

(2002) 03 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1552 of 1982

Jagdish Parshad

APPELLANT

Vs

Sarwan Kumar and Others

RESPONDENT

Date of Decision: March 4, 2002

Acts Referred:

- Evidence Act, 1872 - Section 32

Citation: AIR 2003 P&H 3 : (2002) 2 CivCC 573 : (2002) 2 CivCC 573 : (2002) 3 RCR(Civil) 34

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: C.B. Goel, for the Appellant; Amarjit Markan, for the Respondent

Final Decision: Dismissed

Judgement

M.L. Singhal, J.

Sarwan Kumar filed suit for possession of a portion of property No. 2349, Iqbal Ganj Road, Ambala Cantt as shown in plan Ex. P3 attached to the plaint, in the alternative for exclusive possession by partition of property No. 2349 and for rendition of account against Jagdish Parsad. It is alleged in the plaint that property B. No. 2349 Iqbal Ganj Road, Ambala Cantt, was owned by Mani Ram who had purchased this property vide sale deed dated 20.11.55 registered on 12.1.56 for Rs. 11,500/- from one Kahan Chand Chadha. Mani Ram died on 3.7.56 leaving behind Sarwan Kumar son, S/Smt. Chander Kala, Rameti Devi and Saraswati daughters. So far as Jagdish Parsad is concerned, he is not the son of Mani Ram. In fact, he is the son of Mool Chand. Mool Chand and Mani Ram were real brothers. Mool Chand died in the year 1958. At the time of the death of Jagdish Parsad's mother, he was only two months, old. There was none to bring up Jagdish Parsad after this mother's death. Plaintiffs mother brought up Jagdish Parsad. Plaintiff passed BA in 1954. He passed B.T. in 1955 and thereafter he got into service. Jagdish Parsad was inducted as licensee by the plaintiffs father in a portion of house bearing No. 2349 as his nephew without any licence fee. Jagdish Parsad was allowed to keep one room, one kitchen, one bath

room and a varandah. One portion is on rent with one Siri Kishan at a rental of Rs. 60/- per month and the remaining portion is with him (Sarwan Kumar). After the death of Mani ram, the plaintiff and his sisters i.e. Chander Kala, Rameti Devi and Saraswati became owners of the said property. Plaintiff requested Jagdish Parsad (defendant No. 1) to deliver vacant possession of the portion in his occupation and revoked his licence. On the other hand, Jagdish Parsad defendant took a plea that he had also share in the property as he is real brother. In fact, Jagdish Parsad defendant is not his real brother. He is not the son of Mani Ram but he is the son of Mool Chand. He is thus nephew of Mani Ram. As nephew, he has no right to inherit the property left by Mani Ram when Mani Ram died leaving behind his own son and daughters. Since he (Sarwan Kumar) remained posted outside and Jagdish Parsad defendant was residing at Ambala Cantt and was also his cousin, he allowed him to rent out the portion in order to supplement his (plaintiffs) income. Jagdish Parsad defendant, however, did not pay him even a penny out of the rental income saying that he had been paying taxes and spending on repairs. His plea was that whatever he realised by way of rentals, he spent on repairs and on paying taxes. Defendant No.1 Jagdish Parsad wanted some finances for his business. He requested him to mortgage the property and he assured that he would go on paying the amount. By a trick Jagdish Parsad got his name introduced in the mortgage deed in 1965 on the plea that since he (Sarwan Kumar) plaintiff was living out of Ambala Cantt, he would, go on paying the amount of mortgage to the mortgagee and hence his name should be got introduced in the mortgage deed. Out of love and affection, he got the name of Jagdish Parsad defendant introduced in the mortgage deed. Since the entire amount was to be consumed by Jagdish Parsad, the name of Jagdish Parsad was got introduced in the said mortgage deed although he had no concern with the property at any time. Defendant Jagdish Parsad had been paying mortgage amount from time to time to the mortgagee and had been obtaining receipts. Some time back the plaintiff demanded account of the mortgage but the defendant Jagdish Parsad avoided the issue and told that he did not keep any account of payment upon which the plaintiff became suspicious and approached the mortgagee. The mortgagee told the plaintiff that a sum of Rs. 1500/- was due which the plaintiff offered to pay in order to re-deed the mortgage but the mortgagee was hard in glove with defendant Jagdish Parsad and refused to receive the amount and deliver back the documents to the plaintiff. All these happenings gave rise to suspicion in his mind that Jagdish Parsad defendant might put forth some claim on the property. He revoked licence by means of notice dated 11.1.79. Defendant No. 1 refused to receive notice. Plaintiff also gave notice to Shri Amar Nath who is mortgagee and to Shri Kishan who is tenant. Plaintiff did not want to keep Jagdish Parsad defendant as his licensee. Jagdish Parsad defendant failed to deliver possession of the portion in his occupation. In case the court came to the conclusion that Jagdish Parsad had got share in the property, at the most, his share would be 1/5th in the property. In that event, the plaintiff would be entitled to rendition of the entire amount received by Jagdish Parsad from time to time and the plaintiff is entitled to exclusive possession

by partition of the disputed property.

2. Jagdish Parsad defendant No. 1 contested the suit of the plaintiff. It was urged that he was not the son of Mool Chand. In fact he and Sarwan Kumar are the sons of Mani Ram and S/Smt. Chander Kala, Rameti Devi and Saraswati are the daughters of Mani Ram. Mani Ram died in the year 1956 leaving behind two sons and three daughters. He is the son of Mani Ram and was brought up by his mother i.e. the wife of Mani Ram. It was denied that he is occupying portion of the property as licensee. In fact, he is occupying portion of this property as son of Mani Ram. Portion of this property is on rent with Sri Kishan. On the death of Mani Ram, he and the plaintiff became owners of the property in equal shares. He (Jagdish Parsad) let out portion of the property to Siri Kishan in his capacity as son. It was denied that he let out portion of the property to Siri Kishan at the asking of the plaintiff. He is paying taxes and is spending on the repairs of the property out of the rentals received by him from Sri Kishan. Plaintiff is not entitled to any accounts from the defendant nor he is entitled to any exclusive possession. Defendants 2 to 4 i.e. the daughters have no share in the property. Defendants 2 to 4 supported the claim of the plaintiff. On the pleadings of the parties, the following issues were framed:-

1. Whether the suit is properly valued for the purposes of court fee and jurisdiction?
OPP

2. Whether there is relationship between the plaintiff and defendant No.2? OP
Parties.

3. What share, if any, the plaintiff has got in the property in question? OPP

4. Whether the plaintiff is entitled to accounts, if so from which date? OPP

5. Relief.

3. Plaintiffs suit was decreed for possession to the extent of 1/4th share in the house by partition and also for rendition of accounts by defendant No. 1 Jagdish Parsad to him in view of his finding that the plaintiff and Jagdish Parsad are not real brothers. Plaintiff is the son of Mani Ram while Jagdish Parsad defendant is the son of Mool Chand. Property in question was owned by Mani Ram. On the death of Mani Ram, the property in question devolved upon Sarwan Kumar and his sisters S/Smt. Chander Kala, Rameti Devi and Saraswati in equal shares. It was found that the portion of the property was let out by Jagdish Parsad at the asking of the plaintiff. Jagdish Parsad received rentals from the tenant. It was found that he should account for the rentals received by him from the tenant and also what was spent by him on the repairs of this property and in discharging the tax liability on this property.

4. Aggrieved by this judgment and decree dated 31.8.81 passed by Sub Judge, First Class, Ambala Cantt. in favour of Sarwan Kumar plaintiff, Jagdish Parsad defendant went in appeal which was dismissed by Additional District Judge, Ambala vide order

dated 1.4.82. Still not satisfied, Jagdish Parsad defendant has come up in further appeal to this court.

5.1 have heard the Learned counsel for the parties and have gone through the record.

6. It was submitted by the learned counsel for the appellant that both the courts below have misread and misconstrued the evidence on record and as a result they came to perverse finding of fact. It was submitted that a perverse finding of fact can be gone into by this court in second appeal and this court can go behind finding of fact if it has been arrived at on unjust, unreasonable and illegal appreciation of evidence. There can be no manner of doubt that the primary duty of the courts is to do justice. In appeal, unjust decision of a court below can always be reversed. Now, the question that arises is whether the finding of fact arrived at by the two courts below concurrently is based on reasonable appreciation of evidence and the appreciation of evidence by them was capable of giving rise to the inference which have been drawn by them. Sarwan Kumar plaintiff PW4 stated that he is son of Mani Ram. He has three sisters i.e. defendants 2 to 4. Jagdish Parsad defendant is his real uncle's son. He is his father's real nephew. He is son of Mool Chand who was his "taya". His father died on 3.7.1956. Mool Chand died in the year 1958. Jagdish Parsad defendant was 1-1/2 - 2 months old when his mother died. Defendant No. 1 Jagdish Parsad had one brother whose name was Ramji Lal who died 4-5 years ago at Ambala Cantt. Ramji Lal has two sons and three daughters. Jagdish Parsad has only one sister named Kaushlaya Devi. He further stated that his mother brought up Jagdish Parsad as there was no female in the house to bring up Jagdish Parsad. Ramji Lal was the elder brother of Jagdish Parsad defendant. He further stated that his father never took Jagdish Parsad in adoption nor ever acknowledge Jagdish Parsad as his son. Jagdish Parsad defendant is occupying one portion of the house in dispute as licensee. His father had inducted Jagdish Parsad defendant into one room, one varandah, bath room and kitchen as licensee. When the suit was filed, one Sri Kishan was tenant at a rental of Rs.60/- per month in a portion of this house. Rest of the portion of the house is in his own possession. Earlier, his father Mani Ram was owner of this house. After his death, this house devolved upon him and his three sisters defendants 2 to 4. Jagdish Parsad defendant has nothing to do with this house. Jagdish Parsad used to realise rent from Sri Kishan tenant. He further stated that he was posted outside Ambala Cantt. in connection with his service. He would visit Ambala Cantt for a day or so. Jagdish Parsad defendant was in need of money as earlier he was running arht and karyana business under the name and style M/s Mool Chand Sarwan Kumar and that business ran into losses. He was not partner in that business. House in dispute was mortgaged by both of them with Amar Nath. At the time of the execution of the mortgage, he was not present. He came from Naraingarh. He just put his signatures on the mortgage deed and went away. He came to know some time before the filing of this suit that Jagdish Parsad had described himself as the son of Mani Ram in the mortgage deed. He served notice

upon the mortgagee who gave no reply thereto. He told him orally that Rs.1500/- was due. He came to know from the written statement filed by defendant No.1 that defendant No. 1 had repaid the entire mortgage debt to Amar Nath. He became suspicious about the bona fides of defendant No. 1. He served notice upon him and then filed this suit. In the site plan Ex.P3/1, the portion shown red is in possession of defendant No. 1. In the room shown mark A, the tenant was in occupation. Rest of the house is in his own occupation. He further stated that perhaps the tenant has now vacated the room mark A which has come in possession of defendant No. 1. He accompanied his father to Haridwar in connection with pilgrimage in childhood. Thereafter, he went alone to Haridwar in connection with pilgrimage. There they made entry in the bahi of the panda. Mani Ram made entries in the bahi of the Panda. Copies of entries are PI and P2. In portion mark B to B of Ex.P1, the writing is in his father's hand. Similarly, in portion B to B of Ex.P2, the writing is in his father's hand. At the foot of these writings thee are his father's signatures. In these writings Jagdish Parshad is described as the son of Mool Chand. He stated that he could identify his father's writing and signatures as he had been seeing his father writing and reading English and Hindi. His father was retired Station Master. It was submitted by the leaned counsel for the appellant that the own admissions of Sarwan Kumar made at different times at different places militate again his case that Jagdish Parsad is not the son of Mani Ram but is the son of Mool Chand. There is mortgage deed Ex.D1 which was executed by Sarwan Kumar and Jagdish Par-sad in favour of Ram Rakha and Amar Nath and Kishan Lal for a sum of Rs.8,000/-. It was mortgage with possession. In the mortgage deed Ex. D1 which is dated 29.10.65, Jagdish Parsad and Sarwan Kumar have described themselves as sons of Lala Mani Ram son of late Lal Kalu Ram. Mortgage deed Ex.D1 bears the signatures of Jagdish Parsad and Sarwan Kumar. In this mortgage deed Ex.D1, there is thus admission of Sarwan Kumar that he and Jagdish Parsad are the sons of Mani Ram and further they both are the owners of this house. There is rent deed Ex.D2 which was executed by Jagdish Parsad and Sarwan Kumar in favour of the mortgagees where through they got this house on rent from the mortgagees at a rental of Rs.85/- per mensum. Rent deed is dated 30.10.65. In this rent deed also, they have described themselves as sons as Lala Mani Ram.

7. In the application for the grant of succession certificate Ex.DW/3 which was moved by Sarwan Kumar. Sarwan Kumar had shown defendant Jagdish Parsad as son of Mani Ram. Ex.DW2/l is summons issued by Senior Sub Judge, Ambala in the application for the grant of succession certificate moved by Sawan Kumar in which Jagdish Parsad is being shown as son of Mani Ram. He was called upon to appear and file objections, if any to the grant of succession certificate failing which he would be proceeded against ex parte. Sarwan Kumar wrote letter Ex, D4 to Jagdish Parsad in which he had stated that he (Jagdish Parshad) alone was liable to redeem the mortgage as he alone had utilized the mortgage debt and the property should be freed from incumbrance without any delay. He had further stated that they both

would be liable jointly to discharge the liabilities towards their sisters. For discharging their father's liability towards their sisters, they should deposit jointly in bank or post office to the tune of Rs. 5,000/- each and it should be joint account. He had further stated that sisters had no objection, they could part with their share in their favour in that event, they both would become joint owners in equal shares of the property. He had further stated that as there are two types of liabilities; one of redeeming the mortgage and the other towards their sisters and as the discharge of both these liabilities required money, house should be sold and sale proceeds be shared by him and Jagdish Parsad equally and if he (Jagdish Parsad) had money, he could sell his half share to him or purchase the entire by himself or he should let him sell his 1/2 share. Jagdish Parsad is lying shown as son of Mani Ram in school certificate Ex.DWI/1. It is govt. school. This certificate is signed by Shri K.K. Gupta, Headmaster of the school. Against serial No.2087, name of Jagdish Parsad son of Mani Ram was recorded. Against serial No.2088, name of Sarwan Kumar son of Mani Ram was entered. Jagdish Parsad is shown to have been born on 1.10.33. Sarwan Kumar is shown to have been born on 12.5.35. Jagdish Parsad DW2 stated that Sarwan Kumar is his real younger brother. House in dispute was owned by their father Mani Ram who died in the year 1956. Gyarsi Devi was their mother who is dead. He and Sarwan Kumar plaintiff are owners of this house in equal shares. Defendants 2 to 4 have nothing to do with this property because they have relinquished their shares therein. Plaintiff had made an application for the grant of succession certificate in the court of Senior Sub Judge, Ambala. In that application, he had been arrayed as party. He had received copy of that application which is Ex. D3 in which he had been described as son of Mani Ram. He had received summons from the court of Senior Sub Judge, Ambala in that application for the grant of succession certificate which is Ex.DW2/1. He further stated that he has been residing in this property as owner. He and Sarwan Kumar had mortgaged this property to Pandit Amar Nath vide mortgage deed Ex.D1. He and Sarwan Kumar appeared before the Sub Registrar where this mortgage deed was read out to both of them. He and Sarwan Kumar put their signatures on the mortgage deed. He further stated that he and Sarwan Kumar executed Kirayana Ex.D2 in favour of Amar Nath. Rent deed Ex.D2 was also read out to them by the Arji Navis. He and Sarwan Kumar put their signatures on rent deed Ex.D2. He and Sarwan Kumar passed matriculation examination from the Cantonment Board High School, Ambala Cantt. They both were got admitted in this school together. Plaintiff was born in the year, 1935. Cantonment Board High School is named as Govt. High School now-a-days. He further stated that Sarwan Kumar wrote letter Ex.D4 to him. As far as his knowledge goes, his father Mani Ram never went to Haridwar during his life time. He further stated that he performed the last rites of his father Mani Ram. At Pagri Ceremony, Pagri was tied around his head. It was in token of the fact that after the death of Mani Ram, he would shoulder the responsibilities that devolved upon Mani Ram. He went to Haridwar for the immersion of the remains of Mani Ram. He stated that Mool Chand was not his father but was his taya. Mool Chand's son is dead. Mool

Chand's daughters are alive who are 50 years old, Mool Chand's son was Ramji Lal. Ramji Lal's children are alive. Mool Chand was elder brother of Mani Ram. Mani Ram died in the year 1956. Mool Chand died in the year 1960. Both of them died at Ambala Cantt. Plaintiff is 1-1/2 years younger to him. Plaintiff joined school 1-1/2 years after him.

8. It was submitted by the learned counsel for the respondent that Mani Ram went to Haridwar in 1994-96 Bikrami. He went to his purohit Pt. Nathu Ram. His gomashta Roshan Lal made entry in his panda's bahi in 1994 and 1996 Bikrami. Those entries are Ex.P1 and P2. These were signed by Mani Ram. In those entries Mani Ram described Jagdish Parshad as son of Mool Chand. He described Sarwan Kumar as the son of Mani Ram. In 1994 Bikrami was the occasion when Sarwan Kumar's mundan took place in Haridwar. In 1996 Bikrami was the occasion when the mundan ceremony of Ram Avtar son of Mani Ram took place. It was submitted that the entries made by Pandas in their bahis are admissible into evidence. It was submitted that these entries should be viewed as the statements of dead persons and taken as admissible and relevant under sub-clause 2 of section 32 of the Evidence Act. In support of this submission, he drew my attention to Dukh Haran Tewary and Others Vs. Dulhin Bihasa Kuer and Another, where it was held that where a statement of a deceased was made in the ordinary course of business and in particular it consists of an entry or memorandum made by him in books kept in the ordinary course of business or in the discharge of professional duty or the statement relates to the existence of any relationship between persons as to whose relationship the deceased had special means of knowledge and such statement was made before the question in dispute was raised. Such statement is admissible and relevant under sub-clause 2 and 5 of section 32. In Sitaji and Others Vs. Bijendra Narain Choudhary and Others, it was held as follows:-

"Panjis are maintained by Panjikars who are professional genealogists and they systematically maintain pedigree tables in the community of Naithal Brahmins. They go from place to place and periodically ascertain the genealogies of their clients and enter them in Panjis (palm leaf manuscripts of genealogy) and add to them such fresh additions as occur in the family from time to time. They are considered important in this community because questions of marriage (who may marry whom) and relationship and caste turn on them. It is the business of these Panjikaras to collect this information about pedigrees and presumably they endeavour to collect correct information because what they put down about one man will affect a whole family and the families of those who marry into it. Also, there are checks and counter checks as information pours in from different members and branches of the family. They would consequently fall into dispute if their books contained glaring inaccuracies. Statements about pedigree are not therefore, lightly made."

9. It is true that the entries made in the bahis of pandas are admissible and relevant u/s 32 of the Evidence Act. In this case the question is whether that bahi was

maintained by that panda in the ordinary course of business of panda and further whether the entries were being made in regular course of business and daily raised by the learned counsel for the appellant arises or not. Panda Prem Kumar PW1 stated that he is doing pandagiri at Haridwar, his father and grand father were also doing pandagiri at Haridwar. He stated that this bahi was started in Sambat 1754 BK. In this bahi, there are entries recorded by his ancestors and their karindas/Munims. At page 130 of bahi (Alwar ki bahi No.2), there is entry in the hand writing of Roshan Lal Gumashta (Ex.P1 is its copy). When their jajmans come to them, they record entry pertaining to them in their bahi. At the foot of that entry, the jajman signs if he is literate. On Kartik Shudi 11 sambat, 1994, Mani Ram came to Haridwar to their Haveli Bara Bazar along with his family and this Entry Ex. P1 was made by Roshan Lal. Portion A to AS is in the hand of Roshan Lal beneath which there are Mani Ram's signatures. Portion B to B in the entry Ex. P1 is in the hand of Mani Ram. Similarly in Bikrami Sambat 1996 Baisakh Badi Asthami. Mani Ram again came to Haridwar when entry Ex. P2 was made. In entry Ex.P2, portion A to A is in the hand of Asha Ram gumashta. Writing B to B is in the hand of Mani Ram. Beneath A to A there is signature of Mani Ram. He identified the hand writing of Roshan Lal and Asha Ram. His father maintained these bahis in 1994 and 1996 Bikrami. He stated that he could not make it to the court because of failing health and ripe age of 84-85 years. Asha Ram and Roshan Lal are dead. Roshan Lal died in 2019-2020. Asha Ram died in 2016 Bikrami. He stated that this Bahi was maintain in the regular course of business and is continuing from generation to generation. Entries were made in this bahi caste wise and village wise.

10. Learned counsel for the appellant submitted that panda Prem Kumar gave his age as 40-41 years as on 31.12.79. That means in 2016 Bikrami he was 20-21. He was born in sambat 1995 BK and is MA in History. He submitted that Entries P-1 and P-2 were not recorded in his presence and therefore, he could not vouch-safe that they were in the hand of their gomashtas Roshan Lal and Asha Ram. It was further submitted that if his father could not be brought to the court because of failing health and ripe age, he could be examined through commission. It was submitted that no value should be attached to this bahi of the panda in the face of the clear cut admission of Sarwan Kumar that he and Mool Chand are the sons of Mani Ram, made at so many times. It was submitted that admission is a very valuable piece of evidence which the opposite party can make use of. It was submitted that in view of section 17 and 21 of the Evidence Act, admissions are substantive evidence by themselves though they may not be conclusive proof of the facts admitted, in support of this submission, he drew my attention to Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) by Lrs. and Another. It was submitted that admissions are a good piece of evidence and can well be used against its maker if he has not tried to explain them and falsify them.

11. There is no doubt that admissions are a good piece of evidence and they can well be used against its maker. Admissions are, however, not conclusive and unless

they constitute estoppel, the maker is at liberty to prove that they are mistaken or are untrue. Admissions are mere pieces of evidence. In this case, there is no doubt about the admission of Sarwan Kumar on various occasions that Jagdish Parshad is the son of Mani Ram. Sarwan Kumar PW4 stated that he is the son of Mani Ram. He has 3 sisters named defendants 2 to 4. Jagdish Parshad is his cousin i.e. son of his taya Mool Chand. His father Mani Ram went to Haridwar. In entries Ex.P1 and P2 beneath portion A to A there are Mani Ram's signatures. In his cross examination, he has tried to explain his admissions. He stated the mortgage deed was never read out to him. It was suggested to him that the Sub Registrar had read out the mortgage deed to him and Jagdish Parshad and that they both put their signatures in the presence of sub Registrar in token of its correctness. He denied this suggestion. He feigned ignorance about the execution of rent note with regard to this house by him and Jagdish Parshad in which they described themselves as the sons of Mani Ram. As regards the application for the grant of succession certificate, he stated that he does not remember whether he had impleaded Jagdish Parshad as party to that application for the grant of succession certificate. He stated that he does not remember whether he put his signatures beneath that application. He is M.A., Ph.D. Learned counsel for the applicant submitted that Sarwan Kumar tried to wriggle out of his admissions but he could not. Learned counsel for Sarwan Kumar respondent submitted that not only Jagdish Parshad is described as the son of Mool Chand by his father Mani Ram in the bahi of the panda in the year 1994 and 1996 BK but the assessing authority Property Tax Department, Ambala issued receipt Ex.P3 in which Jagdish Parshad was described as the son of Mool Chand and Sarwan Kumar was shown as the son of Mani Ram. It was submitted by the learned counsel for the respondent that there is one Kabul Chand PW3 who is common relation. He has stated that Sarwan Kumar's grand mother was the real sister of his grand father, Name of Sarwan Kumar's grand mother was Jai Kaur. He stated that his (Kabul Chand's) grand father's name was Ratti Ram. Ratti Ram and Jai Kaur are dead. His father Janki Parsad son of Ratti Ram is also dead. His mother is also dead. Sarwan Kumar is the son of Mani Ram while Jagdish Parshad is the son of Moot Chand. Mool-Chand and Mani Ram were real brothers. Mool Chand and Mani Ram are also dead. When Jagdish Parshad's mother died. Jagdish Parshad was 1-1/2-2 months old. Jagdish Parshad was brought up by Mani Ram and his wife. Jagdish Parshad was never adopted by Mani Ram. Mani Ram was Jagdish Parshad's chacha. Defendants 2 to 4 are Mani Ram's daughters. It was submitted by the learned counsel for the respondent that the statement of Shri Kabul Chand should be given due weight as he is common relation of the parties. He has no axe to grind against Jagdish Parshad. It was submitted that his statement should be given weight as the same falls within the ambit of Section 50 of the Evidence Act. It was held in [Sitaji and Others Vs. Bijendra Narain Choudhary and Others](#), that a member of the family can speak in the witness box of what he is told and what he has learned about his own ancestors. Provided what he says is an expression of his independent opinion (even though it is based on hear-say derived from deceased not living persons) and is not

merely repetition of the hear-say opinion of others and provided the opinion is expressed by conduct."

12. In this case, the admissions made by Sarwan Kumar on various occasions that Jagdish Parshad is the son of Mani Ram have been proved to be untrue. Shri Kabul Chand is the common relation of the parties. He has stated that Sarwan Kumar is the son of Mani Ram while Jagdish Parshad is the son of Mool Chand. As common relation of the parties, he was able to form this impression about the relationship of Sarwan Kumar with Mani Ram and about the relationship of Jagdish Parshad with Mool Chand from conduct towards each other. He is to be believed. In the record of the property tax, Jagdish Parshad is shown as the son of Mani Ram. Mani Ram went to Haridwar twice. Once in 1994 BK and then in 1996 BK. Entries were made in the Bahi of the panda which were signed by Mani Ram. In those entries, Sarwan Kumar is described as the son of Mani Ram while Jagdish Parshad is described as the son of Mool Chand. Mani Ram and Mool Chand are described as the sons of Kalu Ram. Whatever is stated in those entries, that is to be taken as the statement of a dead person u/s 32 of the Evidence Act. Why should the statement made by Mani Ram in the bahi of the panda be not believed particularly when that statement was signed by Mani Ram. If Jagdish Parshad had any doubt about the signatures of Mani Ram on those entries, he could make an application for the comparison of the signatures of Mani Ram on those entries with his signatures elsewhere. It may be mentioned that Mani Ram was retired Station Master. He must have signed at many places during his life time. For the reasons best known to Jagdish Parshad, he did not make any such application and as such inference has to be drawn against Jagdish Parshad. As to whether the panda had maintained his bahi in the regular course of business and as to whether he had been making entries in his bahi regularly, that is of no consequence when those entries were signed by Mani Ram. Had those entries not been signed by Mani Ram, the question whether those bahis had been maintained in the regular course of business, would have been given weight. Further why should defendants 2 to 4 i.e. Chander Kala, Rameti Devi and Saraswati, who are daughters of Mani Ram, have stated that Sarwan Kumar is son of Mani Ram while Jagdish Parshad is the son of Mool Chand. If Jagdish Parshad were also the son of Mani Ram, they would have stated likewise. They would have stated that Jagdish Parshad is also their real brother and he is also the son of their father Mani Ram. In their written statements they have admitted the claim of the plaintiff whole hog, Jagdish Parshad did not choose to put any rejoinder to the written statement filed by Chander Kala, Rameti Devi and Saraswati. In this case, thus, the admissions made by Sarwan Kumar that Jagdish Parshad is the son of Mani Ram have been proved to be untrue.

13. Both the courts below have concurrently found as fact that Jagdish Parshad is the son of Mool Chand and has no right to lay claim to the inheritance of Mani Ram. Concurrent finding of fact based on appreciation of evidence cannot be interfered with by this court in second appeal if the appreciation of evidence by them is

reasonable and just. In this appeal no question of law arises what to talk of substantial question of law.

14. For the reasons given above, this regular second appeal fails and is dismissed.