law, therefore, we are inclined to quash these orders under the inherent powers of this Court under Articles 226/227 of the Constitution of India, even though an alternative remedy may be available to the petitioners. However, we observe that respondents No. 2 to 9, if so advised can file an appropriate application before the appropriate authority for deciding the question regarding the nature of the land as well as for re-partitioning the same among the shareholders if the land in question can be partitioned under the law.

(12) With the aforesaid observations, we allow the writ petition and quash the impugned orders dated 6th June, 2000, Annexures P-3 and P-4, with no order as to costs.

J.S.T.

BEFORE SATISH KUMAR MITTAL, J

DASA SINGH & ANOTHER—*Appellants/Defendants*

versus

JASMER SINGH—*Respondent/Plaintiff*

R.S.A. 129 OF 2000

13th December, 2002

Code of Civil Procedure, 1908—O.12, Rl. 6—Joint Hindu family property—Consent decree in favour of one son—Challenge by other three sons—Defendants making admission in their earlier suit that the land in dispute is Joint Hindu family property—Finding of the trial Court holding the land to be joint Hindu family property liable to be upheld—Consent decree—Not registered—Whether valid—Held, no—Finding of the 1st appellate *Court holding the consent decree to be illegal & void upheld—Whether married daughters entitled to a share equivalent to sons in the joint Hindu family property—Held, no—Finding of the 1st appellate Court holding the daughters to be entitled to get equal share in the property liable to be set aside—Only father & sons entitled to equal share in the property.*

Held, that the trial Court has relied upon the admission made by the defendants in the earlier suit, in which the consent decree was

passed, while holding that the land in question is the joint Hindu family property. The admission of the defendants made in the earlier suit, to the effect that the land in dispute was the joint Hindu family property is very clear. Now the defendants cannot be allowed to resile from their earlier admission that the land in question is the joint Hindu family property. Thus, I reverse the finding of the learned first appellate court regarding nature of the property and upheld the finding recorded by the learned trial Court in this regard.

(Para 15)

Further held, that regarding the validity of the consent decree dated 8th December, 1989, I am of the opinion that the finding recorded by the learned first appellate Court is correct and the same deserves to be affirmed. Once it is held that the land in question is joint Hindu family property then part of such land cannot be transferred by a consent decree. The alleged consent decree was admittedly not registered, therefore, the same was rightly held to be illegal and void by the learned first appellate Court.

(Para 16)

Further held, that the learned first appellate Court has erred in law while observing that the two daughters of Dasa Singh who were married were entitled to equal share in the joint Hindu family property in the partition. The position of law stated by the learned first appellate Court is not correct at all. If partition of a joint Hindu family property takes place, the married daughters are not entitled to any share equivalent to the sons. Only the mother is entitled for the equivalent share to the sons in the partition proceedings. However, the mother cannot compel partition of the coparcenary property. The married daughters and sisters are not entitled to a share on partition of a coparcenary.

(Paras 17 & 18)

B.R. Vohra, Advocate, for the appellants.

M.S. Joshi, Advocate, for the respondent.

R.S.A. No. 130 of 2000

DASA SINGH AND ANOTHER

versus

AJMER SINGH AND ANOTHER

B.R. Vohra, Advocate, for the appellants.

M.S. Joshi, Advocate, for the respondents.

R.S.A. No. 174 of 2000

AJMER SINGH AND ANOTHER

versus

DASA SINGH AND ANOTHER

M.S. Joshi, Advocate, for the appellants.

B.R. Vohra, Advocate, for the respondents.

R.S.A. No. 1091 of 2000

JASMER SINGH

versus

DASA SINGH AND ANOTHER

M.S. Joshi, Advocate, for the appellant.

B.R. Vohra, Advocate, for the respondents.

JUDGMENT

SATISH KUMAR MITTAL, J.

(1) This judgment will dispose of the following four Regular Second Appeals :—

(i) RSA No. 129 of 2000 **Dasa Singh and Gian Singh** *versus* **Jasmer Singh**

(ii) RSA No. 130 of 2000 **Dasa Singh and Gian Singh** *versus* **Ajmer Singh and Hardial Singh**

(iii) RSA No. 174 of 2000 **Ajmer Singh and Hardial Singh** *versus* **Dasa Singh and Gian Singh**

(iv) RSA No. 1091 of 2000 **Jasmer Singh** *versus* **Dasa Singh and Gian Singh**

(2) The aforesaid appeals have arisen from the following two civil suits, filed by Jasmer Singh and his two brothers Ajmer Singh and Hardial Singh against their father Dasa Singh and brother Gian Singh :—

(i)	Civil Suit No. 447-CS, dated 8-5-1992	Jasmer Singh versus Dasa Singh and Gian Singh
(ii)	Civil Suit No. 49, dated 21-12-1992	Ajmer Singh and Hardial Singh versus Dasa Singh and Gian Singh

(3) Since in both the suits, the identical questions of facts and law were involved, therefore, they were consolidated by the trial court.

(4) The brief facts of the case are that Dasa Singh was having four sons, namely Gian Singh, Jasmer Singh, Ajmer Singh and Hardial Singh. He was also having two daughters, who were married and one of whom has now expired. The family of Dasa Singh was a Joint Hindu Family and in the revenue record, the land measuring 140 Kanals 5 marlas was recorded in the name of Dasa Singh. The dispute in the family started, when Dasa Singh suffered a consent decree, dated 8th December, 1989 in favour of one of his son, namely Gian Singh regarding 41 kanals 11 marlas, comprising specific khasra numbers. The suffering of this consent decree led to filing of aforesaid two suits by the remaining three brothers. One suit was filed by Jasmer Singh and another was filed by Ajmer Singh and Hardial Singh against their father Dasa Singh and brother Gian Singh. In their respective suits, they pleaded that the land in question measuring 140 kanals 5 marlas is a Joint Hindu Family property, in which they are coparceners alongwith their father and they have 1/5 share each in the said property. It was further pleaded that in the year 1988, a family settlement was arrived at between the parties, in which the

aforesaid land was partitioned in five equal shares. But no specific Khasra number was given to any one, as the actual partition was to be made in the partition proceedings before the revenue court. It was further pleaded that without doing the actual partition, their father Dasa Singh suffered a consent decree on 8th December, 1989 in favour of one of his sons, namely Gian Singh,—*vide* which land measuring 41 kanals 11 marlas was transferred by way of specific khasra numbers, without any legal right and the said decree is wholly illegal and void.

(5) The defendants Dasa Singh and Gian Singh jointly contested both the aforesaid suits. Their plea was that the property in question is not the Joint Hindu Family property. It was pleaded that in the year 1973, an oral family settlement was arrived at between the father and the sons, wherein the entire land in question was given to the father and each of the son was compensated by means of gold and silver ornaments. Therefore, Dasa Singh, being owner of the land in question, was entitled to transfer his land by way of consent decree in favour of one of his sons. The suits were contested on various other grounds *inter-alia* non-joinder of necessary parties ; and *locus standi* of the plaintiffs to challenge the alienation made by the Karta of the family.

(6) The learned trial court partly decreed the suits filed by the plaintiffs. It was held that the land in question was Joint Hindu Family property, in which each of the coparcener was having 1/5th share. However, the claim of the plaintiffs regarding setting aside the consent decree dated 8th December, 1989 was declined while holding that the sons being coparceners in the Joint Hindu Family were not competent to challenge the alienation made by the Karta of the family during his life time. Against the aforesaid judgment of the trial court, both the parties filed appeals. Two appeals were filed by the plaintiffs against part of the judgment,—*vide* which their suits regarding setting aside the consent decree was dismissed. Two appeals were filed by the defendants against the portion of the judgment,—*vide* which it was held that the land in question was Joint Hindu Family property, in which each coparcener was having 1/5th share.

(7) All these four appeals have been disposed of by the learned first appellate court by a common judgment, whereby judgment of the

learned trial court has been partly modified. Regarding the consent decree dated 8th December, 1989, it has been held that the same is illegal and void on two grounds ; firstly that it was a fraud on the Court and secondly that it was not registered, therefore, the same is illegal and void in view of the decision of the Hon'ble Supreme Court in ***Bhoop Singh*** versus ***Ram Singh and others, (1)*** Regarding the land measuring 140 kanals 5 marlas, it has been held that out of this land, 34 kanals of land is self acquired property of Dasa Singh and the remaining land measuring 106 kanals 5 marlas is the Joint Hindu Family property. Regarding the share in the said property, it has been held that the Joint Hindu Family constituted of seven members i.e. father, four sons and two daughters and each of them is entitled to 1/7th share in the land measuring 106 kanals 5 marlas.

(8) Feeling aggrieved against the aforesaid judgment of the learned first appellate court, both the parties have filed the aforesaid four Regular Second Appeals in this Court.

(9) Learned counsel for the plaintiffs Jasmer Singh, Ajmer Singh and Hardial Singh submitted that the learned first appellate court has illegally reversed the finding of the learned trial court regarding the nature of the property, wherein it was held that the land in question is the Joint Hindu Family Property of the parties. The learned first appellate court, on the basis of surmises and conjectures, has wrongly held that out of 140 kanals 5 marlas of land, 106 kanals 5 marlas is the Joint Hindu Family Property and the remaining 34 kanals of land is the self acquired property of Dasa Singh.

(10) On the other hand, learned counsel for the defendants Dasa Singh and Gian Singh submitted that the entire land in question is the self acquired property of Dasa Singh, as in an oral family settlement in the year 1973, he got the entire property by giving gold and silver ornaments to his sons. He further argued that the learned first appellate court has committed grave illegality while reversing the finding of the learned trial court regarding the validity of the consent decree dated 8th December, 1989.

(11) However, learned counsel for both the parties are joint in submitting that the part of the judgement of the learned first appellate court,—*vide* which it has been held that seven members of

(1) AIR 1996 SC 196

the family, including two daughters of Dasa Singh, are entitled to 1/7th share each in the Joint Hindu Family property, measuring 106 kanals 5 marlas is wrong and against the law. According to them, in no circumstance, the married daughters can be said to be coparceners in the Joint Hindu Family property.

(12) I have considered the respective submissions, made by learned counsel for the parties and have perused the record of the case.

(13) In these four appeals, the following three questions are involved :—

(i) Whether the land in question is Joint Hindu Family property of Dasa Singh and his four sons and if so, what is the share of each member of the Joint Hindu Family ?

(ii) Whether the consent decree dated 8th December, 1989 suffered by Dasa Singh in favour of his son Gian Singh regarding 41 kanals 11 marlas of land is illegal, null and void ?

(iii) Whether the married daughters are members of the Joind Hindu Family and are entitled for a share in the Joint Hindu Family property ?

(14) Regarding the first question, I am of the opinion that the finding recorded by the learned trial court was correct and the learned first appellate court partly reversed the said finding only on the basis of surmises by ignoring the documentary evidence available on the record. Out of 140 kanals 5 marlas of land, 34 kanals of land was held to be self acquired property of Dasa Singh only on the assumption that property was purchased or acquired by him during his life time and the remaining land measuring 106 kanals 5 marlas was held to be inherited by him from his ancestors. While referring to the acquisition of 34 kanals of land on different occasions by pre-emption decree or by sale deed, the learned first appellate court observed as under :—

> "Obviously, the above land total measuring 34 kanals was never held by the ancestors of the parties and as such this

cannot be held to be Joint Hindu Family property of the parties at any point of time."

(15) The learned first appellate court has totally ignored the fact that this Joint Hindu Family was having a nucleus and from the income of that nucleus small acquisitions by sale or pre-emption decree were made. Once such nucleus is established, then the burden to prove that property was not acquired with the help of that nucleus shifts upon the party, who asserts the same. In the present case, the defendants did not lead any evidence to this effect. On the contrary, the plaintiffs have led the evidence to the effect that these small properties were acquired by Dasa Singh being Karta of the family from the nucleus of the Joint Hindu Family property. There is another aspect, which has been ignored by the learned first appellate court. The trial court has relied upon the admission made by the defendants in the earlier suit, in which the consent decree was passed, while holding that the land in question measuring 140 kanals 5 marlas is the Joint Hindu Family property. The admission of the defendants, made in the earlier suit, to the effect that the land measuring 140 kanals 5 marlas was the Joint Hindu Family property, is very clear. Copies of the plaint and written statement filed in the earlier suit have been proved in the present case, which clearly establish the admission made by the defendants. Now, they cannot be allowed to resile from their earlier admission that the land in question is the Joint Hindu Family property. Thus, I reverse the finding of the learned first appellate court regarding nature of the property and upheld the finding recorded by the learned trial court in this regard and it is held that the land measuring 140 kanals 5 marlas is the Joint Hindu Family property of the parties.

(16) Regarding the second question i.e. regarding the validity of the consent decree dated 8th December, 1989, I am of the opinion that the finding recorded by the learned first appellate court is correct and the same deserves to be affirmed. Once it is held that the land in question is Joint Hindu Family property, then part of such land cannot be transferred by a consent decree. The alleged consent decree was admittedly not registered, therefore, the same was rightly held to be illegal and void by the learned first appellate court, in view of the decision of the Hon'ble Supreme Court in **Bhoop Singh's case** (supra).

(17) Regarding the third question, I am of the opinion that the learned first appellate court has erred in law while observing that the two daughters of Dasa Singh, who were married, were entitled to equal share in the Joint Hindu Family property in the partition. It has also been wrongly held that 106 kanals 5 marlas of land is Joint Hindu Family property of the parties, a partition whereof took place in the year 1988, in which the married daughters of Dasa Singh were also entitled for a share. In this regard, the learned first appellate court made the following observations :

> "No doubt, during the life time of father, the daughter has no right to seek partition as per the legal settled position of law, but it is equally settled that in partition of ancestral property the daughters are entitled to get the share equal to the sons. In that view of the matter read with the fact that there is not satisfactory evidence on record that the daughters had relinquished their shares and, therefore, the partition of 1988 cannot make Dasa Singh and his four sons only owners or 1/5th share each and rather on that date i.e. in 1988 Dasa Singh, his four sons namely Ajmer Singh, Jasmer Singh, Hardial Singh and Gian Singh as well as his daughter Mohinder Kaur and the L.Rs. of other daughter Narinder Kaur were entitled to get 1/7th share each out of the land in dispute measuring 106 kanals 5 marlas and oral partition to the contrary giving 1/5th share to father and four sons is illegal."

(18) This position of law stated by the learned first appellate court is not correct at all. If partition of a Joint Hindu Family property takes place, the married daughters are not entitled to any share equivalent to the sons. Only the mother is entitled for the equivalent share to the sons in the partition proceedings. However, the mother cannot compell partition of the coparcenary property. The married daughters and sisters are not entitled to a share on partition of a coparcenary. However, in a partition, a provision has to be made for the maintenance of unmarried daughters and their marriages. Thus, the aforesaid finding recorded by the learned first appellate court holding Mohinder Kaur, daughter of Dasa Singh, and legal representatives of Narinder Kaur, his another daughter to be entitled

to get 1/7th share each in the Joint Hindu Family property is wholly illegal and the same is set aside and it is held that the male members of the coparcenary i.e. father and four sons are entitled to 1/5th share each in the Joint Hindu Family property.

(19) In view of the aforesaid discussion, the Regular Second Appeals No. 129 and 130 of 2000, filed by Dasa Singh and Gian Singh, are hereby dismissed and the Regular Second Appeals No. 174 and 1091 of 2000, filed by Ajmer Singh and Hardial Singh and by Jasmer Singh are allowed. The judgment of learned first appellate court is partly set aside and the suits of the plaintiffs Ajmer Singh and Hardial Singh and of Jasmer Singh are decreed. The consent decree dated 8th December, 1989 passed in civil suit No. 323 dated 14th September, 1989, titled as Gian Singh *versus* Dasa Singh regarding land measuring 41 kanals 11 marlas is held to be illegal, null and void. The suit land measuring 140 kanals 5 marlas is held to be the Joint Hindu Family property of the parties, in which all the coparceners, namely Dasa Singh, Ajmer Singh, Hardial Singh, Jasmer Singh and Gian Singh are in joint possession and are entitled to get 1/5th share each.

(20) No order as to costs.

J.S.T.

Before M.M. Kumar, J

KARAM SINGH—*Petitioner*

versus

DANA SINGH—*Respondent*

Civil Revision No. 4969 of 2002

7th October, 2002

Code of Civil Procedure, 1908—O. XVIII Rls. 4 & 5—Plaintiff filing affidavits by way of evidence in a suit for recovery—Challenge thereto—Whether recording of examination-in-chief by affidavit is confined only to cases which are not appealable-Held, no—Rule 4(i)