



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 16th March, 2026
Pronounced on: 29th June, 2026*

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RSA 266/2013 & CM APPL. 19811/2013

SHRI DHANPAT RAI GUPTA

S/o Late Sh. Chiranji Lal

R/o F-120, Ashok Vihar, Phase- I

Delhi- 110052

.....Appellant

Through: Mr. Dalip Kumar Malhotra and
Mr. Rajesh Kumar Malhotra, Advs.

versus

1. SHRI KASHMIRI LAL GUPTA (SINCE DECEASED)

Represented Through Legal Heirs/Representatives

1(a) SMT. JAGDISH GUPTA

W/o Late Shri Kashmiri Lal Gupta

R/o Khasra No.429/135/1,

Adarsh Nagar Extension,

G.T. Karnal road,

Delhi-110033.

1(b) SHRI BHARAT GUPTA

S/o Late Shri Kashmiri Lal Gupta

R/o Khasra No.429/135/1,

Adarsh Nagar Extension,

G.T. Karnal road,

Delhi-110033.

1(c) SHRI NISHANT GUPTA

S/o Late Shri Kashmiri Lal Gupta

R/o Khasra No.429/135/1,

Adarsh Nagar Extension,



G.T. Karnal road,
Delhi-110033.

2. **SMT. ANGOORI DEVI (SINCE DECEASED)**
Through Legal Representatives
3. **SHRI JAGAT NARAIN GUPTA**
S/o Late Shri Ram Gopal Gupta
R/o D-50, Bhagat Singh Road,
Gali No.5, Majlis Park, Adarsh Nagar,
Delhi-110033.
4. **SHRI LAJPAT RAI GUPTA**
S/o Late Sh. Ram Gopal Gupta
R/o Khasra No.429.135/1,
Adarsh Nagar Extension,
G.T. Karnal Road, Delhi-110033.
5. **SHRI BHARAT BHUSHAN GUPTA**
S/o Late Sh. Ram Gopal Gupta
R/o Khasra No.429.135/1,
Adarsh Nagar Extension,
G.T. Karnal Road, Delhi-110033.
6. **SMT. SHAKUNTALA DEVI**
D/o Late Sh. Ram Gopal Gupta
R/o D-50, Bhagat Singh Road,
Gali No.5, Majlis Park, Adarsh Nagar,
Delhi-110033.
7. **SMT. VIJAY BANSAL (SINCE DECEASED)**
(Ordered to be deleted in terms of
Order dated 23.03.2015)
8. **Ms. CHARU BANSAL**
D/o Late Smt. Usha Bansal
(D/o Late Sh. Ram Gopal Gupta)



R/o A-10, Adarsh Nagar,
Delhi-110033.

9. SHRI SAHIL BANSAL
S/o Late Smt. Usha Bansal
(D/o Late Sh. Ram Gopal Gupta)
R/o A-10, Adarsh Nagar,
Delhi-110033.

10. SMT. SAVITRI GUPTA
W/o Late Sh. Raghu Nath Gupta
R/o Block No. E-3, House No. 31
Sector- 7, Rohini,
Delhi-110085.

11. SH. MUKESH CHAND GUPTA
S/o Late Sh. Raghu Nath Gupta
R/o Block No. E-3, House No. 31
Sector- 7, Rohini,
Delhi-110085.

12. SH. NARESH CHAND GUPTA
S/o Late Sh. Raghu Nath Gupta
R/o Block No. E-3, House No. 31
Sector- 7, Rohini,
Delhi-110085.

13. SMT. AARTI GOEL
W/o Late Sh. Ajay Goel
(S/o Late Sh. Raghu Nath Gupta)
R/o 25-1/8, Shakti Nagar, Delhi

.....Respondent

Through: Mr. Kunwar Karan and Sourabh
Dhall, Advs. for R-4 & R-5. Mr.
Shekhar Dasi, Mr. Mohd Talha, Mr.
Ayush Dassi and Mr. Divyansh
Malhotra, Advs. for LR's R-1.



CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The *present Regular Second Appeal* under Section 100 of the Code of Civil Procedure, 1908 (CPC) has been filed against the Judgment and Decree dated 17.09.2013 passed in RCA No. 10/2010, whereby the learned ADJ *set aside the Judgment and Decree dated 21.01.2008 of the* learned Civil Judge decreeing the Suit of the Plaintiff/Appellant for possession, Injunction, Damages and in alternative for partition.
2. The Plaintiff had filed a *Suit bearing No. 44/2001 for Possession, Damages, Injunction and in alternative for Partition, under Section 6 and 9 of the Specific Relief Act, 1963.*
3. The **facts as narrated in the Plaint**, are that the plaintiff Sh. Dhanpat Rai Gupta, defendant no. 1, Sh. Kashmiri Lal Gupta, defendant no. 2, Sh. Ram Gopal Gupta and Late Sh. Raghu Nath Gupta (husband of Defendant no. 3(a) and father of Defendants no. 3(b) to Defendant no. 3(d)) were four real brothers, who jointly purchased land admeasuring 18 bighas and 6 biswas situated in Village Pipal Thala, Delhi, out of which 11 bighas and 6 biswas comprised Khasra No. 429/135/1, *vide* Sale Deed dated 14.07.1954. It is asserted that the land was purchased for residential purposes. After developing and levelling the land, the brothers reserved approximately 1 bigha and 2 biswas (subsequently increased to about 1300 sq. yards) for their own use, while the remaining portion was divided into residential plots



and sold to various persons. The sale consideration of all the plots sold, was divided amongst the brothers.

4. The Plaintiff further asserted that in order to avoid future disputes, the brothers entered into an *oral family settlement*, whereby each brother became entitled to exclusive ownership and possession of the portion of the land under his occupation. Each of the brothers occupied separate portions of the property. Sh. Dhanpat Rai deposited development charges in respect of the portion claimed by him, on 20.10.1986. Defendant No. 2 and the husband/father of Defendants Nos. 3(a) to 3(d) also deposited development charges, concerning their respective portions.

5. It was further asserted that *the parties submitted building plans to the concerned Authorities, paid development charges and house tax in respect of their respective portions, and that municipal records reflected them as owners of their respective shares.*

6. Thereafter, they all raised constructions thereon, to meet their residential and commercial requirements. Defendant No. 1 and Defendant No. 2 raised constructions on separate portions of the property, to meet their residential requirements. Sh. Raghu Nath Gupta, husband/father of Defendants Nos. 3(a) to 3(d) also constructed upon a separate portion of the land. The Plaintiff, on his part, constructed two shops and laid the foundation of a hall and other structures up to the plinth level, on the portion occupied by him. The construction raised by Plaintiff and defendants was reflected in the site plan filed along with the Plaint, by the plaintiff.

7. It was also claimed that electricity connections in his portion, stood in the names of his wife and son, except for one small shop for which



installation charges had already been deposited by him, *vide* Receipt No. 159880 dated 30.12.1987.

8. The Plaintiff asserted that though no formal partition by metes and bounds was affected, each party acted upon the Settlement, by raising construction on the portion allotted to him, ensuring that every brother had access to at least two shops or an equivalent area facing the road.

9. The Plaintiff claimed that he had constructed two shops, marked as Shop 'A' and Shop 'B', along with a hall up to the plinth level, while the remaining area was left vacant. Shop 'B' was being used by his son, Sh. Kailash Chand Gupta, as an office for carrying on his profession as a Chartered Accountant, whereas Shop 'A' remained vacant.

10. According to the Plaintiff, Defendant No. 1, being his brother, occasionally took the keys of Shop 'A' for temporary storage purposes and returned them, after use. While Defendant No. 1 resided within the same property, the Plaintiff was residing at Ashok Vihar, Phase-I, Delhi.

11. The Plaintiff alleged that in July 1990, the Defendant No. 1 attempted to assert rights over Shop marked 'A', by placing his own lock thereon, without the Plaintiff's consent. The matter was reported to the Police by the Plaintiff's son, on 07.07.1990. It is stated that upon intervention by family members, Defendant No. 1 removed the lock and agreed not to interfere with the Plaintiff's possession.

12. However, on 24.07.1990, Defendant No. 1 allegedly made another attempt to dispossess the Plaintiff from Shop marked 'A,' by breaking open the existing lock and placing his own lock on the premises, though such attempt was resisted by the Plaintiff's son. The Plaintiff asserts that Shop



marked 'A' exclusively fell to his share under the oral Family Settlement and that Defendant No. 1 had no right, title, or interest therein. In view of the aforesaid incidents, the Plaintiff instituted a ***Suit for Permanent Injunction against the Defendant No. 1.***

13. It was further alleged that during the pendency of the said proceedings, Defendant No. 1, taking advantage of the disruption of court work on account of a lawyers' strike, *forcibly dispossessed the Plaintiff from Shop 'A' and the adjoining portion marked 'AA' on the night of 20.02.1992 by breaking open the lock of Shop 'A'*. According to the Plaintiff, the portion marked 'AA', situated behind Shop 'A', had no independent access and could be approached only through Shop 'A'. The Plaintiff, therefore, claimed that Defendant No. 1 was in unauthorized possession of the said portions.

14. On the basis of the aforesaid averments, the Plaintiff sought recovery of possession of Shop 'A' and portion 'AA' (*hereinafter referred as 'Suit property'*), claiming that he had been dispossessed therefrom, within six months prior to the institution of the suit and was ***therefore, entitled to relief under Sections 6 and 9 of the Specific Relief Act.***

15. The Plaintiff also claimed *damages of Rs. 5,000/- against the defendant no. 1 and future damages* along with it. In the alternative, it was prayed that if the oral Family Settlement was not accepted, the ***suit property be partitioned by metes and bounds.*** The Plaintiff, therefore, ***filed a Suit for Possession, Damages, Injunction for shop marked 'A' and portion marked 'AA' as shown YELLOW in the site plan, forming part of premises No. K-429/135, Sarai Pipal Thala Extension, Adarsh Nagar, Delhi.***



16. **Defendant No. 2, Sh. Ram Gopal Gupta and Defendant Nos. 3(a) to 3(d)**, filed a joint **Written Statement** wherein they substantially supported the case of the Plaintiff. They admitted the factual averments made in the plaint and asserted that an oral *Family Settlement* was arrived amongst the brothers, pursuant to which each brother had been allotted approximately equal portion.

17. It was further stated that the brothers entered into an Oral Family Settlement, keeping in view the family relationship and with a view to avoiding future disputes and inconvenience, which had been fully acted upon by the parties. The said Defendants also asserted that a *Memorandum recording the terms of the family settlement, was subsequently executed amongst the parties, which was signed by all the brothers.*

18. Defendant No. 2 and Defendant Nos. 3(a) to 3(d) further endorsed that Defendant No. 1 was a trespasser in respect of the portion claimed by the Plaintiff. According to them, the construction existing over the disputed portion, had been raised by the Plaintiff and the Plaintiff was the exclusive owner and in possession thereof, pursuant to the family settlement. *It was further admitted that Defendant No. 1 had illegally dispossessed the Plaintiff from the said portion.*

19. Defendant No. 2 and Defendant Nos. 3(a) to 3(d), thus, supported the Plaintiff's claim for recovery of possession, against Defendant No. 1. However, they opposed the alternative relief of partition sought by the Plaintiff, contending that the property already stood divided amongst the brothers under the oral Family Settlement, which had been duly acted upon.



20. In the amended **Written Statement, Defendant No.1** denied the averments made in the Plaint. Defendant No. 1 contended that the Suit was not maintainable and *was barred under Order IX Rule 9 CPC*, as an earlier Suit on the same cause of action, had been withdrawn without liberty to institute a fresh Suit. It was further pleaded that the alternative relief of Partition had already been rejected by Order dated 08.05.1995, and therefore, could not be reagitated in the present proceedings.

21. It was also contended that the Suit was barred under *Order II Rule 2 CPC* and had been filed in collusion with the other Defendants, with a view to defeat the rights of Defendant No. 1.

22. It was further claimed that the Suit *had not been properly valued for the purposes of court fee and jurisdiction; that the plaint disclosed no cause of action*, and that the site plan filed by the Plaintiff was incorrect and fabricated.

23. Defendant No. 1 also claimed to be the owner and person in continuous, uninterrupted possession of the disputed property, for more than 23 years.

24. ***On merits***, it was admitted that the Plaintiff, Defendant Nos. 1 and 2, and the husband/father of Defendant Nos. 3(a) to 3(d) had jointly purchased land measuring 18 bighas and 6 biswas, but contended that purchased 5 bigha 12 biswas of land was falling in Khasra no. 120, 122, 124 and 126 and admitted that the total land purchased by all the four brothers *made a total to 18 bigha 6 biswas*. According to Defendant No. 1, the parties had purchased different parcels of land, portions of which were sold over time, and *the*



remaining land had already been divided amongst the four brothers in equal shares, prior to 1966.

25. Defendant No. 1 asserted that he and Defendant No. 2 had developed and occupied their respective portions between the years 1973 and 1975, whereas the Plaintiff and the predecessor-in-interest of Defendant Nos. 3(a) to 3(d) failed to occupy or protect their portions. It was further alleged that encroachments had taken place over certain portions of land and that disputes arose only after the area acquired substantial commercial value.

26. It was further contended that the Plaintiff had constructed only Shop 'B' and that Shop 'A' as well as the adjoining portion 'AA' had always belonged to and remained in the possession of Defendant No. 1. He further claimed to have been carrying on business from the said premises for several years and asserted that he had relevant Municipal and Electricity records, supporting his possession. While admitting that the son of the Plaintiff, Sh. Kailash Chand Gupta was operating his Chartered Accountant's office from Shop 'B', Defendant No. 1 denied that the Plaintiff was ever in possession of Shop 'A' or portion 'AA'.

27. Defendant No. 1 specifically denied the allegations of dispossession and asserted that he had been in continuous possession of Shop 'A' and portion 'AA', since 1960.

28. All the averments made in the Plaint were denied and it was claimed that *the Suit was liable to be dismissed.*

29. The ***Plaintiff in his Replication***, denied the preliminary objections and averments contained in the amended Written Statement of Defendant No. 1 and reiterated the case set up in the plaint. It was asserted that the



parties were real brothers and that *the oral Family Settlement had been accepted and acted upon by all concerned, except Defendant No. 1.*

30. The Plaintiff further contended that Defendant No. 1 was estopped from disputing the family settlement and the extent of the suit property, having previously taken a contrary stand before various authorities, including the documents submitted for obtaining electricity connections. The allegations regarding unequal distribution of land, encroachments, and acquisition of additional land by Defendant No. 1, pursuant to settlement of partnership accounts, were specifically denied.

31. It was further pleaded that the portions marked 'A' and 'AA' did not form part of the property claimed by Defendant No. 1 and that his occupation thereof, was unauthorized. The Plaintiff also alleged that Defendant No. 1 had let out the disputed premises during the pendency of the Suit and was deriving rental income therefrom, thereby rendering himself liable to pay damages/mesne profits. *The Plaintiff reaffirmed their assertions, as made in the Pleint.*

32. Upon consideration of the pleadings of the parties, the ***Issues were framed on 10.10.2001, as under:***

“(1.) Whether the suit has been properly valued for the purpose of Court fees and jurisdiction? OPP

(2.) Whether the suit is barred by Order 2 Rule 2 CPC? OPD

(3.) Whether the plaintiff has no locus standi to file the present suit? OPD

(4.) Whether the defendant is owner and in possession of the suit property as alleged in preliminary objection no. 8? OPD



(5.) *Whether the property has already been partitioned by oral family settlement? OPP*

(6.) *Whether the plaintiff is entitled to relief of possession as prayed? OPP*

(7.) *Whether the plaintiff is entitled to the relief of damages, if so at what rate? OPP*

(8.) *Whether the plaintiff is entitled to the relief of injunction or in the alternative for partition as prayed? OPP*

(9.) *Relief.”*

33. *The Plaintiff examined five witnesses to support his contentions including himself.*

34. *PW-1, Sh. Ajay Jain, Clerk, Assistant Grade-I O/O DVB, 1, Rajasthani Udyog*, produced the summoned record relating to the electricity connection. He proved the copy of the Application of Sh. Kashmiri Lal, the Agreement and Receipt pertaining to the electricity connection, as Ex. PW-1/1 (Colly), and his affidavit as Ex. PW-1/2.

35. *PW-2, Sh. Satbir Singh, Halka Patwari*, produced the summoned revenue record, namely the Khasra Girdawari and Jamabandi pertaining to Village Pipal Thala in respect of Khasra No. 429/135/1. His examination-in-chief was, *however, deferred at the request of learned counsel for the Plaintiff.*

36. *PW-3, Sh. Dinesh Mittal, LDC, Office of Sub-Registrar-I* proved the certified copy of the said Sale Deed registered on 19.04.1966, in favour of *Ch. Kali Ram* as Ex. PW-3/1.



37. **PW-4 (sic) Sh. Dhanpat Rai Gupta, the Plaintiff** tendered his affidavit of evidence, Ex. PW-4/A and deposed about the facts as narrated in the pleadings.

38. **PW-4, Sh. Brij Mohan, LDC**, produced the summoned record pertaining to an application filed by Sh. Kailash Chander Gupta under the Ad-hoc Registration Scheme, 1990 in respect of property bearing No. K-429/135/1A, Adarsh Nagar Extension, Delhi. He deposed that an ad-hoc Licence bearing No. 1818 dated 11.04.1991 was granted, after verification. He proved the copy of the licence as Ex. PW-4/1 and the site plans filed by the Applicant, as Ex. PW-4/2 and Ex. PW-4/3.

39. In Defence, Defendant No. 1 examined himself as **DW-1** and tendered his affidavit by way of evidence, Ex. DW-1/A. Defendant No. 1 deposed on similar lines as his defence in the Written Statement. He affirmed that the partition had taken place in the year 1966 and denied the Plaintiff's case regarding the oral Family Settlement of 1986.

40. Defendant no. 2 and Defendant Nos. 3(a) to 3(d) did not lead any evidence.

41. The **learned Civil Judge** upon appreciation of pleadings and evidence, **held** that the Plaintiff had succeeded in establishing the existence of the oral *Family Settlement* amongst the brothers, pursuant to which each brother came into exclusive possession of the portion allotted to him. The Ld. Civil Judge observed that the said arrangement had been acted upon by the parties for several years and found support from the conduct of the parties, municipal records, payment of development charges, and other contemporaneous documents.



42. It was further held that Defendant No. 1 had failed to substantiate his plea of an oral partition allegedly effected in the year 1966, as the alleged partition was neither reduced into writing nor reflected in any revenue or official record. The Court also took note that Defendant No. 2 and Defendant Nos. 3(a) to 3(d) had supported the Plaintiff's case and admitted the oral family settlement pleaded in the plaint.

43. It was further found that the Defendant No. 1 had failed to produce cogent evidence to establish either his ownership thereof or his possession prior to the alleged dispossession. *The Court accordingly, concluded that Defendant No. 1 had unlawfully occupied the disputed portions and was liable to restore possession thereof to the Plaintiff. The Suit of the Plaintiff for possession of the suit property was consequently decreed with costs, vide Judgment dated 21.01.2008.*

44. Aggrieved by the aforementioned judgement, **Regular Civil Appeal RCA No. 10/2010** was filed by the Defendant No. 1. The **Learned ADJ**, upon re-appreciation of the evidence on record, held that the findings by the learned Trial Court, were not sustainable. The Plaintiff's claim was founded upon an alleged oral family settlement, but no cogent evidence had been produced to establish either the terms of such settlement or the exclusive allotment of the disputed portions marked 'A' and 'AA,' in favour of the Plaintiff.

45. It was further held that the suit property originally belonged jointly to the four brothers and that the Plaintiff had failed to establish that the disputed portion, had exclusively fallen to his share. The **Ld. ADJ** held that Defendant No. 1 had been in long and settled possession of the suit property



and that the evidence led by the Plaintiff was insufficient, to establish dispossession in the manner alleged. *The learned ADJ, vide Judgment dated 17.09.2013, allowed the Appeal and set aside the impugned Judgment and decree dated 21.01.2008.*

46. Being aggrieved thereby, the *present Regular Second Appeal* has been preferred.

47. The *grounds of challenge* are that the learned First Appellate Court erred in reversing the Judgment and Decree passed by the learned Trial Court, despite the same being founded upon a proper appreciation of the oral and documentary evidence. It was contended that the findings returned by the First Appellate Court, were based on surmises and conjectures and ignored material evidence supporting the Plaintiff's case.

48. It was further contended that the learned First Appellate Court failed to appreciate that *the parties had acted upon the oral family settlement arrived at in October, 1986*, whereby the remaining land measuring approximately 1300 sq. yards was divided amongst the four brothers. According to the Appellant/Plaintiff, the said settlement stood corroborated by the site plan, affidavits filed before public authorities, municipal records and the long-standing conduct of the parties.

49. It was asserted that the learned First Appellate Court wrongly discarded the Plaintiff's case regarding the *Family Settlement* of 1986, despite the fact that Defendant No. 2 and Defendant Nos. 3(a) to 3(d) had supported the Plaintiff's version and admitted the settlement, in their Written Statement. The Appellant contended that the evidence and admissions supporting the settlement, were ignored without any valid justification.



50. It was further contended that both the courts below had rejected the defence of Defendant No. 1 regarding the alleged partition of 1961/1966. Therefore, having accepted that only about 1300 sq. yards remained available amongst the brothers, the learned First Appellate Court erred in discarding the Plaintiff's case of the *Family Settlement of 1986*.

51. It was further contended that the learned First Appellate Court failed to consider the evidence which supported the family settlement, partition and possession and also several material documents viz. Memorandum of Settlement Ex. PW-3/5, Khasra Girdawari, Revenue Records, Site plan Ex. PW-3/6 depicting the partition, Affidavits of Defendant No. 1 Ex. PW-1/1 and Ex. PW-1/2, acknowledging the extent of his possession, House tax assessment records, MCD Inspection Report, Receipts of payment of development charges and electricity installation charges, as well as the admissions made by Defendant No. 2 and Defendant Nos. 3(a) to 3(d), in support of the Plaintiff's case.

52. The aforesaid evidence established the oral family settlement of 1986, the Plaintiff's possession over the disputed portions and the subsequent encroachment by Defendant No. 1. According to the Appellant, the failure of the learned First Appellate Court to consider the said material evidence, rendered the impugned judgment perverse and unsustainable in law.

53. Reliance was placed on *Haran Haldar & Ors. vs. Union of India*, 150 (2008) DLT 277, wherein the Hon'ble Court has held that where two views are possible, the one accepted by the trial court would bind the First Appellate Court.



54. The Appellant also relied on the case of L.N. Aswathama & Anr. vs. P. Prakash (2009) 13 SCC 229, wherein it was held that where the Trial Court has considered the entire evidence and recorded reasoned findings, the first Appellate Court cannot reverse the same without independently examining the evidence in its entirety.

55. The substantial question of law, which arise for consideration, are proposed as under:

“a. Whether the findings recorded by First Appellate Court, contrary to findings recorded by Trial Court valid without considering the material evidence, documents and admission on record are perverse and illegal?

b. Whether the Ld. First Appellate Court was legally justified in interfering with finding of fact recorded by Ld. Trial Court based on pleading, evidence & documents on record, particularly when same is a plausible view?

c. Whether the Memorandum recording the Family Settlement executed between brothers is admissible in evidence in suit where Oral Family Settlement between brothers is pleaded and month with year of partition is pleaded in Replication?

d. Whether the averments in replication filed by Appellant/Plaintiff is part of pleadings and same could be ignored in law?

e. Whether the admission of one of the Defendant are binding and can be used against Respondent unless same is proved by party making admission as false or untrue under Section 17 of Evidence Act even without proving in view of Section 58 of Evidence Act.

f. Whether admission of one of the Defendant to suit in its pleading can be used Plaintiff in support of its case only if



the party making admission appears as a witness and not otherwise?

g. Whether Memorandum recording family settlement is evidence in support of oral family settlement between brothers and need not be pleaded as a fact in pleadings?"

h. Whether the First Appellate Court in Appeal is legally justified in rejecting the documents admitted in evidence during trial and Exhibited without any objection?

i. Whether an issue No.4 framed by Court could be decided in favour of party who failed to prove the same during trial.

56. It is therefore, submitted that the *impugned Judgment dated 17.09.2013, be set aside.*

57. **Written submission filed on behalf of the Appellant** reiterate the averments and contentions urged in the present Appeal.

58. **Written submission has also been filed by the LR's of Respondent No. 1**, setting out the chronology of events, that have transpired in the present proceedings. It is contended that the Appellant, under the guise of raising substantial questions of law, seeks a re-appreciation of the evidence and factual findings recorded by the courts below.

59. Reliance has been placed on *Krishna Devi v. Kartar Singh Bidhuri*, 2014 (208) DLT 517, wherein it was held that re-appreciation of facts and evidence, does not give rise to a substantial question of law within the meaning of Section 100 CPC.

60. The Respondents have also placed reliance upon *Nazir Mohamed v. J. Kamala & Ors.*, Civil Appeal Nos. 2843-2844 of 2010, and *Chandrabhan (Deceased) through LRs v. Saraswati & Ors.*, Civil Appeal No. 6857 of 2022.



Submissions heard and record perused.

61. It is an admitted case of the parties that Plaintiff, Sh. Dhanpat Rai Gupta, Defendant No.1, Sh. Kashmiri Lal Gupta, Defendant No.2, Sh. Ram Gopal Gupta, and their brother, Sh. Raghu Nath Gupta (*husband of Defendant No.3(a) and father of Defendant No.3(b) to (d)*), were four real brothers who had jointly purchased land admeasuring 18 bighas and 6 biswas in village Pipal Thala, Delhi. Out of this land, 11 bighas and 6 biswas was in Khasra No.429/135/1. The said land was purchased for residential purposes, *vide* Sale Deed dated 14.07.1954.

62. Thereafter, the four brothers, for the purpose of improving, developing, and levelling the land, reserved about 1 bigha 2 biswas (approx.1100 sq. yards which was subsequently increased to 1300 sq. yards), out of the purchased land for their own use, while the remaining land was divided into residential plots and were sold to different persons. The sale consideration so realized, was equally divided amongst the four brothers. Shri Raghu Nath Gupta died on 27.08.1989, after which Defendant No.3(a) to (d), his legal heirs, became the joint owners of his share in the subject property.

63. *Defendant No.2 and 3* essentially admitted the facts, as stated by the Plaintiff.

64. *However, Defendant No.1, in his Written Statement*, explained that the total land purchased jointly was 18 bighas 6 biswas, out of which the land admeasuring 12 bighas and 14 biswas, formed part of Khasra No.429/135 which was purchased from the erstwhile owner, Shri Ram Swaroop and his son, Shri Braham Prakash Aggarwal and was duly mutated



in the Revenue Records in 1954 *vide* document Ex.DW1/1, in the name of all the four brothers.

65. Thereafter, the four brothers purchased 5 *bighas and 12 biswas of land falling in Khasra No.120, 122, 124 and 126*, which was situated away from the main road. It was thus, explained how the total land admeasuring 18 *bighas and 6 biswas*, was purchased by the four brothers.

66. It is further not denied that the Plaintiff as well as the three brothers, sold the entire land of 5 *bighas and 12 biswas* jointly in the year, 1966 *vide* Sale Deed Ex.PW1/8, and no land remained with the parties, in the said *Khasra No.120, 122, 124 and 126*.

67. It was further explained by *Defendant No.1, in his Written Statement, that* four plots of 200 sq. yards each i.e. total land of 800 sq. yards, was carved out of *Khasra No.429/135* admeasuring 12 *bighas and 14 biswas*, and the sale proceeds were divided amongst the four brothers, prior to 1966. The Defendant No.1 got land admeasuring 2975 sq. yards while Plaintiff, Defendant No.2 and Late Shri Raghu Nath Gupta also got land admeasuring 2975 sq. yards each.

68. Defendant No. 1 further explained that the Plaintiff and Defendant No.2, Ram Gopal Gupta, sold their respective share of 2500 sq. yards each whereas Defendant No.1 and Shri Raghu Nath Gupta sold 2000 sq. yards land separately, *vide* Sale Deeds Ex.DW1/3 to Ex.DW1/6.

69. The Defendant No.1 and Defendant No.2 raised construction of their portion of land after developing it, between 1973 to 1975, and occupied their portion. However, Plaintiff and Late Shri Raghu Nath Gupta did not occupy and protect their portions. The Plaintiff was residing in his own house in



Ashok Vihar since 1968, while Raghu Nath Gupta was residing in Shakti Nagar, much prior to 1966.

70. Out of the land admeasuring 975 sq. yards, some portion is lying open as a thada/compound in the front portion of Defendant No.1, while some portion of land belonging to Defendant No.1, has been encroached with passage of time, by Plaintiff and Defendant No.2 and 3. It was claimed that it was possible that the shares of Plaintiff and Defendant No.3, have been encroached by land grabbers, as they were not in possession of their entire portion and were not taking care of their lands. Defendant No.1 intimated them several times, but they did not bother as they were living in their own respective houses. It is only because of shifting of Azadpur Mandi and development of Adarsh Nagar near the property in question, that it acquired value, which increased the lust and greed of Defendant No.3 Raghu Nath Gupta and Plaintiff, who initiated litigation against Defendant No.1, instead of taking care of their land which had been lost due to their own negligence.

71. Defendant No.1 further claimed that the land got divided by metes and bounds, between the parties. In his Affidavit of evidence Ex.DW1/A, Defendant No. 1 had explained that after the sale of 5 bighas and 12 biswas of land in Khasra No.120, 122, 124 and 126 in the year 1966 and further sale of 4 plots of 200 sq. yards each in Khasra No.429/135/1, and sale of individual plots by the four brothers, there were 4 plots of 200 sq. yards each that remained, which were divided between the four brothers in equal share, prior to 1966. However, DW1 in his cross-examination further stated that *“at present approx. area of 1300 sq. yards of land is in the possession of the brothers including me wherein I have possession 775 sq. yards. Plaintiff,*



Defendant No.2 and Defendant No.3 are in occupation of 200 sq. yards of area belonging to me and they are also in possession of 325 sq. yards of land belonging to them”.

72. The Plaintiff asserted that the Suit property was never partitioned and was always in joint possession of all four brothers; the Plaintiff in the alternative had sought partition of the Suit property by metes and bounds. However, as is admitted by the Plaintiff as well as the Defendant No.1, that while 5 bighas and 11 biswas of Khasra No.122 had been sold jointly, the Plots in Khasra No.429/135 had been sold *vide* separate Sale Deeds Ex.DW1/3 to Ex.DW1/6, by the four brothers.

73. This reflects that the four brothers had mutually divided the property orally and had sold the land separately, by virtue of the individual Sale Deeds. Had the property not been so agreed to be divided amongst the brothers, there would not have been separate Sale Deeds executed by the four brothers.

74. It is not in dispute that about 1300 sq. yds. were remained from the entire plot of land, that was purchased by them. It is also an admitted case that the remaining land was divided into plots of 200 sq. yards each, which were respectively in possession of the four brothers, a fact admitted by Defendant No.1 in his cross-examination.

75. The Plaintiff explained that while Defendant No.1 and 3 had been residing in the area, they both had constructed their residential premises. The Plaintiff had constructed two shops and left other area open. Likewise, Ram Gopal Gupta, who was also residing in Shakti Nagar, had raised limited construction, on his portion. The plaintiff further deposed that



because the shops were lying vacant and they were not residing there, the portion of their property, i.e. Shop A and the portion behind it, (*which is the suit property*) had been encroached by Defendant No.1.

76. Admittedly, the parties had entered into a *Memorandum of Oral Partition in October, 1986 Ex.PW3/5*, which bears the signatures of all four brothers. Therein, it was specifically recorded that for the better use and enjoyment of the property that had been purchased jointly in equal shares admeasuring 1027.005 sq. mtrs., had been divided equally. Ram Gopal Gupta on partition, had accepted 256.26 sq. mtrs., Dhanpat Rai Gupta (Plaintiff) got 242.09 sq. mtrs., Raghu Nath Gupta got 251.38 sq. mtrs. and Kashmiri Lal Gupta got 277.30 sq. mtrs. It was further recorded in the Settlement, that there was no formal Deed of Partition that was executed by the parties and the property had been partitioned by metes and bounds amongst the above-named parties, by their conduct.

77. It has been explained by the Plaintiff that since the construction of residential houses had been done by Defendant No.1 and 2, the parties recorded the Memorandum of Partition specifying the areas which were not exactly the same, because the parties had agreed to not disrupt the residential houses, which had already been constructed by Defendant No.1 and 2. This explains the minor variation in the size of plots that came to the share of four brothers.

78. Along with this Memorandum of Oral Partition, was the Site Plan Ex.PW3/6 which also identified the *share of Plaintiff as in yellow colour*; while that of Defendant No.1 Kashmiri Lal Gupta in Red colour; the portion in the share of Ram Gopal Gupta was indicated in Brown colour; and that



coming to the share of Raghu Nath Gupta was indicated in green colour. *Essentially, there is no challenge to this site plan Ex.PW3/6, annexed along with the Memorandum of Settlement Ex.PW3/5.*

79. The Plaintiff further deposed that Memorandum of Settlement had been duly acted upon, as in response to Public Notice Ex.PW3/8 issued by MCD in the newspaper for approval of building in regularized unauthorized colonies, the Plaintiff and his two brothers Ram Gopal Gupta and Raghu Nath Gupta had submitted this site plan, which was duly certified by registered Architect. The Plaintiff had deposited first instalment of Development Charges @ Rs.50/-, in the office of MCD. The copy of the documents including the site plan submitted in MCD, are collectively Ex.PW3/7.

80. The Plaintiff further stated that Defendant No.1 while applying for electricity connection pursuant to this Family Settlement, he had submitted an Affidavit dated 05.08.1985 for his plot area and deposited the Development Charges @ Rs.12 per sq. yard amounting to Rs.3,000/- in DESU, for obtaining the electricity connection dated 07.08.1985, confirming that Defendant No.1 was the owner of the Plot admeasuring 250 sq. yds.

81. The Defendant No.1 had also been paying House Tax for the four rooms constructed by him on his plot of 250 sq. yards, which had fallen to his share in the Family Settlement. The copy of Inspection Form 'A', on the basis of which the House Tax had been assessed, is Ex.PW3/9.

82. The Plaintiff had explained that he had constructed two shops Mark A and B in the Site Plan Ex.PW3/6, besides the hall up to plinth level shown in Yellow colour and the remaining portion was left open. The Plaintiff also



had applied for electricity connection for his portion of the property comprising of two shops in the name of his wife, Prem Lata Gupta and son Kailash Chand Gupta. His son Kailash Chand Gupta had also deposited Electricity Development Charges with DESU, vide Receipt dated 23.09.1987 and Receipt dated 05.02.1988 Ex.PW3/11 collectively.

83. The electricity connection was given in respect of one shop, where his son Kailash Chand Gupta had the ad-hoc registration license for running his shop, by the MCD *vide* Sanction Letter dated 16.02.1991 Ex.PW3/10. The DESU issued a Certificate dated 01.02.1989 Ex.PW3/12, sanctioning the electricity connection.

84. The Plaintiff further explained that the electricity connection in respect of second shop had been sanctioned in the name of his wife, but was not installed as the shop was lying vacant, as per the Report of the Inspector. The copy of the Letter dated 16.03.1988 received by his wife is Ex.PW3/13.

85. In the shop Mark B, his son was running his office as a practising Chartered Accountant, whereas the Shop No. A was lying vacant since long. The keys of the shop Mark A were kept by him and his son, but at times it was used by Defendant No.1 for storage, which he did not object since he was his brother. The Defendant No.1 would return the key after a few days of using the shop. The Defendant No.1 was having his residence in his plot, while Plaintiff was residing in Ashok Vihar, Phase-I, Delhi and keeping their relations, he often obliged Defendant No.1 and let him use the shop which was lying vacant, though it was in his possession.

86. The Plaintiff had thus, explained that he and Defendant No.1 were having separate electricity connections in their respective portions, except



one small shop for which he had deposited the charged vide Receipt dated 30.12.1987 Ex.PW3/14. He further deposed that all the brothers were enjoying their respective plots which had fallen to their share as owners exclusively, without any interference of the other party.

87. The Plaintiff claimed that somewhere in July, 1990 the intentions of Defendant No.1 became *mala fide* and without authority, consent or approval of the Plaintiff, he broke open the lock of shop A in the portion marked in yellow colour in site plan Ex.PW3/6, which belonged exclusively to the Plaintiff. The matter was reported to the Police on 07.07.1990 but with the intervention of the family members, Defendant No.1 agreed not to raise a claim to the shop and to remove his lock, in order to settle the dispute.

88. However, in the evening of 24.07.1990, the Defendant No.1 again alleged that the shop Mark A belonged to him and tried to dispossess the Plaintiff by breaking open the lock and putting his own lock, on Shop Mark A. The son of the Plaintiff did not allow Defendant No.1 to do so, but the Defendant No.1 left with a threat that he would take the possession of the shop and dispossess the Plaintiff.

89. The Plaintiff further explained in his evidence, that because there were threats from Defendant No.1 to dispossess the Plaintiff from the suit shop, he filed a *Suit for Permanent Injunction before the Sub-Judge, 1st Class, Delhi*. The Defendant No.1 took advantage as no hearing took place for a long time because of the Lawyer's strike, and on the night of 20.02.1992 dispossessed the Plaintiff from the shop Mark A and the portion behind it, shown as Mark AA, in site plan Ex.PW3/6, by unauthorizedly



breaking open the lock on the door of shop Mark A. It was further explained that the portion Mark AA was behind the shop Mark A and had not other opening wall for ingress and egress, as the door for its entrance was provided through shop Mark A, only. The Plaintiff thus, claimed that though he is the rightful owner of the Suit property, but he has been illegally dispossessed.

90. From the *Memorandum of Settlement Ex.PW3/5* and also the evidence of the Plaintiff as well as Defendant No.1, it is established that their properties stood partitioned and the suit shop had come to the share of Plaintiff, who was the rightful owner of the Suit property. Admittedly, the possession of the Suit shop is with the Defendant, which proves that his possession was unauthorized and illegal, since the suit shop belonged to the Plaintiff. *The learned Civil Judge had rightly decreed the Suit of the Plaintiff and directed the Defendant No.1 to restore the possession of portion Mark A and AA to the Plaintiff/Respondent within two months.*

91. The ***Learned ADJ in his Judgment dated 17.09.2013 in the Regular First Appeal***, however, found fault in the reasoning of the learned Civil Judge and asserted that there was no evidence to prove the partition or that the Suit shop had come to the share of the Plaintiff. ***Consequently, the Appeal was allowed and the Suit of the Plaintiff was dismissed.***

92. However, the learned ADJ fell in error in overlooking the admitted facts and the overwhelming documents produced by the Plaintiff, that admittedly the plots of land though purchased jointly, were sold vide separate Sale Deeds. Not only this, each brother had divided the remaining land equally and raised independent construction. While Defendant No.1



and Defendant No. 2 had constructed their residential houses, Plaintiff Dhanpat Rai and Raghunath were residing in Ashok Vihar/Shakti Nagar thus, had raised partial construction. Plaintiff had constructed two shops. All this is well documented in the site plan Ex.PW3/6, which was submitted along with development charges, in the MCD. *There were overwhelming evidence and documents, which are admitted by defendant No.1, to establish that the partition had taken place way back in 1966.*

93. This oral partition is further evidenced by the ***formal Memorandum of Partition Ex.PW3/5*** which was prepared in October, 1986 which admittedly had the signatures of all the four brothers. The Site Plan Ex.PW3/6 annexed with the Memorandum of Settlement, defined the respective portions of the property which came to the share of the four brothers. Not only this, the brothers acted upon this Settlement and even obtained electricity connection for their respective plots. Moreover, the House Tax was also been paid separately by all the brothers. The parties had been thus, dealing with their respective shares independently, which is established that they obtained separate electricity metres for their respective portions and were paying house tax separately.

94. The Defendant No.1 has contended that the Memorandum of Partition Ex. PW3/5, is not registered and is inadmissible in evidence. *The next pertinent issue for adjudication in the present Appeal, is: **whether the Family Arrangement dated October, 1986 required compulsory registration and whether dehors the registration, is not enforceable.***

95. The significance and the importance of a Family Settlement was highlighted in the case of *Mathuri Pullaiah vs. Maturi Narasimham and*



Ors., AIR 1966 SC 1836, wherein it was observed that a family arrangement resolves family disputes, and that even disputes based upon ignorance of parties as to their rights, may afford a sufficient ground to sustain it.

96. Likewise, in the case of Ram Charan Das vs. Girjanandini Devi And Ors., (1965)3 SCR 841, the Apex Court observed that the consideration for such a family settlement, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another. The settlement consisting of recognition of the right asserted by each other, cannot be permitted to be impeached thereafter.

97. In the case of S. Shanmugam Pillai and Others vs. K. Shanmugam Pillai and Others, (1973) 2 SCR 312, the importance of family settlement was again emphasized by observing that if it is in interest of family peace and that the family members have settled their disputes amicably. In such circumstances, the Court would generally lean in favour of the family arrangement and would be reluctant to disturb the same.

98. *The sanctity of the family arrangement can therefore, never be questioned and once the parties have arrived at a settlement, the general tendency is to uphold such family settlements.*

99. The first aspect is to understand is what arrangement can be termed as family settlement. Halsbury's Laws of England, Vol. 17, Third Edition, defined a *family arrangement* as an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding



litigation or by saving-its honour. Family arrangements are governed by principles, which are not applicable to dealings between strangers.

100. Further, Sahu Madho Das and Others vs. Pandit Mukand Ram and Another, AIR 1955 SC 481 explained the basic eligibility for parties to enter into a Family Settlement, as under:

*“It is well settled that compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. **That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property, under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary.**”*

101. The Full Bench of Allahabad High Court in Ram Gopal vs. Tulshi Ram, AIR 1928 All. 641 (FB), observed that a family arrangement could be oral and if it is followed by a petition in Court containing a reference to the arrangement and if the purpose was merely to inform the Court regarding the arrangement, no registration of the said Arrangement was necessary. In this connection, the Full Bench adumbrated the following propositions in answering the reference:

“(1) A family arrangement can be made orally.



(2) If made orally, there being no document, no question of registration arises.

(3) If though it could have been made orally, it was in fact reduced to the form of a “document”, registration (when the value is Rs. 100 and upwards) is necessary.

(4) Whether the terms have been “reduced to the form of a document” is a question of fact in each case to be determined upon a consideration of the nature and phraseology of the writing and the circumstances in which and the purpose with which it was written.

(5) If the terms were not "reduced to the form of a document", registration was not necessary (even though the value is Rs. 100 or upwards); and, while the writing cannot be used as a piece of evidence for what it may be worth, e.g. as corroborative of other evidence or as an admission of the transaction or as showing or explaining conduct.

(6) If the terms were "reduced to the form of a document" and, though the value was Rs. 100 or upwards, it was not registered, the absence of registration makes the document inadmissible in evidence and is fatal to proof of the arrangement embodied in the document.”

102. The aforesaid principles were analysed and upheld by the Supreme Court in the landmark Judgment of Kale and Others vs. Deputy Director of Consolidation and Ors., (1976) 3 SCC 119, wherein, it was observed that the object of such an arrangement is to protect the family from long drawn litigation and perpetual disputes, which affect the unity and solidarity of the



family and create hatred and bad blood between various members of the family. However, the *bonafide* and propriety of a family arrangement has to be judged by the circumstances prevailing at the time when such settlement was made. The onus of proving the family settlement, lies solely on the person claiming that a family Agreement existed.

103. Thus, the Supreme Court in *Kale and Others (supra)* created two categories of family settlements, one being oral settlement and the other being written settlements. It was held that the prior does not require registration however, the latter would be a compulsorily registerable document. However, in the second category, an exception was carved out, i.e. if the Memorandum of Family Settlement was reduced to writing only for the purpose of record or for information of the court for making necessary mutation, then it would be exempt from registration as the Memorandum itself does not create or extinguish any rights in the immovable properties.

104. In *Lieutenant Col. Gaj Singh Yadav vs. Satish Chander Yadav*, 1999 (51) DRJ 240, it was explained that if a party had a share in the property, enlargement of such share by relinquishment or gift by the other defendant, would not require registration. It is only when a right in the property is created for the first time by a particular document, that it would require registration. Therefore, mischief of Section 49 of the Registration Act, 1908 would not fall on an oral settlement.

105. The Apex Court has analysed the effect of non-registration of a Kharurnama (**family arrangement recording past transaction**) in the case of *Korukonda Chalapathi Rao v. Korukonda Annapurna Sampath Kumar*,



2021 SCC OnLine SC 847 and opined that whether a document by itself ‘affects’, i.e., by itself creates, declares, limits or extinguishes rights in the immovable properties in question and it is found that the document merely records past transactions which have been entered into by the parties, and does not purport to by itself create, declare, assign, extinguish or limit right in properties, it would not attract Section 49(1)(a) of the Registration Act, 1908. ***Therefore, a mere recital of what has already taken place, cannot be held to declare any right and there would be no necessity of registering such a document.***

106. Similarly, in a recent judgement of K. Arumuga Velaiah (Supra) while emphasizing upon the distinction between Section 17(2) Clause (iv) and Clause (v) of the Registration Act. 1908, the Court observed that a document of partition which provides for effectuating a division of properties in future, would be exempt from registration. It was further crystallized that by virtue of Section 17(2) Clause (v) Registration Act 1908, any document which does not in itself create a right, title or interest in any immovable property ***but rather creates a right to obtain a subsequent document which when executed, would create a right in the property, the same does not require mandatory registration.***

107. Similarly, while relying upon the above judgments in the case of Ravinder Kaur Grewal (Supra), the Supreme court emphasized that since the parties having acted upon the terms of a disputed Family settlement to the prejudice of the other party, it was not open to them to resile from the said arrangement and they were estopped from disowning the arrangement. ***The court observed that even in the event a family arrangement has not***



been registered, it would not prejudice its binding nature upon the members of the family and would continue to act as an estoppel to prevent members from revoking the family arrangement, if the members have acted upon it.

108. It is therefore, been well-settled in the light of the Judgments referred above, that where there is a bona fide dispute between the parties, which is eventually compromised by each party recognizing an antecedent title in the other, it is not required to be registered, as it does not purport to create, assign, limit, extinguish or declare within the meaning of these expressions, as used in Section 17(1)(b) of the Registration Act, 1908. It is merely a recital of fact, between the parties, recording that they have come to an arrangement.

109. *The learned ADJ, therefore, erroneously held that there was no partition or that the possession of the entire area remained joint.*

110. The learned Civil Judge had not only rightly appreciated the evidence but had given cogent reasons, to conclude that the partition had indeed taken place and the Suit property i.e. the Shop Mark 'A' and 'AA' had come exclusively to the share of the Plaintiff and was being enjoyed by him, and that the Defendant No.1 had forcibly dispossessed the Plaintiff, in 1992.

111. The impugned Judgment dated 17.09.2013 of learned ADJ in Regular First Appeal is hereby, set aside and the Decree passed by learned Civil Judge decreeing the Suit for Possession of the Plaintiff, is hereby, restored.

112. The Appeal is accordingly, allowed and the Suit of the Plaintiff/Appellant for possession, is hereby decreed.



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113. The pending Application(s) are disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 29, 2026/R