 when his father was alive. Again after 1960 there is no evidence that plaintiff alone was in actual possession of the property in dispute from 1954 uptil 1960 when his father was alive. Again after 1960 there is no evidence that plaintiff alone was in actual possession in dispute rather copies of khasra girdawaries and jamabandies show that firstly it was Parshotam Dass who was in possession of the land in dispute and after his death the property in dispute was inherited by his three sons and they have been recorded as co-sharers in possession of the property in dispute. For the first time the possession of Gurdas Ram, not as owner but as a co-sharer has been recorded in Ex. P.1 which is copy of jamabandi for the year 1970-71. So in view of this position when the plaintiff has not been shown or proved to be in exclusive possession of the land in dispute as an owner, authorities so relied upon by the counsel for the plaintiff are not applicable to the facts of the case in hand rather the same is covered by **A.I.R. 1973 Punjab & Haryana, 126 in Smt. Sewti Devi versus Kanti Parshad and others,** which is more recent pronouncement of our own High Court wherein it has been laid down that, when the name of the defendant was entered in the revenue records without a denial of the claim of the plaintiff, his right had been effectively invaded or jeopardised and it was at that time the cause of action accrued to the plaintiff. It has been further laid down in the said authority that when the claim of the defendant was admitted and mutation was allowed in his name by the plaintiff, the plaintiff cannot be allowed to change the position after lapse of many years."

The first appellate court reversed the finding regarding possession and held that the plaintiff is in exclusive possession of the suit land. In spite of recording this finding, the issue of limitation was decided

against the plaintiff on the basis of the decision of this Court in **Smt. Sewti Devi's case** (supra). The said judgment of the Division Bench of this Court is not applicable to the facts and circumstances of the case. It is well settled that in a suit for declaration as well as permanent injunction, limitation will not start with the adverse entry in the revenue record, but when the actual possession of the plaintiff is threatened by the other party. Under Article 58 of the Limitation Act, time begins to run not from the date on which an adverse entry is made in the revenue papers, but from the date on which there is a fresh denial of the plaintiff's rights. If an adverse entry is made against a person who is in actual physical possession of property and if he continues to retain possession of the said property despite this entry in the revenue papers, he is under no obligation to bring a suit. If, however, his rights are actually jeopardised by the actions or assertions of the defendant then he must take proceedings within three years from the date of such actions or assertions. It is also well settled that the plaintiff cannot be estopped from claiming the property merely because the mutation regarding the said property was sanctioned in favour of other persons. Mere non-challenging of the mutation, when plaintiff is in actual possession of the suit land for a long time, does not amount to any estoppel by way of his conduct. Therefore, in my view, both the courts below have wrongly decided the issue of limitation against the plaintiff while holding that the suit filed by the plaintiff is barred by limitation. Thus, both the substantial questions of law are decided in favour of the appellant and against the respondents.

(21) In view of the above, this appeal is allowed and the impugned judgments and decree, passed by both the courts below are set aside. The suit filed by the appellant-plaintiff Gurcharan Ram is decreed to the effect that he is owner in possession of the suit property, as detailed in the head note of the plaint, and the respondent-defendants are restrained from dispossessing the appellant-plaintiff illegally and forcibly from the property in dispute.

R.N.R.