

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****122****RSA-3115-2023 (O&M)****Date of decision: 11.05.2026****Pushpinder Kaur and others****...Appellant(s)****Vs.****Mohinder Kaur deceased through LRS and others ...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. N.K.Verma, Advocate
for the appellants.

NIDHI GUPTA, J.

The plaintiffs are in Second Appeal against the concurrent judgments and decrees of the learned District Courts, whereby suit filed by the appellants for partition and possession, has been dismissed by both the District Courts.

2. It was the pleaded case of the appellants that the suit plot bearing No. 124 as described in the plaint, was allotted to late Sh Gurbax Singh i.e. M/s. Golden Tiles Corporation. Gurbax Singh was the sole and absolute owner of the said plot, and a Conveyance Deed was executed by Chandigarh Administration in his favour on 27.05.1972. Gurbax Singh died intestate; whereupon suit plot devolved upon the plaintiffs and defendants. It was contended that plaintiffs acquired 2/9th share; and in similar manner, every defendant also acquired 1/9th share each in the suit property. Thereafter, on account of death of Sh. Bahadur Singh, husband of plaintiff no.1(a), plaintiffs demanded their shares in the plot as well as



in other properties. However, Defendants flatly refused to honour the same. In fact, defendants did not allow the plaintiffs to enter the plot in question. It was averred that plaintiffs do not want to remain co-owners with the defendants; and accordingly prayed that the plaintiffs are entitled for a decree of partition and possession by metes and bounds; and in the alternative if that is not possible then by way of auction. Hence, present suit was filed on 21.01.2010.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Chandigarh had dismissed the suit of the plaintiffs vide judgment and decree dated 31.05.2017. The Civil Appeal filed by the plaintiffs was dismissed with costs by the learned Additional District Judge, Chandigarh vide judgment and decree dated 15.05.2023. Hence, the present second appeal by the plaintiffs.

4. Ld. counsel for the appellants submits that in opposition to the case of the appellants, respondents have set up a case of Family Settlement. It is contended that, however, neither has the suit property been transferred on the basis of succession nor has the property been divided as per the Family Settlement. As such, appellants could not have been non-suited.

5. When learned counsel for the appellants is confronted with the findings of both the District Courts to the effect that Family Settlement dated 28.01.2005 has been acted upon, learned counsel contends that, there may be a finding to this effect, but in pursuance to the Family



Settlement, possession of the property has not been delivered to the appellants.

6. It is further submitted by learned counsel for the appellants that appellant examined PW-1 Balwant Singh, PW-2 herself and she proved on record by summoning the record of the ownership of Plot No. 124, Industrial Area, Phase-I, Chandigarh and it was duly proved that neither the plot in question nor the other properties i.e. House No. 404 Sector 46, Chandigarh nor the plot No. 128 Industrial Area, Chandigarh has been transferred to the family members on the basis of the alleged family settlement. Appellant proved on record regarding the allotment of site of the Industrial Plot in question and deed of conveyance which was duly executed in the favor of Late Sh. Gurbax Singh.

7. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Id. District Courts be set aside.

8. No other argument is raised on behalf of learned counsel for the appellants. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellants.

9. The sole argument raised on behalf of the appellants is that notwithstanding the findings of both the District Courts to the effect that Family Settlement dated 28.01.2005 Ex.DA has been acted upon, but, in actual fact, possession of the suit property has not been delivered to the appellants. In this regard, first and foremost, it is to be noted that concurrent findings of fact cannot be interfered by this Court. This Court in



Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559*** has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in the Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. Further, reliance is also placed upon recent judgment of Hon'ble Supreme Court passed in ***Russi Fisheries P. Ltd. v. Bhavna Seth, (SC) : Law Finder Doc Id # 2880321***, the relevant paras of which read as under:-

"31. It is settled in law that the findings of fact howsoever erroneous, cannot be reopened and disturbed in second appeal which is required to be adjudicated only upon the substantial question of law, if any, arising therein. Thus, the argument that the High Court in second appeal ought to have examined the evidence to ensure the correctness of the findings of the First Appellate Court has no legs to stand and fails.

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33. In Kashibai w/o Lachiram and Another v. Parwatibai w/o Lachiram and others, (1995) 6 SCC 213, a similar proposition of law was laid down by this Court and it was held that the High Court cannot re-appreciate the evidence and interfere with the findings of facts unless a substantial question of law or a question of law duly formulated is to be decided. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

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35. Again, in Kulwant Kaur and Others v. Gurdial Singh Mann (Dead) by Lrs and Others, AIR 2001 SC 1273, it was emphasized



that the fact remains that in a second appeal, a finding of fact, even if erroneous, will not be disturbed unless it is found that it stands vitiated for want of perversity. No such case for interference has been made out in the present case.”

10. In the present case, no such error in law and procedure has been made out by learned counsel for the appellants. Appellants have shown nothing whatsoever to this Court to establish that the Family Settlement was not acted upon.

11. Furthermore, Plaintiff No.1, namely, Pushpinder Kaur has also admitted that the said Family Settlement has not been challenged by Bahadur Singh during his lifetime. Plaintiff No.1 while appearing as PW2 also admitted in her cross-examination that the Family Settlement dated 28.01.2005 Ex.DA had been signed by her predecessor Bahadur Singh; that Bahadur Singh had died on 31.10.2009; and that during 2005 to 2009 Bahadur Singh had not challenged the said Settlement. Plaintiff No.1 had admitted the signature of her husband Bahadur Singh upon the Family Settlement Ex.DA. In fact, the record reveals that Ex.DA has been admitted by all the parties including the plaintiffs, who in their cross-examination have also admitted that all parties had signed the said Family Settlement in the presence of each other.

12. Furthermore, various documents have been placed on record by the defendants to show that the property in question has fallen to the share of Gurbax Singh; and installments have been deposited by him. Defendants, through comprehensive record, had established by way of



corroborative evidence that Family Settlement had been duly acted upon between the parties.

13. Further, suit is bad for misjoinder of necessary party as plaintiff No.2 is not shown to be daughter of Kuldeep Singh. Pleadings of the plaintiffs about non-partitioning of property remained totally unproved, and therefore untrue. Contention of the appellants before the District Courts that Family Settlement had not been registered, was also rejected as the same being only Memorandum of Settlement; was not required to be registered. It is also necessary to point out that in their plaint, plaintiffs have concealed material facts with regard to the existence of document Ex.DA and partitioning of properties by the legal heirs of Gurbax Singh.

14. Relevant findings of learned Additional District Judge, Chandigarh are in para 15 of the judgment dated 15.05.2023, as under: -

"15...It is other matter that even as per Ex.D-A there are multiple properties but plaintiffs have filed suit concerning only one property i.e. Plot No. 124, Industrial Area, Phase-I, Chandigarh. In plaint she though refers about "other properties" also but did not divulge further details of such property nor sought their partition inferring that remaining properties stood partitioned. In her cross-examination this PW-2 also admitted that the Family Settlement Ex.D-A dated 28.01.2005 stood signed by her Predecessor Bahadar Singh also. She also admitted that he never had challenged this document during his life time. Death certificate of Bahadar Singh is on Lower Court file at page No. 1295 as Annexure P-3 which shows that he had died



on 31.10.2009 at Bhuvneshwar. Between 2005 and 2009 he did not challenge this document. Then comes the value of documents like Ex.D-H a GPA executed by defendants No. 6 and 7 in favour of Bahadar Singh regarding one of the properties i.e. House No. 404, Sector 46-A, Chandigarh. Another document Ex.DW-4/A1 is dated 01.04.2005 patently executed before the execution of Family Settlement Ex.D-A. This document is concerning Plot No. 128, Industrial Area, Phase-I, Chandigarh. Then there are documents Ex.D-E and Ex.D-F dated 28.01.2005 whereby said Bahadar Singh and his brother Iqbal Singh had resigned as partners of Golden India Tiles (P) Ltd. These documents reflect unambiguously that even before the execution of Family Settlement document Ex.D-A the legal heirs of Gurbax Singh had effected the partition of the properties. These documents Ex.D-E and Ex.D-F further show that to complete the formalities of such terms of partition the parties had executed these documents after the execution of document Ex.D-A as well. It is relevant to note here that in his written statement defendant No. 3, brother Sarup Singh, had admitted the pleadings of plaintiffs and had sought partitioning of the suit property but when he himself testified as DW-1, he admitted that the parties were in possession over separate properties. These all circumstances infer that even before the execution of document Ex.D-A the properties stood partitioned amongst the legal heirs. This document was never challenged by any of the legal heirs earlier. On its page 2 in the last para it was got recorded by them jointly that they are enjoying their occupation and rights as per the Family Settlement since long back...”



15. Learned counsel for the appellants is unable to controvert or dispute the above said facts and findings.

16. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned District Courts. The present Regular Second Appeal is hereby **dismissed**.

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

11.05.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

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