PETITIONER:
BHARAT SINGH AND ANR.

Vs.

RESPONDENT:
BHAGIRATHI

DATE OF JUDGMENT:
26/08/1965

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
SARKAR, A.K.
RAMASWAMI, V.

CITATION:
1966 AIR 405 1966 SCR (1) 606
CITATOR INFO :
D 1971 SC1153 (23)
F 1974 SC 117 (8)
F 1977 SC 409 (21)
RF 1977 SC1712 (14)

ACT:
Indian Evidence Act (1 of 1872)-Admissions-Witness not confronted -Whether admissible-Hindu Law-Widow's name mutated-If sufficient to prove severance of joint family.

HEADNOTE:
The appellants filed a suit for a declaration that the entry in the name of the respondent in the Jamabandi papers of certain villages was incorrect and alleged that they along with their brother, the husband of the respondent, constituted a joint Hindu family, that their brother died as a member of the joint Hindu family and thereafter his widow-the respondent--lived with the appellants who continued to be owners and possessors of the property in suit, the widow being entitled to maintenance only, and that by mistake the respondent's name was entered in village records in place of the deceased husband. The respondent contested the suit alleging, inter alia, that her husband did not constitute a joint Hindu family with the appellants at the time of his death and also that the suit was barred by time as she had become owner and possessor of the land in suit in 1925 on the death of her husband when the entries in her favour were made, and the suit was brought in 1951. The respondent had admitted in certain documents about the existence of the joint Hindu family or a joint Hindu family firm. The trial Court decreed the suit, which on appeal, the High Court set aside. The High Court did not use the admissions of respondent as she, when in the witness box, was riot confronted with those admissions; and as those documents, if read as a whole did not contain any admissions on behalf of the respondent that there was any joint family still in existence. In appeal by certificate to this Court.
HELD : (i) There is a strong presumption in favour of Hindu brothers constituting a joint family. It is for the person alleging severance of joint Hindu family to establish it. The mere fact of the mutation entry being made in favour of

the respondent on the death of her husband was no clear indication that there was no joint Hindu family of the appellant, and the respondent's husband at the time of the latter's death. [610 E. F-G]

(ii) Admissions have to be clear if they are to be used against the persons making them. Admissions are substantive evidence by themselves in view of ss. 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matter admitted. The admissions duly proved or(admissible evidence irrespective of whether the party making them appear ad in witness box or not and whether that party when appearing as wines was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under s. 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to in admission made by a party is a matter different from its use as admissible evidence.

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Therefore, the admissions of the respondent which had been duly proved could be used against her. They were proved long before she entered the witness box and it was for her to offer any explanation for making admissions. Her simple statement that her husband had separated from his brothers even before her marriage was, by itself, neither an adequate explanation of those admission nor a clear cut denial of the facts admitted. [615 F-616 C]

(iii) The suit was clearly not barred by limitation. Admittedly the dispute between "he par-ties arose sometime in 1944. Prior to that there could be no reason for the respondent acting adversely to the interests of the appellants. It was really in about 1950 that she asserted her title by leasing certain properties and by transferring others, and in 1951 the appellants instituted the suit. [617 C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 423 of 1963.

Appeal from the judgment and decree dated November 9, 1959 of the Punjab High Court in Regular First Appeal No. 151 of 1954.

Bishan Narain, M. V. Goswami and B. C. Misra, for the appellants.

Mohan Behari Lal, for the respondent.

The Judgment of the Court was delivered by

Raghubar Dayal, J. This appeal, on certificate, is against the judgment and decree of the Punjab High Court reversing the decree of the trial Court and dismissing the suit of the plaintiffs for a declaration that the entry in the name of the defendant in the Jamabandi papers of certain villages was incorrect.

The plaintiffs, Bharat Singh and Kirpa Ram, are the sons of Ram Narain. They had another brother Maha Chand, whose widow is Bhagirti, the defendant. The plaintiffs alleged that they and Maha Chand constituted a joint Hindu family, that Maha Chand died as a member of the joint Hindu family and that thereafter Maha Chand's widow lived with the plaintiffs who continued to be the owners and possessors of the property in suit, the widow being entitled to

maintenance only. They also alleged that it was by mistake that the defendant's name was mutated in the village records in place of Maha Chand, who died on September 16, 1925. They further alleged that the defendant lost her right to maintenance due to her leading an unchaste life. This contention, however, was not accepted by the Courts below and is no more for consideration. It was on the other allegations that the plaintiffs claimed a declaration that the entry of the

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defendant's name in the column of ownership in the Jamabandi papers was wrong, that they were the owners and possessors of the property in suit and that the defendant had no right therein. They also claimed a permanent injunction against the defendant restraining her from alienating or leasing any of tile properties in favour of any person or causing interference of any kind in the possession of the plaintiffs.

The defendant contested the suit alleging that her husband Maha Chand, along with the plaintiffs, did not constitute a joint Hindu family at the time of his death, that he was separate from the plaintiff's and that he was living separate from them, that the property In suit was neither ancestral property nor the property of the joint Hindu family that the plaintiffs and Maha Chand were owners of agricultural land as co-sharers out of which one third share belonged to Malta Chand and that therefore the entry in her favour in the Jamabandi papers was correct. She also claimed right to Maha Chand's share on tile basis of custom. This contention, however, was not accepted by the Courts below and is not now open for consideration. Bhagirti further contended that the suit was not within time as she had become owner and possessor of the land in suit in 1925. The suit was brought in 1951.

By their replication, the plaintiffs stated that Maha Chand had never become separate from them and that the defendant was not III possession of the property in suit, the possession being with the plaintiffs of their tenants or lessees,

The trial Court 'II--Id that the parties were governed by the Hindu law unmodified by any custom, that the joint Hindu family constituted the plaintiffs and their brother Maha Chand was never disrupted and that Maha Chand died is a member of the joint Hindu family, that the property in suit was co-parcenery property in the hands of the three brothers, that the entry of the defendant's name in the Jamabandi was wrongly made and that the suit was instituted within time as the earliest the defendant asserted her claim to the land in suit was in 1950. The trial Court therefore granted the plaintiffs a decree for declaration in the following terms

> "1. That the entries in the revenue papers showing the defendant as owner of one third share in the suit land ire wrong and are not binding on the plaintiffs.
>
> 2. That the property in dispute vests in the plaintiff as coparceners.
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>
> 3. That the defendant's only right in the suit property is one of maintenance and she is not entitled to alienate it in any way.

The plaintiffs are further granted a permanent injunction restraining the defendant from alienating the suit property in any way .and from causing interference in the plaintiffs' possession of the property.

The plaintiffs' suit for declaration that the defendant has lost her right of maintenance in the suit property by unchastity is dismissed .... "

The defendant appealed to the High Court. It was not contended on her behalf that the land was ancestral and had descended from Ram Narain to the plaintiffs and Maha Chand. What was urged before the High Court was that the entry in Maha Chand's name as owner of one-third share in the Jarnabandi and similar entry in defendants name after the death of Maha Chand was correct as irrespective of the fact whether the family was originally a joint Hindu family or not the joint Hindu family stood disrupted by the conduct of the parties and therefore there was no question of the plaintiffs' getting the entire property by survivorship. Reliance was placed on the entries in the revenue records with respect to Maha Chand and the defendant after him owning one-third share in those properties and about her possession upto 1946-47 and on the defendant's being impleaded in several suits by the plaintiffs as a co-plaintiff and in one suit as a defendant. The High Court considered this evidence sufficient to prove disruption of the joint family as the mutation entries in the revenue records could not have been obtained by the defendant surreptitiously or without the knowledge and consent of the plaintiffs and as none of the plaintiffs objected to her being entered as a co-sharer with them after the death of Maha Chand which showed that there was no joint Hindu family at the time of the death of Maha Chand. The High Court also relied on the fact that the plaintiffs had impleaded the defendant as a plaintiff or defendant in the various suits, as Bharat Singh refused or did not care to give an explanation why the defendant had been throughout shown as a co-sharer in those proceedings when actually she was not a co˜sharer and was merely entitled to maintenance. The High Court did not use the admissions of Bhagirti, defendant, in certain documents about the existence of the joint Hindu family or a joint Hindu family firm as she, when 'in the witness box, was not confronted with those admissions and as those documents, if read as a whole, did not contain any admissions on behalf of Bhagirti that there was any joint family stilt in

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existence. The High Court summed. up its view on the question of disruption in the family thus :

> "These revenue entries normally do not furnish a very strong evidence of severance of a Joint Hindu Family but subsequent conduct of the plaintiffs, as detailed above, leaves no manner of doubt that there did not exist any Joint Hindu Family after the demise of Ram Narain and that Mst. Bhagirati was rightly shown as a co-sharer in the revenue records."

The High Court considered the case to have been instituted after the expiry of the period of limitation but did not base its decision on this finding. The High Court, accordingly, allowed the appeal and set aside the decree of the trial Court in favour of the plaintiffs.

The sole question for determination in this Court is whether the plaintiffs and Maha Chand constituted a joint Hindu family at the time of the latter's death. Having considered the evidence on record and the submissions made on behalf of the parties, we are of opinion that the trial Court took a correct view of the, evidence on record. There is a strong presumption in favour of Hindu brothers constituting a joint family. It is for the person allying severance of the joint

Hindu family to establish it. It is to be noticed in the present case that the defendants did not state in the written statement as to when disruption took place in the joint family. The High Court too has not given any clear-cut finding with regard to the time when disruption took place in the joint family. The way it has expressed itself indicates that no joint Hindu family existed after the death of Ram Narain, father of the plaintiffs and Maha Chand. There is nothing in the judgment of the High Court as to when severance of the Hindu joint family took place. The mere fact that mutation entry after the death of Ram Narain was made in favour of three brothers and indicated the share of each to be one-third, by itself can be no evidence of the severance of the joint family which, after the death of Ram Narain, consisted of the three brothers who were minors. Ram Narain died in 1923. Maha Chand died in 1925 and is said to have been about 17 or 18 years of age then. The plaintiffs were of even less age at that time. There was no reason why just after the death of Ram Narain the three brothers should have separated.

It is true, as the High Court observes, that Bhagirati could not have manipulated the mutation entries after the death of Maha

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Chand surreptitiously. It is not alleged by the plaintiffs that she got the entries made wrongly in her favour by some design or able means. There is however nothing surprising if the mutation entry had been made without the knowledge of the appellants who were minors at the time. Their minority win also explain the absence of any objection to the mutation being made in her favour. The way in which the mutation entry was made does not indicate that the mutation entry was made after notice to the plaintiffs or their guardian, whoever he might have been at the time, or after any statement on their behalf that they had no objection to the entry. Exhibits D-7 and D-8 are the extracts from the Register of Mutations relating to mauza Asoda, Todran Jamnan Hadbast No. 28, Tehsil Jhajjar, District Rohtak. The entries in column 15 show that the Patwari of the village reported on November 30, 1925 that Munshi Lal Mahajan had informed him that Maha Chand had died and that Mst. Bhagirati was in ion of the property of the deceased as heir, that mutation by virtue of succession had been entered in the register and the papers were submitted for proper orders. The Revenue Assistant

passed an order on December 29, 1925 which is in the following terms

Bahadurgarh Public Assembly.

ORDER

> Ramji Lai Lambardar, testified to the factums of the death of Maha Chand and the succession (to him) of Mst. Bhagirati his widow. There is no objector. Hence mutation in respect of the heritage of Maha Chand in favour of Mst. Bhagirati. his widow is sanctioned.
>
> Dated the 29th December, 1925.
>
> Signature of
>
> The Revenue Assistant."

The shows that was made as a result of there being no objection from anybody to the statement of Ramji Lal, Lambardar, about the death of Maha Chand and Bhagirati succeeding him as widow. The plaintiffs, who were minors, may not have attended the Public Assembly. They being minors could not have understood the significance of any general notice, if any, issued in that connection and the

gathering of people. It is not for
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the Revenue Authorities to make any regular enquiry about the devolution of title. They make entries for revenue purposes about the person who is considered prima facie successor of the deceased. A widow would be considered an ostensible successor to her husband unless it be known that her husband was a member of a joint Hindu family and the property over which mutation was to be made was joint family property.

We are therefore of opinion that the mere fact of the mutation entry being made in favour of Bhagirti on the death of Maha Chand is no clear indication that there was no joint Hindu family of the plaintiffs and Maha Chand at the time of the latter's death.

Bharat Singh, appellant no. 1, instituted 5 suits on behalf of himself Kirpa Ram and Bhagirati. All these suits related to agricultural land. DI, D2, D3 and D4, the plaints in four of these suits, were in the name of the plaintiffs and Bhagirati and it was stated in them that the plaintiffs were the proprietors of the agricultural laid in suit. With respect to the admission in these plaints that Bhagirti was one of the proprietors, Bharat Singh stated that lie had been including her name in the cases tiled against tenants in accordance with the revenue papers. This is a sound explanation. So long as an entry in the defendant's name stood in the revenue papers, suits in revenue Court-,. as these suits were, had to ha filed in those names. D-5 is the plant of a suit by Bharat Singh and Kirpa Ramn Instituted on April 6, 1943. Bhagirti is implement as defendant no. 1. Para 1 of plaint stated that defendants nos. 2 to 5 were non-occupancy under the plaintiffs and defendant no. 1. and Para 3 stated that defendant no. 1 being absent, could not join the suit and that therefore she had been made a pro-forma defendants When Bharat Singh made the statement on November 27, 1953 I do rot remember why Bhagirati was made defendants be does not to have been shown the plaint Exhibit D-5. There is nothing surprising if be could not remember the reason for making her a defendant. Earlier he had already made a statement on October 3, 1953 that they had been including her name in the cases filed against tenants in accordance with revenue papers and that explanation, together with what is entered in the plaint, sufficiently explains for Bhagirti being impleaded as defendant in D-5. The High. Court was not factually correct in making the following observation -

> "When Bharat Singh came into the witness-box, he was confronted with all these documents but, strangely enough, he did not care to give any explanation why
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> Mst. Bhagirati had throughout been shown as a cosharer with them in these proceedings if, in fact, she was not a co-sharer and was entitled only to maintenance. As a matter of fact, when a pointed question was asked from him with regard to Exhibit D-5, he stated as follows:- 'I do not remember why Mst. Bhagirati was made a defendant.' "

Bharat Singh had given explanation with respect to her being impleaded in these suits. The record does not show that he was referred to Exhibit D-5 and a pointed question with regard to what was stated in the plaint had been put to him when he made the particular statement about his not remembering why Mst. Bhagirati was made a defendant. If he

had been referred to the plaint, he could have himself, on reading given the proper answer, or his counsel would have reexamined him in that regard.

We are of opinion that the High Court was in error in relying on these admissions of Bharat Singh when he had explained them reasonably.

The oral evidence adduced for the defendant to prove separation of Maha Chand from his brothers, has been rightly described to be worthless by the trial Court. No reliance on that evidence was placed on behalf of the respondent in the High Court. The evidence consists of the statements of three persons. Munshi Ram, D.W. 1, brother of defendant, who was about 10 years old when Maha Chand died, simply that time of Maha Chand's death, he- was separate from his admitted in cross-examination that 'his he had learnt from his father. His evidence is hearsay and is of no value.

Giani Ram, D.W. 3, stated that all the three brothers, Bharat Singh, Kirpa Ram and Maha Chand had separated in 1923 during the life time of Ram Narain himself. The finding of the High Court is that the disruption of the joint family took place after Ram Narain's death. Giani Ram does not belong to the family. No reason exists why disruption of family should have taken place in the life-time of Ram Narain. The fact that Ram Narain or his mother are not said to have got any share of the agricultural land when disruption took place, does not stand to reason. No mutation entry appears to have been made in the village papers at the time of the alleged partition in the life-time of Ram Narain. Giani Ram is much interested in the case of the defendant as he holds a decree against her. Further, firm Shiv Prasad Giani Ram sued firm Jairam Das Ram Narain (the family firm of the parties herein) through Bhagirati for the recovery of the money

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the defendant firm owed to the plaintiff firm on the basis of bahikhatha accounts. Giani Ram, through whom the suit was instituted, and Bhagirati entered into an agreement for referring this dispute to arbitration. In this agreement signed by Giani Ram and Bhagirati, she was described as proprietrix of the joint Hindu firm known as Jairam Das Ram Narain. The only explanation for such a statement occurring in the agreement is given by him to be that the petition writer did not read over the agreement to him or to Bhagirati and got their signatures on it without making them read the agreement. No reliance could have been placed on his statement.

Bhagirati, defendant, as D.W. 4, simply stated that when her husband died he and the plaintiffs were not joint and that they had separated even before her marriage. She is no witness of the disruption of the family.

We are therefore of opinion that the evidence relied on by the High Court for holding the disruption proved together with the oral evidence led by the defendant about disruption of the family is insufficient to prove disruption after the death of Ram Narain and during the life time of Maha Chand.

It is not necessary to discuss the evidence for the plaintiffs about the family being joint when Maha Chand died. Suffice it to say that apart from the statement of Bharat Singh, P.W. 7, there is other evidence to establish it. Shiv Narain, P.W. 4, deposed that when Ram Narain was alive he and his brothers constituted a joint Hindu family upto the death of Maha Chand and that the joint family continued upto the date he gave evidence. He was not cross-examined with regard to his statements. Jai Lal, P.W. 5, deposed to the same effect. In cross-exammination he stated

that had there been a son of Maha Chand, he would have got one-third share of Maha Chand and that all the three brothers had one-third share each in the property. This statement does not mean that there had been disruption in the family. We do not know in what form the questions to which these are the answers were put. The answers are consistent with the fact that had separation taken place during the life time of Maha Chand his share would have been one-third and that his one-third share would have gone to his son or that the entries in the village papers would show Maha Chand's son being mutated over the one-third share of Maha Chand just as Bhagirati's name was mutated in place of Maha Chand.

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Reliance was also placed for the plaintiffs on the admissions of Bhagirati. The High Court did not take these admissions into consideration as they were not put to her when she was in the witness box and as in its opinion the documents containing the alleged admissions if read as a whole did not contain any admissions on behalf of Bhagirati that there was any joint family still in existence.

The legal objection to the consideration of these admissions was based on the Full Bench decision of the Punjab High Court in Firm Malik Des Rai v. Firm Piara Lal(1). The view taken in ,hat case was differed to by the Full Bench decision of the Allahabad High Court in Ayodhya Prasad v. Bhawani Shanker (2) The punjab High Court based its decision on the observations of the privy Council in Bal Gangadhar Tilak v. Shrinivas Pandit(3). fiat case, however, did not directly deal with the use of admissions which are proved but are not put to the person making the admissions when he enters the witness box. The entire tenure of he documents whose certain contents were construed by the High Court to discredit the persons making those admissions went to support their case and did not in any way support the case of the other party. The Privy Council. expressed its disapproval of the High Court minutely examining the contents of the documents and using its own inferences from those statements to discredit the oral statements of the persons responsible for making those documents when those persons had not been confronted with those statements in accordance with s. 145 of the Indian Evidence Act.

Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of ss. 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under s. 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an. ad-

(1) A.I.R. 1046 Lab. 65.
(2) A.T.R. 1957 All. 1.
(3) L.R. 42 I.A. 135.

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mission made by. a party is a matter different from its use

as admissible evidence.

We are therefore of opinion that the admissions of Bhagirati. Which had been duly proved could be used against her. They were proved long before she entered the witness box and it was for her to offer any explanation for making those admissions. The Court could have considered the effect of her explanation. She preferred to make no reference to her admissions proved by the plaintiffs. Her simple statement that her husband had separated from his brothers even before her marriage is, by itself, neither an adequate explanation of those admissions nor a clear-cut denial of the facts admitted.

We have already referred to her admissions in the agreement executed by her and Giani Ram for referring the dispute in Giani Ram's suit for arbitration in 1946. She instituted a suit earlier in 1944. The plaint of that suit is Exhibit P. 2. She instituted this suit against the present plaintiffs and stated in para 1 of the plaint that those defendants and Maha Chand, her husband, were members of a joint Hindu family and in para 2 that in place of her husband Maha Chand she was then the co-sharer and owner and possessor of the property of his share and that in this way the plaintiff and the two defendants were members of the joint Hindu family. In para 3 she stated that the joint Hindu family mentioned in para 1 held the property mentioned therein and this property included residential property and the business of two firms. She further stated in para 4 that defendants 1 and 2, the present plaintiffs, were running the business of the firms in the capacity of managers and that she did not want to keep her share joint in future. She had instituted the suit for partition of the property and the firms mentioned in para 3.

P.W. 2, clerk of Shri Inder Singh Jain, pleader, scribed this plaint and has deposed that the pleader had prepared the brief in accordance with the instructions of Bhagirati and that he had written out the petition and plaint and that it had been read out to her. He denied that the thumb marks of Bhagirati were secured on a plain paper and that the plaint was written later on. This suit was withdrawn.

Again, in 1950, she instituted another suit against the present plaintiffs and one Han Narain, for a certain declaration. In para 1 of the plaint it was stated that the three shops mentioned therein belonged to the joint Hindu family firm Jairam Das Ram Narain in Narela Mandi, Delhi State. The plaint is Exhibit P.-1. Shri

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M. K. Madan, Advocate, P.W. 1, has deposed that the plaint was got written by Bhagirti, that a portion of the plaint was in this handwriting and that it was read over to her and that she put her thumb mark on it after having heard and admitted its contents. He also stated that the suit was subsequently withdrawn.

We are of opinion that the evidence of the plaintiffs on record establishes that there had been no disruption between the plaintiffs and Maha Chand and that Maha Chand died as a member of the joint Hindu family. It follows that the entries in the Jamabandis showing Bhagirati as the owner of one-third share are wrong and that the decree of the trial Court is right.

The question of limitation may be briefly disposed of. There is no good evidence on record to establish that the respondent, prior to 1950, asserted that she had any right adverse to the plaintiffs over the property in suit or that she acted any manner which would amount to an ouster of the plaintiffs. Admittedly the dispute between the parties

arose sometime in 1944. Prior to that there could. be no reason for her acting adversely to the interests of the plaintiffs. It was really in about 1950 that she leased certain properties and transferred certain plots and soon after the plaintiffs instituted the suit. The suit is clearly not barred by limitation.

We therefore allow the appeal, set aside the decree of the Court below and restore the decree of the trial Court. We further direct the respondent to pay the costs of the appellants in the High Court and this Court.

Appeal allowed,

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