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Reserved on 11th of February, 2026
Pronounced on 11th of May, 2026
Uploaded on 12th of May, 2026

Whether full judgment is pronounced? **Yes**

3. Plaintiff filed suit for possession by way of partition of the ancestral houses situated within the *abadi deh* of village Rupomazra, Tehsil & District Ambala.



3.1. As per plaintiff, the house property is an ancestral property which was owned by Ram Kishan. The defendants as well as the plaintiff are all sons of Ram Kishan. Ram Kishan died on 25.11.2010. On 04.08.2013, defendant No.1 denied entry of the plaintiff in the house(s) in question. He further submits that an amount of Rs.1,07,320/- was transferred from the saving account of father Ram Kishan to the account of defendant No.1. Thus, the plaintiff is also entitled for his share from the same.

4. Suit was contested by defendant No.1. He denied that the suit property is ancestral or is a joint Hindu family property. Defendant No.1 claimed that on partition the suit property fell into his share on the basis of mutual family settlement.

5. Suit filed by the plaintiff was put to trial by the Court of the First Instance, framing following Issues:

1. Whether the plaintiff is entitled to the relief of possession by way of partition? OPP
2. Whether the plaintiff is entitled for recovery of Rs.26,220/- along with interest @ 18% per annum as mentioned in the plaint? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the suit of the plaintiff is false and has been filed by concealing the true facts? OPD
5. Whether the plaintiff has not affixed proper court fee on the plaint? OPD
6. Relief.



6. The Court of the First Instance held that the plaintiff was required to prove ancestral nature of the suit property. He failed to prove the same. Though, he claimed that the property was a joint Hindu family property, but failed to prove nucleus from which the property was purchased. It being an admitted case that the parties are neither joint in mess nor in residence, the property cannot be held to be a joint property. The Court of the First Instance however, answered Issue No.2 in favour of the plaintiff and held him entitled to his share of Rs.17,887/- out of the amount of Rs.1,07,320/- transferred to the account of defendant no.1 on death of Ram Kishan. Suit filed by the plaintiff was accordingly decreed in part.

7. Unsuccessful plaintiff filed appeal.

8. The Lower Appellate Court affirmed the findings recorded by the Court of the First Instance and dismissed the appeal filed by the plaintiff.

9. I have heard counsel for the parties and have gone through records of the case.

10. The plaintiff did not lead any evidence to prove ancestral nature of the property. But the fact that defendant No.1 pleaded that same has fallen to his share by way of family settlement proves that the property was owned by family jointly. Thus, the burden shifted upon defendant No.1 to prove the family settlement. It is conceded position of fact that the parties partitioned their agricultural property long back. They are neither joint in mess nor in residence. Plaintiff is residing in Mumbai. The houses in question have been constructed by defendant No.1. He is in settled



possession thereof. These facts lead to the inference that house(s) fell to the share of defendant No.1.

10.2. This Court finds that the issue would be squarely covered in favour of the defendant No.1 in view of the dictum of law laid down by Supreme Court in the case of **Kale and others vs. Deputy Director of Consolidation and others, (1976) 3 SCC 119** observing as under:

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 arrangement 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 immovable 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 'It which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no 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 9 owner, 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.

11. In view of above, this Court finds that it can be inferred from the records of the case that the houses in question fell to the share of the brother who was settled in the village i.e., defendant No.1. He constructed the house(s) from his funds and is in settled possession thereof. Thus, this Court finds no reason to interfere in the pure findings of fact recorded by the Courts below which are affirmed though for reasons different from those recorded by the Courts below.

11.2. It is pertinent to mention that the Regular Second Appeals before this Court are to be treated and dealt with in accordance with Section 41 of the Punjab Courts Act. Trite it is that Second Appeal is not the forum to re-appreciate the evidence. In the absence of any legal infirmity, this Court is precluded from interfering in pure findings of fact recorded by the Courts below. Reliance can be placed upon law laid down by the Apex Court



in **Randhir Kaur versus Prithvi Pal Singh & Ors. 2019(17) SCC 71**

wherein it was held as under :-

“14. The Division Bench of Punjab and Haryana High Court in a judgment reported in **Sadhu v. Mst. Kishni, 1980 AIR (Punjab) 85** set aside the judgment of the learned Single Bench in an intra court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:

"12. The scope of second appeal as envisaged by section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to **Detty Paitabhiramaswami v. S. Hanyamayya [AIR 1959 Supreme Court 57.]**, **Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 Supreme Court 1633.]**, **Bithal Dass Khanna v. Hafiz Abdul Hai [1969 S.C. Notes 481.]** and **Afsar Shaikh v. Soleman Bibi [(1976) 2 SCC 142 : AIR 1976 Supreme Court 163.]**. These pronouncements; in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact.



14. In view of the above discussion, we are clearly of the view that the learned Single Judge exceeded his jurisdiction in setting aside the findings of the fact on issue No. 2. The provisions of section 100 being clear and unambiguous, there was no scope for interference with those findings. We thus allow the appeal and set aside the judgment of the learned Single Judge and affirm the judgment and decree passed by the District Judge. The parties are, however left to bear their own costs.

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.”

11.3. The said dictum was further elaborately echoed by three Judges Bench in **Satyender and others vs. Saroj and others, 2022 AIR (Supreme Court) 4732** as under:

“XXXX

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17. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum



where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court.....”

11.4. In view of afore-said ratio of law, finding no merit in the present appeal, the same is ordered to be dismissed.

12. The present appeal is accompanied by an application under Order XLI Rule 27 CPC whereby the applicant/appellant has sought permission to tender in evidence documents, Annexures A/1 to A/4.

12.1. There is no explanation as to why the said documents could not be produced before the Courts below. Thus, this Court finds that the applicant/appellant having failed to satisfy the ingredients of Order XLI Rule 27 CPC, there is no merit in the application. Accordingly, the same is also ordered to be dismissed.

13. Pending application, if any, shall also stand disposed off.

May 11, 2026

Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No