



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-1505-2018 (O&M)

Date of decision: 15.05.2025

Daya Ram (deceased) through LRs and others ...Appellant(s)

Vs.

Partap Singh and another ...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. P.R.Yadav, Advocate for the appellants.

Mr. Mukesh Rao, Advocate with
Mr. Shubham Aneja, Advocate for the respondents.

NIDHI GUPTA, J.

CM-3952-C-2018

Prayer in this application filed under Section 151 CPC is for
condonation of delay of 15 days in re-filing the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is
supported by an affidavit of learned counsel for the applicant/appellants,
the same is allowed and delay of 15 days in re-filing the accompanying
appeal is condoned.

RSA-1505-2018 (O&M)

The defendants are in second appeal against the concurrent
judgments and decrees of the learned Courts below, whereby the suit
filed by the plaintiffs/respondents, for possession of suit property as



described in the plaint, has been decreed with costs by both the Courts below.

2. Brief facts of the case as set out in the plaint are that in partition proceedings effected between the parties, plot No. 152 measuring 10 Marlas came to the share of the plaintiffs; whereas plot No. 153 measuring 7 Marlas came to the share of the defendants. Both plots are adjacent to each other. It was the case of the plaintiffs that over a period of time, defendants slowly shifted/ encroached towards the portion of the plaintiffs. The plaintiffs consequentially constructed one pucca wall in place of the earthen wall. On 15.06.2006, the plaintiffs had got demarcated the plot bearing khasra No. 152 as per the orders of Collector 2nd Grade, Kosli. As per demarcation report dated 15.06.2006, it was found that the defendants had encroached upon 1 Marla of land of the plot/khasra No. 152 of the plaintiffs. Despite repeated requests, the defendants refused to handover the possession of the encroached portion to the plaintiffs. Finally, the defendants had refused to hand over the possession on 31.01.2009. As such, the plaintiffs had filed the present suit on 04.02.2009.

3. The suit was contested by the defendants by filing written statement inter alia taking the plea that a written Compromise dated 31.12.1996 had been entered into between the parties, as per which it had been decided that the plaintiffs would give 11 feet wide portion to the defendants from their plot/khasra No. 152. It was contended that the said Compromise was entered in the presence of respectable persons.



Thus, as per Compromise, the defendants had constructed their house over the said portion. Accordingly, dismissal of the suit was prayed for.

4. Learned trial Court vide judgment and decree dated 30.01.2015 decreed the suit of the plaintiffs with costs to the effect that the defendants were *"directed to hand over the possession of encroached portion of Khasra no. 152 (0-10) i.e. 2 Karam wide and 5 karam long, total (0-1) Marla (as per the report of local commissioner dated 15.6.2006), to the plaintiffs within a period of two months from the date of passing of this judgment."* The appeal filed by the defendants was also dismissed with costs by learned Additional District Judge, Rewari vide judgment and decree dated 18.10.2017. Hence, the present second appeal by the defendants.

5. It is inter alia submitted by learned counsel for the appellants/defendants that the suit of the plaintiff was barred by limitation.

It is submitted that in Para 2 of the plaint it was pleaded that: -

"That in the north of the plot of the plaintiffs there is plot of defendants bearing No.153. The plaintiffs in the north side of their plot had constructed Chhapper in the old times and the same were demolished gradually and an earthen wall was constructed in between both the plots and the defendants kept on shifting the same gradually towards the plaintiffs and the plaintiffs in place of the said earthen wall constructed a pucca wall in the northern side."

6. It is argued that from the above pleading of the plaintiffs, it is clear that the plaintiffs themselves admit about the existence of wall and the said admission of the plaintiffs shows that there was no encroachment



by the defendants. Even no date and time of encroachment, or construction of pucca wall between the two plots has been mentioned. In para 4 of the plaint regarding cause of action it is mentioned that initially the defendants kept on avoiding the matter and finally on 31.01.2009 they totally refused. Thus, waiting almost for 3 years shows that the cause of action in the present suit is just fictitious and sham. Even the demarcation is of 15.06.2006, whereas suit has been filed on 04.02.2009. As such, suit is barred by limitation.

7. It is further submitted that the mutual partition that took place on 31.12.1996 was mentioned and was also annexed in the written statement filed by the appellants-defendants. Ld. Counsel refers to the written statement wherein it was pleaded as under in para No.1:-

"1. That para no.1 of the plaint is wrong and denied. By way of written mutual settlement dated 31.12.1996 Rajender Singh and Partap Singh plaintiffs had given 11 feet wide area to the Chhotu Ram-Ramanand-Raghunath-Mohlad @ Dhandhu-Bhanu Pratap etc. out of Khewat No.22/18, Khatoni No.29 Khasra No.152 adjoining to plot Khasra No.153. Above mentioned settlement was affected in the presence of many respectable persons of the village. On the basis of the same Maniram etc. had constructed their houses over the same at that time. Photocopy of settlement is annexed with the present written statement."

8. It is submitted that no replication was filed to the above written statement by the plaintiffs which amounts to admission on behalf of the plaintiffs, that there was a family settlement and the same was acted upon. Even in the Affidavit of Pratap Singh (Ex. PW1/A) (Page 105-111 of the LCR), he has stated that first an earthen wall was constructed and after that



a pucca wall was constructed - which means the construction was done at the behest of the plaintiffs and they had constructed the wall as per their share after the mutual partition of 31.12.1996. While appearing as PW1 Partap Singh in his affidavit Ex.PW1/A has admitted about written settlement in 1996 but it has been mentioned that the same was not acted upon. Similarly in his cross-examination (Page 113-116 of LCR) he has admitted as under: -

"It is correct that on 31.12.1996 our written compromise was effected. It is correct that in the northern side of plot No.152, the defendants have already raised construction on 11 feet area. We are two brothers. It is correct that we all the parties are offsprings of one common grandfather."

9. Ld. Counsel contends that in view of the above admission the settlement dated 31.12.1996 stood proved, and so its execution. Moreover, there is admission of the plaintiffs themselves that they had constructed the pucca wall between the plots No. 152-153. It is contended that the same was done by the plaintiffs as per the mutual compromise.

10. It is further submitted that partition of gairmumkin houses conducted by the Revenue Authorities was beyond pleadings and their jurisdiction; and such an order is void ab-initio and is not binding upon the parties; and the mutual settlement being a document of mutual partition of houses was beyond the jurisdiction of revenue authorities. It is argued that the mutual settlement dated 31.12.1996 came into existence during the partition proceedings of agricultural land and the settlement dated



31.12.1996 is only a sort of partition document and the same does not require any registration as held by the Ld. First Appellate Court.

11. Ld. Counsel submits that the disputed area where the houses of the defendants have been constructed is exactly the same, both in the demarcation report as well in the mutual settlement dated 31.12.1996 and the same is not an inch less or more. Had the defendants encroached upon the said area then the encroachment could not be exact 11 feet wide and thus the only irresistible conclusion is that the compromise dated 31.12.1996 was duly executed and the appellants had pre-existing rights in the disputed land. It is reiterated that only 11 feet land was given to the appellants and the same was a family settlement and a sort of mutual partition and the same does not require registration and the revenue authorities have no jurisdiction to partition the same and therefore there was no question of its incorporation in revenue record.

12. Ld. Counsel further submits that in view of the fact that the mutual settlement dated 31.12.1996 was placed on record with the written statement and PW1 Partap Singh also admitted about the same, thus the same was only to be exhibited formally. Therefore, the application for additional evidence filed by the defendants before the Ld. First Appellate was liable to be accepted but the Ld. First Appellate Court committed a grave error of law in dismissing the same especially when the same goes to the root of the matter and was necessary for substantial justice. Even the Ld. First Appellate Court has discussed the ingredients of the same but has wrongly held that the same required registration.



13. Ld. Counsel submits that even in the cross-examination of DW1 Ramanand (Page 125-127 of LCR) a specific suggestion was put that in the year 1996, 11 feet area of plaintiffs was included by the defendants in their plot. The relevant extract of cross-examination of DW1 is referred to:

"It is correct that in the year 1996, 11 feet wide area of plaintiffs was included by us in our plot bearing No.153. It is correct that possession of 11 feet width and 27.5 feet length of plot No.152 have been taken by us and has been included in our plot no.153 and the same has been done by us according to the family settlement."

14. It is submitted that a similar suggestion was also put to DW2 (Page 131-132 of LCR) Satya Narain in his cross-examination :-

"It is correct that we have included 11 feet wide and 27.5 feet long area out of Khasra No.152 in Khasra No.153 and the same is according to Panchayati settlement. It is correct that property of, we the parties, was joint. No pucca partition had taken place regarding the disputed land for which mutual settlement was arrived at because we had less land."

15. It is argued that, therefore, in view of the above specific suggestions put to the defence witnesses coupled with the fact that houses of the defendants were quite old and a period of more than 12 years had passed since the possession of the defendants over the disputed land and the possession of the defendants was open and hostile, therefore the defendants are at least entitled to protect their possession. Though no plea of adverse possession has been taken by the defendants still this Court under Order 41 Rule 33 CPC can certainly declare the defendants-appellants



as owners in possession of the disputed portion. It is prayed that in view of the above, the case of the appellants may kindly be decreed with costs.

16. *Per contra*, it is submitted by learned counsel for the respondents/plaintiffs that there are concurrent findings of fact as per which the ownership of respondent regarding the suit property and encroachment by present appellant has been specifically established. Moreover, the above facts and other material documents of the plaintiffs have been admitted by the appellants. The only defence of the appellants is written mutual settlement which was neither registered nor proved by them. Their application for additional evidence proving the same was also dismissed by the Ld. First Appellate Court. It is incorrect for the defendants to submit that the Family Settlement was proved before the learned Courts below. It is submitted that original settlement was never produced by the defendants. A photocopy of the same was produced as Mark 'A'. However, the same was rejected for cogent reasons given by the learned Courts below in their respective judgments. Ld. Counsel in particular refers to paras 10 and 11 of the Id. trial court judgment; and paras 13, 18, 19, 21, 23 of the learned first appellate court judgement. Moreover, as the said Settlement pertains to immovable property having value of more than Rs.100/-, as such, the same is required to be compulsorily registered. Ld. Counsel submits that therefore, present appeal deserves to be dismissed.

17. In rebuttal, it is submitted by learned counsel for the defendants that as per the judgment of Hon'ble Supreme Court in



Ranganayakamma and another vs. K.S. Prakash (D) bv L.Rs. and others,

Law Finder Doc Id # 144409, it is held as follows: -

“48. The deed of partition could have also been entered into by way of family arrangement where no registration was required. Such a course of action had not been taken. The parties knew the nature of the document. Appellants and other sisters being highly educated were supposed to know the contents thereof. Their husbands are well-off in the society. The transaction, therefore, was transparent. Furthermore, the mother was alive. She was also a party to the deed of partition. She must have played a pivotal role. She even if suffering from illness might be anxious to see that family properties are settled. Release by an heir other than a co-parcenar does not need any consideration. A release is valid even without consideration.”

18. It is accordingly prayed that the present appeal be allowed.

19. No other argument is made on behalf of the parties.

20. I have heard learned counsel for the parties and perused the case file and the lower Court records in minute detail. After having given my thoughtful consideration to the rival submissions made on behalf of the parties, I find no merit in the submissions made on behalf of the appellants.

21. The record reveals that there is no specific denial by the defendants of the facts that the plaintiffs are the owners of the suit land; or that the defendants have encroached upon the same. Rather in their Written Statement and evidence, defendants have admitted the encroachment however took a plea that the area encroached by them has



been given to them by way of written settlement dated 31.12.1996 as per which 11 ft wide land adjoining khasra no. 152 bordering khasra no. 153 was given to them. However, admittedly, the original Settlement dated 31.12.1996 was never produced by the defendants. Before the Lower Appellate Court, defendants had sought to lead additional evidence. However, the said application was dismissed. As such, the said alleged Settlement was never proved in accordance with law.

22. At this stage, reference may be made to judgment of the Hon'ble Supreme Court in **H. Siddiqui (D) By Lrs. v. A. Ramalingam (SC)** : **Law Finder Doc Id # 247723**, wherein it is held that: -

"10. Provisions of Section 65 of the Act 1872 provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where original documents are not produced at any time, nor, any factual foundation has been led for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon."



23. Further, even though the said Settlement was admitted by the plaintiffs, however, it was their specific case that the same was never acted upon. This is borne out from the fact that Kabza Karvahi in respect of the suit land was affected on 2.6.1997, which is, after the alleged Settlement dated 31.12.1996. In the said proceedings, no such Settlement was produced by the defendants before the revenue authorities. To my mind, the entire dispute is settled by the uncontroverted evidence of plaintiff/PW1, who has specifically pleaded in para no. 4 and 6 of his evidence affidavit Ex. PW-1/A that the defendants have encroached 2 karam wide and 5 karam long area in the Northern side of Khasra no. 152 total 0-1 Marla area of plot bearing khasra no. 152. The said portion is shown in site plan Ex. PW-2/A (page no. 135 of LCR). Plaintiff further in para 6 of his affidavit specifically stated that the suit property was partitioned between the parties and possession of Khasra no. 152 has been handed over to them only on dated 2.6.1997 by kabja karvahi (Ex. PW3/C at page no. 143 of LCR). As noted above, the entire issue stands clinched with the said report dated 2.6.1997 from which it is evident that possession of Khasra no. 152 was handed over to the plaintiffs on 2.6.1997; whereas the alleged Settlement is prior there to being dated 31.12.1996. It was further specifically pleaded that the alleged mutual settlement has neither become effective and nor implemented and was thus discarded and plaintiff never handed over the possession of the disputed portion to the defendants. There is no cross-examination of the



defendants on the above said facts; meaning thereby the aforesaid facts are admitted by the defendants.

24. Further, Ved Bhushan (draftsman) was examined as PW-2 who proved the site plan Ex PW 2/A. Narain Singh record keeper-clerk of Tehsildar Kosli, Rewari examined as PW-3 proved following documents: a) Demarcation report as Ex. PW-3/A; b) Execution Petition as Ex. PW-3/B; c) Photocopy of Kabja Karvahi dated 2.6.1997 as Ex. PW-3/C; and d) Final order of execution dated 30.06.1997 as Ex. PW-3/D. Even further, Ishwardass Sain (Rtd. Kanungo) examined as PW-4 proved demarcation report conducted by him and proved that there is an encroachment to the extent of the area measuring 2 karam wide X 5 karam long of khasra no. 152 by present appellant in their khasra no. 153.

25. The very crucial and important Kabza Karvai report dated 2.6.1997 Ex.PW3/C, reads as follows: –

“Subject:- Report of Possession proceedings in case titled Rajinder Singh Versus Sajjan Singh, of land situated in village Nangal Pathani, Tehsil Kosli.

Respected sir,

Ex. PW3/C

Today on 2.6.97, in compliance of order of Respected Tehsildar Sahab Kosli in reference to No. 1992/ Reader Dated 11.3.97, for possession proceedings in case titled Rajinder Singh Versus Sajjan Singh etc, village Nangal Pathani, reached at the spot. On the spot, Sh. Satpal Patwari Datma along with record Village Nangal Pathani was found present and on the spot, First party Rajinder Singh and Devi Sahal son of Mahasarup, Balwant son of Parkash, xxrai son of Deeraj,



Amar Singh son of Mahasarup, Jaivir son of Ganga Ram, Ralla Singh son of Harsarup, Dharam Singh nambardar and Mehar Chand chowkidar deh, were found present on the spot. First of all, on the spot the second party Sajjan Singh etc were called through Mehar Chand chowkidar. Chowkidar himself has stated that out of Sajjan Singh etc, no one was found present at the home by me. His family members said that no one out of us will come. After that comparison of warrant interference (Dakhal) was done with the revenue record, which was found correct. Interference of partition be done. On the spot, land is vacant. So, the total barani possession of Killa No. 28/7/1, 42/18/1, Kitta 2, Measuring 7K 17 M, was granted to Rajinder Singh Partap Singh sons of Phool Chand son of Lekho through kassi. The kassi was operated by Rajinder son of Phoolchand himself and marks were put at every point. The possession proceedings were conducted with peace and harmony. No hindrance of any kind was faced. A copy of this possession proceedings was got recorded in Rojnamcha vakiyat of Patwari Kalka at Rapat No. 344 Dated 2.6.97. The mustari munadi (open declaration) regarding the possession proceedings were got done from Mehar Chand Chowkidar in loud voice. Munadi fees of Rs. 10/-ten in cash was given on the spot by the possession taken. The receipt of the same is enclosed herewith. Instructions/directions were given to Patwari datma that the compliance of this proceedings be done in the revenue record as per rules. Orders have been complied with. After report of possession proceedings, the same is presented in service along with original warrant for taking further action.”



26. The defendants have placed much reliance upon the evidence of Ramanand/ DW-1 who has tendered his evidence by way of affidavit Ex. DW-1/A (available at page 123 of the LCR). However, DW1 in his cross-examination (available at page 125 to 127 of LCR) has admitted regarding the encroachment by defendants on the land the plaintiffs. No doubt, he pleaded mutual settlement; but further admitted there is no entry of the settlement in the revenue record and the said settlement was also not registered. Satya Narain/ DW-2 tendered his evidence by way of affidavit Ex. DW-2/A (at page 129 of the LCR), also deposed on the similar lines as DW-1 which is also not of much help to the defendants.

27. It is in view of the facts and evidence pleaded by both the parties that the learned Trial Court vide judgement and decree dated 30.1.2015 decreed the plaintiffs' suit against the defendants on the following grounds:-

"10. In order to succeed in their claim, the plaintiffs have placed on record demarcation report dated 15.6.2006 as Ex.PW3/A. Perusal of the same reveals that the defendants have encroached 2 karam wide and 5 karam long, total 0-1 Marla area of plot bearing Khasra no. 152. The local commissioner namely Ishwardass Sain, Rtd. Kanungo himself appeared into witness box as PW-4 and proved the said demarcation report as Ex.PW3/A. Even otherwise, the defendants have not disputed the fact that they are in possession of the disputed portion. The defendants have claimed that the plaintiffs themselves handed over the possession of the disputed portion to them as per the written family settlement dated 31.12.1996 in the presence of several



persons of the village. But the defendants have nowhere proved the said family settlement. The plaintiffs have admitted that a family settlement took place between the parties on dated 31.12.1996. But they have further stated that the said family settlement never became effective and it was never implemented and they never handed over the possession of the disputed portion to the defendants. Now, the onus has shifted upon the defendants to prove the fact that the said family settlement was implemented and it became effective and the possession of the disputed portion was actually handed over to them by the plaintiffs. In this regard, no cogent evidence has been led by the defendants. Therefore, it is not proved on case file that the said family settlement was implemented and possession of the disputed portion was actually handed over to the defendants. The defendants have nowhere named any person in whose presence, the said family settlement became effective. Therefore, it cannot be said that the family settlement dated 31.12.1996 was actually acted upon. Thus, it is not proved on case file that the disputed portion i.e. 2 karam wide and 5 karam long was given to defendants by the plaintiffs. The plaintiffs have placed on record Ex.P-4 which is jamabandi for the year 2004-05. Perusal of the same reveals that the plaintiffs Rajender Singh and Pratap Singh sons of Phool Chand have been recorded as owner in possession of khasra no. 152 (0-10) gair mumkin. Thus, it is well proved on record that the plaintiffs are owner in possession of the disputed plot till date. Even for the sake of arguments, if the version given by the defendants is believed to be true, then also, the defendants have nowhere explained that why they did not make any effort to get entered the said written family settlement dated 31.12.1996 in the revenue record.



11. The plaintiffs have claimed that the suit property has already been partitioned between the parties and possession of Kila no. 152 has also been handed over to them on dated 2.6.1997. To prove the said fact, they have placed on record Ex.PW3/C which is photocopy of kabja karvahi. The defendants have not led even a single evidence to rebut the aforesaid claim of the plaintiffs. In view of the above discussed facts, it is well established on record that the defendants have failed to prove the written family settlement dated 31.12.1996 was acted upon between the parties. On the other hand, the plaintiffs have very well proved that the defendants have encroached 2 karam wide and 5 karam long area of khasra no. 152 which belongs to the plaintiffs. Therefore, the plaintiffs are entitled to the relief of possession. In view of the above discussed facts, issue no. 1 is decided in favour of plaintiffs and against the defendants.”

28. First Appeal was filed by the defendants dated 13.4.2015 along with an application for additional evidence to prove the mutual settlement. Vide judgment and decree dated 18.10.2017, the first Appeal as well as application for additional evidence of the appellants was dismissed by the Ld. First Appellate court by passing a detailed and reasoned order. The relevant findings of the Ld. First appellate court are contained in paras 13, 18, 19, 21 and 23 of the judgment dated 18.10.2017, which read as follows:-

“13. Before deciding the appeal on merits, this Court would like to dispose off the application under order 41 rule 27 CPC moved by the appellants for grant of permission to lead additional evidence. By way of the present application, the



*appellants want to exhibit the photocopy of the written compromise/family settlement dated 31.12.1996 and to further cross-examine the witnesses examined by the respondents on the aforesaid written compromise/family settlement. However only photocopy of the written compromise/family settlement has been produced on record by the appellants which is otherwise inadmissible in evidence. Even no permission has been sought by the appellants to lead secondary evidence to prove the photocopy of the aforesaid written compromise/family settlement. There are also no pleadings of the appellants to the effect that the original written compromise/family settlement dated 31.12.1996 has been destroyed or lost or that it has been in possession of the opposite party. The original written compromise/family settlement dated 31.12.1996 has also not seen the light of the day till today. The evidentiary value of this document would be determined while deciding the appeal on merits of the case in the later part of this judgment. **Accordingly this Court does not find any merit in the present application and the same is hereby dismissed.***

18. I have given due consideration to the arguments advanced by learned counsel for the parties and gone through the case law cited by them. The jamabandi for the year 2004-05 Ex.P4 and Jamabandi for the year 2009-10 Ex.P6 records respondent Partap Singh and Rajender Singh since deceased to be owners of gair mumkin property comprising of khasra no.152(0-10) and appellants no.5 to 8 and Daya Ram and Ramanand since deceased to be owners of the gair mumkin property comprising of khasra no.153(0-7). As per the instrument of partition (sanad takseem) Ex.DE, the property comprising of khasra no.152 fell to the share of the respondents and the property comprising of khasra



no.153 exclusively fell to the share of the appellants. The possession of the land including the property comprising of khasra no.152 and 153 partitioned vide aforesaid "sanad takseem" dated 03.12.2016 was also delivered to the parties as per their respective shares as recorded in the "sanad takseem" vide rapat (kabza karvahi) dated 02.06.1997 Ex.PW3/C. It implies that the possession of khasra no.152 was handed over to the respondents and the possession of khasra no.153 was handed over to the appellants.

19. There is nothing on record to show that the alleged written compromise/family settlement dated 31.12.1996 Mark A was ever brought to the notice of A.C Ist Grade, Kosli during the pendency of the partition proceedings. No objection whatsoever to that effect was raised by the appellants before the revenue officer. Had the aforesaid written compromise/family settlement been acted upon, a reference to that effect would have been made in the partition order itself. There is also nothing on record to show that the aforesaid final partition order was ever challenged by the appellants by filing appeal again before the higher revenue officers/appellate authorities. There is also nothing on record to show that any objection was ever raised by the appellants at the time of delivery of possession (kabza karvahi) on 02.06.1997. The revenue record also nowhere reflects that any portion of khasra no.152 came to be owned or possessed by the appellants.

21. Even otherwise a perusal of the recitals made in the said written compromise/family settlement show that the ownership of the disputed property 11 feet wide as shown in red colour in the site plan was transferred for the first time on the day on which the said written compromise/family settlement was written. Any such transfer of immovable



*property valued more than Rs.100/- would require compulsory registration. The aforesaid written compromise/family settlement does not relate to any past transaction or settlement between the parties. It evidences transfer which was effected on the day on which it was executed. It cannot be held to be admissible in evidence for want of requisite stamp and compulsory registration. Reference in this regard may also be made to the observations made by Hon'ble High Court of Punjab and Haryana in the case law titled **Chander Shekhar vs Des Raj** (Supra) cited by learned counsel for respondents.*

*23. On the other hand, the specific stand taken by the respondents has been that the appellants have encroached upon the portion of khasra no.152 adjacent to khasra no.153 to the extent of 2 karams x 5 karams. The reliance has been placed by them upon the demarcation report dated 15.06.2006 Ex.PW3/A proved by PW-4 Ishwar Dass Saini, retired Kanungo. PW-3 Narain Singh, record clerk produced the original demarcation file pertaining to the demarcation conducted on 15.06.2006 as per the instructions issued by A.C. IInd Grade, Kosli. A perusal of the certified copy of the demarcation report shows that Kanungo demarcated khasra nos.152 and 153 by affixing three pucca points as per the instructions issued by the Financial Commissioner. As per the report submitted by him, the appellants were found to have encroached upon land measuring 1 marla of khasra no. 152 adjacent to khasra no.153 having following dimensions: **East:** 2 karam, **West:** 2 karam **North:** 5 karam, **South:** 5 karam. No evidence to the contrary has been led on file by the appellants. Rather the appellants have themselves admitted their possession over the portion marked by letters ABEF as shown in red colour in the site plan Ex.PW2/A being part of*



khasra no.152. Since the appellants have failed to establish their legal, authorized or long standing possession over the disputed property being part of khasra no.152, they are not entitled to retain its possession. The respondents being owners of the disputed property marked by letters ABEF as shown in red colour in the site plan are thus held entitled to its vacant possession.”

29. Thus, by concurrent judgments of both the Courts below, it was found that the encroachment has been admitted by the defendants themselves; the mutual settlement was not acted upon nor implemented or possession of the disputed portion was handed over to the defendants; defendants did not make any effort to get entered the said settlement dated 31.12.1996 in the revenue record.

30. To recapitulate and reiterate, it is established on record that as per the demarcation report dated 15.06.2006 Ex.PW3/A the defendants have encroached upon approximately 2 karam wide and 5 karam long total area of 1 Marla of the plot No. 152. No infirmity can be found in the said report as admittedly, Demarcation report dated 15.06.2006 Ex.PW3/A shows that kanungo had demarcated khasra Nos. 152 and 153 by affixing 3 pucca points, which is as per the instructions issued by the Financial Commissioner. Defendants had not denied that they are in possession of disputed portion. They have claimed that plaintiffs themselves have handed over possession of the disputed portion as per the Family Settlement dated 31.12.1996. However, in the first instance, the said Settlement was not produced by them. Even thereafter, the said Settlement has not been proved by the defendants. On the other hand, as



per the plaintiffs, the suit property already stood partitioned between the parties and possession of plot/khasra No. 152 was handed over to them vide kabja karwahi dated 02.06.1997 Ex.PW3/C. In proof, plaintiffs had placed on record jamabandi for the year 2004-05 Ex.P4 as per which plaintiffs are recorded as owners in possession of khasra No. 152. Even as per jamabandi for the year 2009-10 Ex.P6, plaintiffs were recorded as owners of plot/khasra No. 152 measuring 10 Marlas; and defendants as owners of the plot/khasra No. 153 measuring 7 Marlas. It is not disputed that as per instrument of partition Ex.DE, property comprising in khasra No. 152 fell in the share of the plaintiffs exclusively; and property comprising in khasra No. 153 fell in the share of the defendants exclusively. Possession was also delivered to the parties as per their respective shares as recorded in Sanad Takseem vide rapat/kabja karwahi dated 02.06.1997 Ex.PW3/C. As execution of Family Settlement dated 31.12.1996 does not stand proved, possession of the defendants over the suit land is illegal. Unregistered oral Family Settlement can be relied upon only when it has been acted upon. However, an unregistered Family Settlement, which has not been acted upon, is not admissible.

31. In the above noted facts and circumstances of the case, reference may be made to a 3-Judge Bench judgment of the Hon'ble Supreme Court in **Kale v. Deputy Director of Consolidation, (SC) : Law Finder Doc Id # 106005**, wherein it has been held as follows: -

“10. In other words, to put the binding effect and the essentials of a family settlement in a concretised form, the



matter may be reduced into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family.

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangements may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immoveable properties and therefore does not fall within the mischief of Section 17 (2) (sic) (Section 17 (1) (b) ?) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has not title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owners, then the antecedent title must be assumed



and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.” (Emphasis added)

32. In the present case, admittedly, the Settlement was reduced into writing. The said Settlement also determined the rights of the parties in immovable property. As such, the same was compulsorily registrable.

33. In any event, the Hon’ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc Id # 2034559**

has held that: -

*“14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."

15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the



Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force." (Emphasis added)

34. I find no error or defect in law and procedure in the present case. Therefore, no ground is made out to interfere in the impugned concurrent judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

35. Pending applications, if any, stand disposed of.

15.05.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No