PETITIONER:
NIRMALJIT SINGH & ORS.

Vs.

RESPONDENT:
HARNAM SINGH (DEAD) BY LRS.& ORS.

DATE OF JUDGMENT: 30/01/1996

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
BHARUCHA S.P. (J)

CITATION:
JT 1996 (1) 622 1996 SCALE (1)584

ACT:

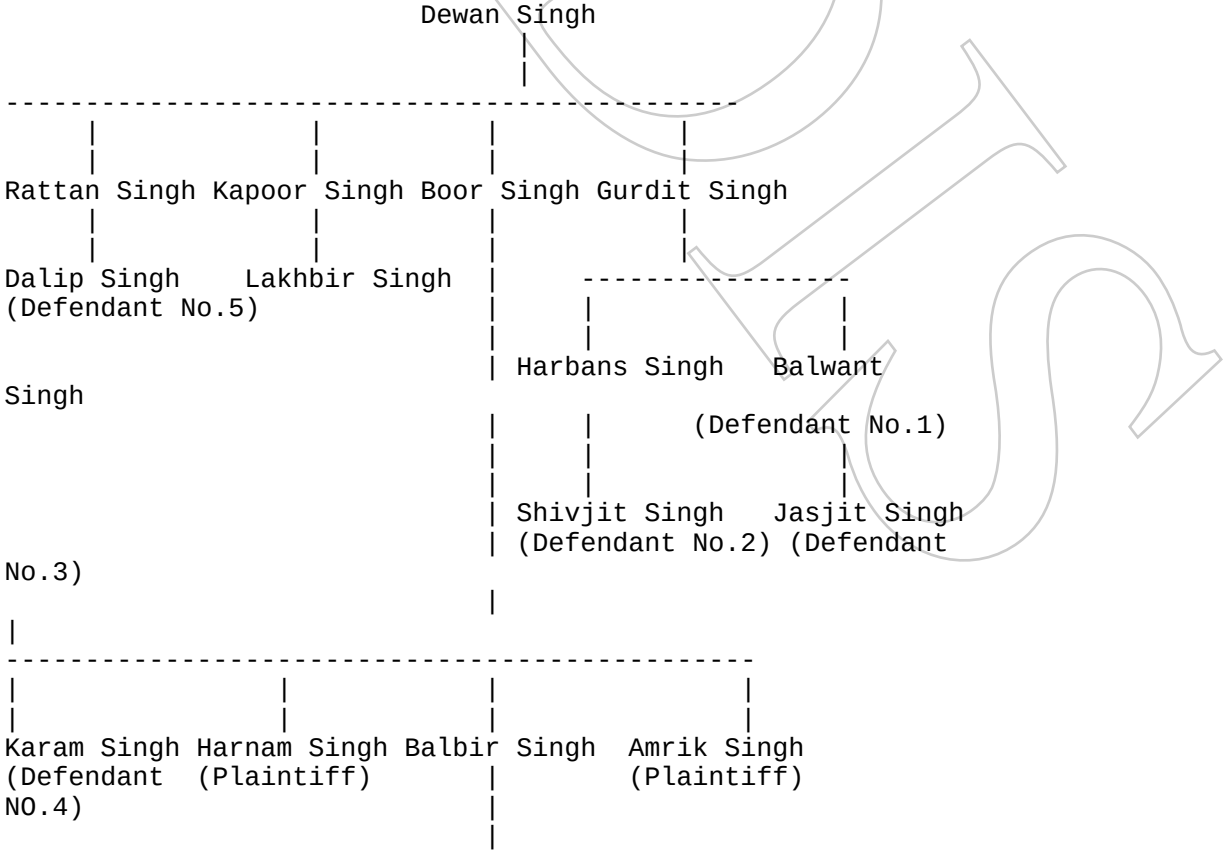
HEADNOTE:

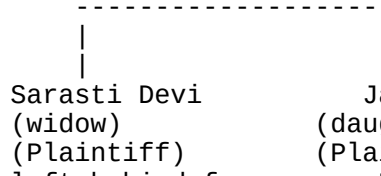
JUDGMENT:

J U D G M E N T

Mrs. Sujata V. Manohar, J.

The property of one Dewan Singh, a common ancestor of the appellants and the respondents, is the subject matter of dispute in this appeal. A genealogy table showing the relationship between the appellants and the respondents is given below :






Dewan Singh left behind four sons, Rattan Singh, Kapoor Singh, Boor Singh and Gurdit Singh. In 1926, one of the sons of Dewan singh, namely, Boor Singh filed a suit for partition in respect of the houses and mansion left by Dewan Singh including a house known as 'Haveli Dewan Singh Wali' at Phagwara, in the Court of the Magistrate First Class, Tehsil Phagwara, Kapurthala State. His brothers Gurdit Singh, Kapoor Singh and Dalip Singh s/o of his deceased brother Rattan Singh were all parties to this suit. In this suit, a reference was made to arbitration. The reference to arbitration is singed by Boor Singh's branch consisting of his four sons, Karam Singh, Harnam Singh, Balbir Singh and Amrik Singh. Amrik Singh being a minor, Harnam Singh has signed as the guardian of Amrik Singh. Boor Singh presumably was not alive by this time. The reference to arbitration is also signed by Boor Singh's brother Kapoor Singh, Dalip Singh s/o Boor Singh's brother Rattan Singh and Balwant Singh s/o Boor Singh's brother Gurdit Singh, Gurdit Singh also presumably having passed away. Gurdit Singh had also left behind another son Harbans Singh. Harbans Singh, however, did not contest the suit and claimed no share in the properly in question. It is submitted by the appellants that Harbans Singh was given in adoption to his maternal uncle and was, therefore, not interested in any property coming to the share of his natural father Gurdit Singh. Harbans Singh was not a party to the reference. The Arbitrator proceeded with the reference and gave his award which was filed in court. A decree in terms of this award was passed by the Magistrate First Class, Tehsil Phagwara, Kapurthala State, on 19 Paus 1987, that is to say, some time in the year 1930.

On 24th of October, 1967 the present suit for partition of Dewan Singh's property, being a house known as 'Haveli Dewan Singh Wali' at Phagwara was filed by Harnam Singh and Amrik Singh, sons of Boor Singh along with the widow and daughter of Balbir Singh (another son of Boor Singh) against Karam Singh another son of Boor Singh and the sons of Gurdit Singh, Kapoor Singh and Rattan Singh. It was contended before the trial court by the defendants that the claim in this suit was barred by res judicata in view of the decree passed in the partition suit filed in 1926. The trial court, however, decreed the suit. The first appeal from the judgment and decree of the trial court was dismissed. The High Court dismissed the second appeal. Hence the present appeal has been filed before us by the branch of Balwant Singh s/o Gurdit Singh against the branches of the other three brothers.

It is submitted by the appellants that in the partition suit of 1926, the same property which is the subject matter of the present suit was also the subject matter of partition in that suit. The decree which has been passed in that suit is being on the respondents since each of the branches of the four sons of Dewan Singh was a party to that suit and to the reference to arbitration made therein. The decree passed in that suit is binding on all the four branches of Dewan Singh. The original plaintiffs who are respondents before us, however, contend that the earlier decree in terms of the award must be ignored and cannot operate as res judicate because Harbans Singh, the second son of Gurdit Singh, was

not a party to the reference. The reference to arbitration is, therefore, bad in law.

There is no merit in this contention. If at all anyone could have challenged the award, it was Harbans Singh. harbans Singh has not challenged the arbitration award or the decree passed in terms thereof. The persons who are challenging this award and the decree in terms of this award are the two sons of Boor Singh and the heirs and legal representatives of Balbir Singh, another son of Boor Singh. These three sons of Boor Singh were parties to the reference to arbitration and were also defendants to the suit. The decree which has been passed in terms of the award is binding on them. Neither Harbans Singh nor his son Shivjit Singh, who is defendant No. 2 in the present suit, has challenged the award or the decree. Hence, the decree passed in the earlier suit cannot be disowned by the respondents - original plaintiffs on the ground that Harbans Singh was not a party to the arbitration proceedings.

It is next contended by the original plaintiffs who are respondents here that the decree passed in the suit of 1926 is a nullity and can be ignored because no notice of the filing of the award in court was served upon the parties. The decree was passed as far back as in 1930. No proceedings have been taken out by the original plaintiffs at any time to have this decree set aside or to have it declared as a nullity. So long as the decree stands and has not been set aside, the decree is binding on the parties to it and cannot be ignored. In respect of the previous suit, what is produced before us is a copy of the last order sheet of the Court or Lala Shiv Ram Das Saheb, Magistrate, First Class, Tehsil Phagwara, Kapurthala State. It notes that the arbitrator pronounced his award in the presence of the parties and it should have been got declared as a Rule of the Court. Inspite of service the plaintiff has not appeared. The order then proceeds to make the award a Rule of the Court. It further states : "The parties may be informed in writing accordingly as required by law and the file may be consigned to the record room." Clearly, therefore, the record shows that at least immediately on passing of the decree a notice was served on all the parties in writing by the Court informing them of the award being made an order of the court. If any of the parties had any grievance in respect of the award or the decree passed in terms of it, they could have applied to the court for having the decree set aside. Despite this notice in writing nobody challenged either the award or the decree which was passed in terms of that award. The decree is, therefore, binding on the parties and it cannot be ignored or considered as invalid.

Moreover, the contention that no notice of the filing of the award was served on the parties was not raised either in the plaint or before the trial court or before the first appellate court. This contention was raised for the first time in second appeal before the High Court. In our view the High Court was not right in coming to the conclusion that in the absence of the notice of the filing of the award (which it presumed) the decree in terms of the award can be considered as non est and can be ignored so that it would not operate as res judicata.

In the premises, the suit is clearly barred by the principles of res judicata. The appeal is, therefore, allowed. The judgment and decree of the High Court is set aside and the suit or the plaintiff is dismissed with costs.