



2026:DHC:8615



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 20<sup>th</sup> July, 2026*

*Pronounced on: 1<sup>st</sup> October, 2026*

# CNR No : DLHC010370412021

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**RSA 88/2021, CM APPL. 42881/2021**

LT. COL. SH. I.S. DHINGRA (DECEASED)  
S/o Dr. Jai Chand Dhingra  
Through LR's

- (i) Ms. Chanderkanta Dhingra (Deceased)  
W/o Lt. Col. I.S. Dhingra  
R/o A-3, Greater Kailash Enclave-I  
New Delhi
- (ii) Ms. Anjana Handa (Deceased)  
D/o Lt. Col. Sh. I.S. Dhingra  
W/o Sh. P.K. Handa
  - a) Sh. P.K. Handa (Husband)  
S/o Late N.C. Handa  
R/o C-8, East of Kailash  
New Delhi.
  - b) RAJAN HANDA (Son)  
S/o Sh. P.K. Handa  
R/o 11, Navjeevan Vihar  
2<sup>nd</sup> Floor, New Delhi.
  - c) SH. UJJAWAL HANDA (Son)  
S/o Sh. P.K. Handa  
R/o C-8, East of Kailash  
New Delhi
- iii. MS. JAISHREE AJWANI  
W/o Sh. Rajiv Ajmani  
R/o 100, Ravine Edge Dr



2026:DHC:8615



Richmond Hill, ON, L4 E4  
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Through Attorney  
Mr. Rajan Handa  
S/o Sh. P.K. Handa

- iv. MS. AMBIKA AHMED  
W/o Sh. Shahid Ahmed  
R/o C-101, Sector-23,  
Noida 201301  
Uttar Pradesh.

...Appellants

Through: Mr. Kabir Srivastava and Mr. Amit  
Dhyani, Advocates.

versus

1. SH. JAI CHAND DHINGRA (DECEASED)  
Through LRs ....Respondent No. 1
- i. Wg. Cdr. A.K. Dhingra (Deceased)  
S/o Sh. Jai Chand Dhingra
- ii. SH. O.P. DHINGRA  
S/o Sh. Jai Chand Dhingra  
R/o C-132, Jiwan Bima Nagar,  
Bangalore 560075
- iii. FLT. LT. S.P. DHINGRA  
S/o Dr. Jai Chand Dhingra  
R/o 268, Nilgiri Apartments  
Alakhnanda,  
New Delhi.
- iv. SMT. VED MUTHREJA  
W/o Sh. Prem Kumar  
Prem Nursing Home  
Sukhdev Vihar  
Panipat, Haryana.
2. SH. O.P. DHINGRA

Signature Not Verified

Signed By: ANIL  
KUMAR BHATT  
Signing Date: 05.10.2026  
11:44:12

RSA 88/2021

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S/o Sh. Jai Chand Dhingra  
R/o C-132, Jiwan Bima Nagar,  
Bangalore 560075.

...Respondent No.2

3. FLT LT. S.P. DHINGRA  
S/o Dr. Jai Chand Dhingra  
R/o 268, Nilgiri Apartments,  
Alakhnanda, New Delhi.

...Respondent No. 3

4. MR. SUNIL DHINGRA  
S/o Late Wg. Codr. A.K.Dhingra  
R/o A-3, Ground Floor (Back Side)  
Greater Kailash Enclave-I,  
New Delhi.

...Respondent No. 4

Through: Mr. R. K. Sachdeva, Advocate for  
R-2 & R-3.  
Mr. Aquib Ali, Advocate for R-4.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. The ***Regular Second Appeal*** under Section 100 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been preferred by the Appellants against the Judgment and decree dated 21.12.2019, whereby the *Regular First Appeal* **was partly allowed**, and the Judgment and decree of the learned Civil Judge granting the relief of Declaration was set aside, while the relief of Permanent Injunction was upheld.

2. The Plaintiffs/Appellants had filed Civil Suit No. 515/1998 for Declaration in respect of the *front portion of the property bearing No. A-3, Ground Floor, Greater Kailash-I, New Delhi* (*hereinafter "Suit Property"*), praying that the Plaintiff be declared the sole and exclusive



owner of the suit property. Further, Permanent Injunction restraining the Defendants from interfering with the right and possession of the suit property, was also sought .

**3. The facts in brief, as narrated in the Plaint,** are that the Plaintiff, I.S. Dhingra is the eldest son of the Defendant No. 1, Dr. Jai Chand Dhingra, and the Defendant Nos. 2 to 4, namely, Wg. Codr. A.K. Dhingra, Sh. O.P. Dhingra and Flt. Lt. S.P. Dhingra, respectively, are his younger brothers.

**4.** The Plaintiffs and the Defendants were originally settled in West Punjab, now in Pakistan, and came to India upon partition. They lost all their disputed properties and acquisitions. The Defendant No.1, Dr. Jai Chand Dhingra, was an Officer in the Railways, who retired in 1950. The Defendant Nos. 3 and 4 were young and did not have any earnings of their own. The Defendant No. 2, Wg. Codr. A.K. Dhingra had just joined the Army, but could barely support himself. The Plaintiff, however, was an Army Officer and was the best-earning member, and he always gave a major part of his salary to the parents, for bringing up the younger brothers and also for the upliftment of the family.

**5.** In the early sixties, after mutual discussion, it was agreed that a joint family property would be acquired, where all the brothers could live together. With this objective, the Defendant No. 1, who was an employee of the Railway, became a member of East Punjab Railways Rehabilitation Society (*hereinafter referred to as Society*), which proposed to obtain land for its members from DDA in Delhi.

**6.** The Plaintiff started contributing towards acquiring the Property from the beginning, whereas Defendant No. 4 was in his teens, while the



Defendant No. 3 was hardly grown up and the Defendant No. 2 was barely able to support himself. The Defendant No. 1 had no independent means of earning on his own, and therefore, had no means to make any payments towards the acquisition of the joint property.

7. In 1966, the Plaintiff at the instance of his friends became a member of the Sainik Co-operative House Building Society Ltd., and was entitled to be allotted a residential plot. As time passed, the Defendant Nos. 3 and 4 grew up, and the Defendant No. 2 became a Senior Officer. The Plaintiff, however, had advanced in age and was in the age of retirement. Moreover, the Plaintiff had his own liabilities of his family. He was keen to settle himself and his family before retirement and needed a house of his own.

8. The Plaintiff's dream of living with his brothers in a Joint Family house began to appear unlikely, as none of the brothers were contributing or willing to contribute any funds, for the construction on the plot. Plaintiff's family was also of the opinion that he should get an individual house.

9. With no brother coming forward with the finances for construction, the threat of the plot being resumed on account of non-construction became grave. Thereafter, the Defendant No. 1 started pressuring the Plaintiff and Defendant No. 2, to commence the construction on the plot.

10. The Plaintiff agreed to contribute finances, on the assurance of Defendant No. 1 that he would be given the front portion of the Ground Floor, if he raised the construction of his portion. Thereafter, the plot was divided for use and construction by the four sons of the Defendant No. 1.

11. It was agreed that Plaintiff and Defendant No. 2 would be given the Ground Floor because of their right of hereditary succession, and the



Defendant Nos. 3 and 4 would have a right to construct and live on the floor above. The following arrangement was agreed:

- a) **Front portion, ground floor:** Plaintiff, being the eldest and also for the reason that he paid the maximum amount towards the construction.
- b) **Rear portion, ground floor:** Defendant No. 2, being second in hierarchy.
- c) **Front portion, first floor:** Defendant No. 3.
- d) **Rear portion, first floor:** Defendant No. 4.

12. Upon this Settlement, the Plaintiff started giving huge amounts for construction of his portion; likewise, the Defendant No. 2 also started making payments for construction of his own portion.

13. For the aforesaid reasons and also because the Appellant could ill-afford another house, he forsake his right of membership of Sainik Co-operative House Building Society, where he was bound to get a plot exclusively for himself.

14. The construction of the Ground Floor got completed in the year 1976 from the funds given by the Plaintiff and Defendant No. 2, for their respective portions. The Plaintiff retired in the year 1976 and thereafter, shifted to the front portion of the Ground Floor and has been living there as the owner of that portion. This right of the Plaintiff was acknowledged by Defendant No. 1 orally and tacitly, *vide* certain documents.

15. In keeping with the Settlement, the Defendant No. 3 constructed his portion on the first floor and let out the same to 'MODI STEEL', and the rent for the same is being collected by him.



16. Contrary to the wishes cherished by the Plaintiff, the relationship between the Plaintiff and the Defendant Nos. 1 and 2 became strained, and the two Defendants started misbehaving, which ultimately came to a breaking point, when the Defendants started threatening the Plaintiffs with dire consequences and even disputed their right of ownership in the *front Ground Floor portion*.

17. The Plaintiffs claimed that the Defendants are estopped from resiling from the arrangement/the Settlement, as the Plaintiff had paid every single penny of his earnings, including his Provident Fund and money realised from the surrender his Insurance Policy, because of the assurance given to him.

18. Therefore, the Plaintiff claimed that he is the absolute and exclusive owner of the front portion on the Ground Floor, as indicated in the Site Plan.

19. The Plaintiff, I. S. Dhingra, *thus, filed a Suit for being declared as the owner of the front Ground Floor portion and also sought Permanent Injunction to restrain the Defendants from interfering in his peaceful possession of the suit property.*

20. **Defendant No. 1, Dr. Jai Chand Dhingra, the father, in his Written Statement** denied that the Plaintiffs and the Defendants were settled in West Punjab and shifted to India upon partition of the country. It was claimed that the Defendant No. 1, at the time of partition, was posted at Jalandhar in the employment of Railways. However, he had a plot of land in Lahore and a share in some property in District Khanewal (present-day Pakistan). He was given a plot of land at Hansi, *in lieu* of the aforesaid Properties in Pakistan.



21. It was further contended that he retired from the Railways in the year 1950 and at that time, the Defendant Nos. 3 and 4 were studying. However, it was denied that Defendant No. 2 had just joined the Army in the year 1950. It was explained that Defendant No. 2 had joined the Army in 1948 and was commissioned in 1949 and was a Lieutenant in the Indian Army in 1950 and thereafter became a Captain. It was also denied that the Plaintiff was the best earning member in the family.

22. The Defendant No.1 stated that after his retirement, he was practicing as a Homeopathic Doctor in Gurgaon and supporting himself, as well as the Defendant Nos. 3 and 4. The Plaintiff, as well as the Defendant No. 2, used to send some money on their own out of love and affection to the Defendant No. 1, from time to time.

23. It was denied that there was any discussion of acquiring a Joint Family Property. It was, however, admitted that the Defendant No. 1 was a member of East Punjab Railways Rehabilitation Society, though it was denied that the object of his becoming a member was to acquire any Joint Family Property.

24. The Defendant No. 1 claimed that the price for the purchase of the plot of land had been paid by him, out of his own savings, and part of the money for the price was contributed by the Defendant No. 2. The Plaintiff and the Defendant No. 2 were working in the Indian Army and there was hardly any difference in their salary. The Plaintiff, with *mala fide* intention, has alleged that the Defendant No. 2 was barely able to support himself or that the Defendant No. 1 had no independent earning. It was denied that the Property acquired was Joint Family Property or that the Plaintiff had made contribution towards the price of the land, which was Rs.18,968/-.



25. It was further stated that the Plaintiff and the Defendant No. 2, had become members of Defence Co-operative House Building Society Ltd. after the acquisition of the plot by him as they both wanted to have a house of their own, but it was denied that any Joint Family House was acquired. The Defendant No. 1 claimed that the construction of the house on the plot of land was carried out by him, and when he fell short of funds, he requested his sons for financial assistance.

26. The Plaintiff had given the assistance to the extent of Rs.54,000/- and the Defendant No. 2 had given Rs.1,03,000/-, while Defendant No. 3 gave Rs.10,000/- for the construction of the suit property. However, merely by giving financial assistance to Defendant No. 1, neither the Plaintiff nor the Defendants acquired any rights in the suit property.

27. The Defendant No. 1 further stated that, being a person of old age, he had requested the Plaintiff and the Defendant No. 2 to supervise the construction on the Property, but the Plaintiff refused to do so. Ultimately, the Defendant No. 2 took over the task of supervision and construction.

28. It was denied that any assurance was given by Defendant No. 1 to the Plaintiff that he would be entitled to the front portion on the Ground Floor of the suit property, as the entire Ground Floor was being constructed as one. It was also denied that the plot was agreed to be kept as joint, or in the name of the Defendant No. 1; he being the head of the family.

29. The Defendant No. 1 claimed that the plot, as well as the construction carried out thereon, belongs to him and the Plaintiff and other Defendants have no right, title, or interest in the Property in question, except what may be inherited by them subject to the Will of the Defendant No. 1.



30. It was also denied that any of the portions as claimed in the Plaint, had been demarcated for the Plaintiff and the Defendants. However, the Defendant No. 1 had permitted the Defendant No. 3 to construct the front portion of the First Floor from his own funds and had assured him that the said portion shall be bequeathed by way of Will to Defendant No. 3. Defendant No.1 also affirmed to Defendant No. 3 that the front portion of the first floor, belongs to Defendant No. 1.

31. Defendant No. 1 denied that there was any Settlement that could convey the specific portions of the Property as detailed in the Plaint, to the Plaintiffs or the Defendants. It was claimed that the only understanding between the parties was that, upon all the parties contributing equally towards the cost of construction of the house, the Defendant No. 1 shall bequeath the Property equally to the Plaintiff and the Defendants, as well as his wife, in his Will. However, the Plaintiff did not act according to the understanding and refused to give any further money, after giving Rs.54,000/-.

32. It was denied that the Plaintiff had relinquished his membership in Sainik Cooperative House Building Society Ltd., for the reasons as stated by him in the Plaint.

33. The Defendant No. 1 admitted that the construction of the Ground Floor of the Property was completed in the year 1976, but it was denied that the Plaintiff and Defendant No. 2 had contributed the funds for raising construction of their respective portions. In fact, the ground floor of the property was constructed out of the funds of Defendant No.1 and the amounts advanced by the Plaintiff and Defendant Nos. 2 and 3.



34. It was admitted that the Plaintiff retired in the year 1976 from Bangalore and after his retirement, he shifted to Delhi. The Defendant No. 1 asked the Plaintiff to shift to the rear portion of the Ground Floor, but he broke open the locks of the front portion and shifted therein.

35. The Defendant No. 1 had protested orally, as well as in the Letters written to the Plaintiff, about forcibly shifting into the front Ground Floor portion, where he has been living. The Plaintiff was denied that his occupation was that of the owner of the said portion, but claimed that he was living only as the son of the Defendant No. 1. It was denied that the Plaintiff had any right of residence in the front portion of the Ground Floor, as alleged by him.

36. It was further asserted that the documents, if any, were written pursuant to the understanding that upon the Plaintiff and the Defendants contributing equal amounts towards the construction amount, they would inherit the rights in the Ground and First Floor of the property in question, from the Defendant No. 1. However, the Plaintiff failed to fulfil his part of the understanding.

37. It was, however, admitted by the Defendant No. 1 that the Defendant No. 3 had constructed the front portion of the First Floor and was rented out by him, from which he was receiving the rent.

38. Further, Defendant No. 1 admitted that relations between the Plaintiff and other Defendants were strained, due to the deeds of the Plaintiff. It was denied that the defendants had misbehaved with the Plaintiff or had threatened him.

39. It was asserted that Defendant No. 1 had exclusive ownership and denied any right of ownership of the Plaintiff. The Defendant No. 1 further



stated that he had earlier executed a Will dated 10.10.1980, but because of the conduct of the Plaintiff and his son-in-law, **he executed another Will dated 10.11.1987 in supersession and after revocation of the earlier Will.** *It was, therefore, submitted that the Suit was liable to be dismissed.*

**40. The Defendant Nos. 2 and 3 were served, but they failed to file any Written Statements and were proceeded *ex parte*.**

**41. The Defendant No.4, Flt. Lt. S.P. Dhingra, in his Written Statement,** submitted that a mutual Agreement was arrived at amongst all the parties to the effect that the plot shall remain in the name of the Defendant No. 1, on account of bar of partition and also on account of respect for him, as Head of the family. The plot flat, however, was agreed to be a joint property of all four sons, and the particular areas were demarcated, with the right to the four sons to raise the construction.

**42.** He also admitted that, in furtherance of the family arrangement/Agreement, upon construction of the respective portions, all sons, would have become the owners of the superstructure of their respective portions. The Plaintiff and Defendant No. 2 financed their respective portions in around 1974 and since then, have been occupying the same.

**43.** Defendant No. 3 constructed his portion of the First Floor in the early 1980s and gave it on rent. The answering Defendant No.4 was not in a position to construct his portion fully and has partly constructed the same, and is in possession.

**44. The Plaintiff in the Replication** reaffirmed the assertions as made in the Plaint and denied the averments made in the Written Statement.



**45. The Issues from the pleadings were framed on 04.01.1994, as under:**

- a) *Whether the plaintiff is entitled for relief of declaration as prayed by him? OPP*
- b) *Whether the plaintiff is entitled for the relief of permanent injunction, as prayed ? OPP*
- c) *Whether the price of land has been paid by the defendant no. 1 and its effect? OPD*
- d) *Relief*

**46. PW-1, Ms. Anajan Handa**, daughter of the Plaintiff (since deceased), deposed on similar lines as the assertions made in the Plaint. She proved letters written by the Defendant No. 1 addressed to the Plaintiff as Ex. PW-1/1 to PW-1/3 and Ex.PW-1/8, letters written by Defendant No. 2 addressed to the Plaintiff as Ex. PW-1/4 to PW-1/7, receipt as Ex.PW-1/9 and the certified copies of the judgment and decree passed in the Suit No. 355/87 as Ex. PW-1/10 and PW-1/11.

**47. PW-2, Mr. Satish Gupta, Dy. Record Keeper, District & Sessions Judge, Gurgaon**, produced the certified copy of the Plaint, Written Statement and the Order dated 10.06.1987 in Suit No. 355 of 4.6.1987, which are exhibited as Ex.PW-2/1 to Ex.PW-2/3 (colly.)

**48. Defendant examined DW-1, Sh. H.R. Sardana**, who was the attesting witness to the Will of the Deceased Defendant No. 1, and deposed that the Will dated 10.11.1987 was signed by Late. Dr. Jai Chand Dhingra, Defendant No.1, in his presence, and he as well as the second witness, Sh. Brig. I.C. Narang, also signed it, in the presence of each other.



49. **DW-2, Sh. A.K. Dhingra, Defendant No. 2**, deposed in support of Defendant No.1 and reiterated the defence taken in the Written Statement.

50. **DW-3, Brig. I.C. Narang**, was a witness to the will Ex. PW1/D3 dated 10.11.1987 and Codicil Ex. PW1/D4 dated 13.01.2000 and tendered their affidavit of evidence and deposed that Dr. Jai Chand Dhingra was of a normal state of mind, as that of an old man, while signing the Will; he further deposed that he had signed at Mark "A" of the Ex.PW1/D3. He also deposed that Sh. Bhutani, the other witness, had already signed on the Codicil.

51. **The learned Civil Judge, on appreciation of the evidence**, held that even though it is assumed that the sale consideration of the land may have been paid exclusively by the Defendant No. 1, but the property was actually purchased for the benefit of the Joint Hindu Family. Regarding the cost of the land, it was held that Defendant No. 1 had paid the consideration amount in respect of only 500 sq. Yards, as admitted by DW-2.

52. It was also admitted that a family settlement amongst the parties in respect of the suit property had existed. A reliance was placed upon ***the earlier Suit No. 355/87, filed by Sh. O.P. Dhingra, Defendant no.3*** wherein it had been specifically pleaded by *that a family settlement had taken place and that the respective portions of the property had been allotted to the brothers*. The said averments were **expressly admitted by Defendant No. 1 in his Written Statement**. The learned **Civil Judge** held that this was a clear admission regarding the family settlement and the allotment of the respective portions to the four brothers.



53. *The learned Civil Judge thus held that Defendant No. 1 was estopped from subsequently denying the Plaintiff's ownership and possession of the front portion of the ground floor.*

54. The learned Trial Court further relied upon the Letters written by Defendant No. 1, viz. Ex. PW-1/1 to Ex. PW-1/3, Ex. PW-1/8 and Ex. PW-1/9, which acknowledged that the Plaintiff had made a substantial financial contribution towards the construction of the suit property.

55. The learned Trial Court further observed that Defendant No. 2, Sh. A.K Dhingra, in his testimony as DW-2, had admitted that Defendant Nos. 3 and 4 had constructed and were in exclusive possession of their respective portions, on the first floor. *He also admitted that he was in possession of the rear portion of the ground floor, while the Plaintiff was in possession of the front portion of the ground floor.*

56. ***Thus, the learned Trial Court found that the four brothers had been in exclusive possession of their respective portions for a considerable period of time, which was consistent with the existence and implementation of the family settlement.***

57. Consequently, **the Plaintiff's Suit for Declaration and Permanent Injunction was allowed**, and the Plaintiff was declared as the sole and absolute owner and in possession of the front Ground Floor portion of the Suit Property, and the Defendants were restrained from interfering in the peaceful possession of the Plaintiff.

58. Mr. Sunil Dhingra, son of Late Wg. Comm. Mr. A.K. Dhingra (Defendant No. 2, though he had not filed any Written Statement and was proceeded ex-parte in the trial ), filed the **Regular First Appeal bearing No. RCA DJ No. 60855/2016.**



59. The **learned ADJ**, upon reappreciation of pleadings and evidence, **held** that Defendants had proved that the price of the plot was paid solely by Defendant No. 1, the father, and, therefore, it cannot be said that the property was a Joint property or the same was allotted in the name of Defendant No. 1, to avoid any technicality of law.

60. It was further found that the earlier litigation in *Suit No.355/1987 filed by Defendant No.3 Sh. O.P. Dhingra seeking Declaration to the effect that he was the owner of his portion in the suit property against the father / Defendant No.1 Dr. Jai Chand Dhingra, in the Gurugram Courts*. The Court observed that this Suit was only against the Defendant No. 1, and the other brothers were not impleaded as parties in that suit.

61. The learned ADJ further found it unexplained why Defendant No. 3, despite having obtained a decree in the said Suit, *did not contest the Suit or support the claim of Defendant No. 1*. It was also noted that Defendant No. 1 himself had not disclosed this earlier Suit in his Written Statement. In these circumstances, *the learned ADJ held that the earlier decree could not, by itself, establish any family settlement amongst all the brothers or justify the finding that Defendant No. 1 was estopped from disputing the Plaintiff's alleged ownership of the front portion of the ground floor*.

62. The learned ADJ, while considering the Plaintiff's contribution towards construction of the suit property, referred to the Settlement dated 21.02.1976, Ex. PW-1/D1, which recorded that the Plaintiff had given a loan of Rs.64,000/- to Defendant No. 1 for construction of the house, while Defendant No. 2 had loaned Rs.75,000/- for the same purpose. The document further recorded that the income from the house, would be utilised towards repayment of the loans taken for its construction.



**63.** The **learned ADJ accordingly**, found that the amounts contributed by the Plaintiff and Defendant No. 2 were *advances made by way of loan towards construction*, and not contributions towards acquisition or ownership of the suit property. The correspondence between the parties was also found to support the fact that the contributions were in the nature of loans.

**64.** The covenants in the Will dated 10.11.1987 Ex.PW-1/D3 executed by Defendant No.1 / father, reflected the willingness of the father at that point of time to let the Plaintiff use the rear portion of the house, considering that he had retired from the service and had no home. However, Plaintiff thereafter broke open the locks of the front portion and occupied the same.

**65.** It further recorded that Defendant No. 1 wrote several letters to the Plaintiff to return the same and pay the balance amount towards the house, but the Plaintiff did not do so. The Will also recorded the father's grievance that the Plaintiff had not paid the full amount towards construction and had not maintained proper relations with his brother.

**66.** The ADJ also considered the Codicil, Ex.PW-1/D4, whereby Defendant No. 1 modifying his Will dated 10.11.1987, Ex.PW-1/D3. It was noted in the said Codicil that the Plaintiff had tried to put up a fence forcibly to occupy the front lawn and had even tried to pressurise, by calling the Police.

**67.** Thereof, Defendant No. 1 modified his Will and permitted the Plaintiff and his wife to continue residing in the front portion, during their lifetime. After their death, however, the front portion was to be sold by a Committee comprising Defendant Nos. 2 and 3 and Dr. Prem Kumar, and



the sale proceeds to be distributed amongst the Plaintiff's three daughters, after adjustment of the outstanding dues and expenses. He specifically mentioned that in no circumstance would the front portion be sold to the Plaintiff's son-in-law, directly or indirectly, keeping in view his behaviour. The Learned ADJ noted that the ownership rights in the front portion of the Ground Floor was to vest in the aforesaid Committee.

**68.** On an overall consideration of the Will, Codicil and correspondence, the learned ADJ found that Defendant No. 1 intended that his sons should reside together and that the documents did not establish that the brothers had been given exclusive possession of their respective portions, pursuant to any family settlement.

**69.** In view of the aforesaid discussion, ***the Suit of the Plaintiff seeking a Decree of Declaration was dismissed by setting aside the Judgment and Decree of the learned Trial Court, while Permanent Injunction restraining the Defendants from creating third-party rights in the suit property was upheld, vide impugned Judgment dated 21.12.2019.***

**70.** Aggrieved by the impugned Judgment, ***the present Regular Second Appeal has been filed by Appellant Lt. Col. Sh. I. S. Dhingra (original Plaintiff, through his Legal heirs).***

**71.** **The grounds of challenge** are that the Learned ADJ failed to appreciate that the Respondents had not placed any material document on record and had attempted to suppress material information. Sections 17, 18 and 31 of the Indian Evidence Act have not been considered.

**72.** Further, Admissions made by Defendant No.1 in Court Proceedings and his Written Statement Defendant No. 1, in the Civil Suit filed before the Senior Sub-Judge, Gurugram, wherein he had admitted that the



Property was joint family property and that the Plaintiff had been permitted to construct the front portion of the Ground Floor, have not been appreciated, even though the Decree passed by the Learned Civil Judge, Gurugram Courts, has not been set aside by any court till date.

73. Learned ADJ has declined to rely on this Judgement by questioning why the Suit had been filed in Gurugram Courts, although the property was situated in Delhi. It was not appreciated that both Defendants were staying in Gurugram, and that the Defendant No.1 had not himself raised any objection as to the territorial jurisdiction, in his Written Statement.

74. It has not been considered, *while considering Issue 3*, that Defendant No.1 failed to produce any documentary proof or bank statement to prove that the price of the land has been paid by him. On the contrary, DW-2, who had earlier been proceeded *ex parte*, appeared as a witness and stated that at the time of purchase of the property, *Defendant No.1 paid Rs.13,000/- towards the consideration for the plot of 500 sq. yards, while Defendant No.2 paid Rs.6,000/- for the remaining 3,000 sq. yards.*

75. Learned ADJ recorded his own observations on the Will and Codicil executed by Defendant No.1, even though no such issue had been framed in this regard.

76. *It is therefore submitted that the impugned Judgement of the learned ADJ is liable to be set aside and the Judgement of the learned Trial Court dated 25.01.2012 be restored.*

77. The **Appellant, in the Written Submissions**, has essentially reiterated the grounds taken in the present Regular Second Appeal. He states that Sh. A.K. Dhingra, Defendant No.2, entered the proceedings merely as the substituted legal heir of Defendant No. 2 and neither did he



file any Written Statement nor contest the Suit, but only appeared as DW-2, in support of Defendant No.1. He made no independent claim of right, title or interest in the suit property, nor did he demonstrate any civil consequences or injuries suffered by him.

**78.** Under Order XXII Rule 4 and Order XLI Rule 4 of CPC, a party who abstains from contesting at trial cannot, through substituted LRs, assert rights consciously abandoned in the first instance.

**79.** It is further asserted that the admissions in the Gurugram Suit have been erroneously discarded and the financial contributions made by the Plaintiff have been mischaracterised as a loan. This interpretation directly contravenes the Supreme Court's mandate in Kale vs. Deputy Director of Consolidation, which requires courts to look at the substance of family arrangement, rather than its technical nomenclature.

**80.** There has been premature reliance on the Will dated 10.11.1987 Ex.PW-1/D3 and Codicil Ex.PW-1/D4 executed by Defendant No.1, to defeat the Plaintiff's *inter vivo* title, despite Defendant No.1 being alive during the pendency of the Suit. As held in Suraj Lamp & Industries (P) Ltd. Through Director vs. State of Haryana & Anr., (2012) 1 SCC 656, a Will is an ambulatory document with no legal force or binding evidentiary value until the testator's death. Therefore, reliance on the Will and Codicil was a patent illegality.

**81.** It was submitted that there are inherent contradictions in dismissing the relief of Declaration, while upholding the Permanent Injunction for protecting the Plaintiff's possession. Under Section 38 of the Specific Relief Act, an injunction is granted to prevent a breach of obligation arising from a legally cognizable right or title. Applying Anathula Sudhakar vs. P.



*Buchi Reddy, (2008) 4 SCC 594*, an injunction could have only been granted herein, because there was a foundation of title and therefore, the Declaration was a natural relief, which in the present case has been denied by the learned Appellate Court, despite the relief having been granted by the learned Civil Judge. *It is therefore submitted that the impugned Judgement be set aside.*

**82. Respondent No.4 / Mr. Sunil Dhingra, in his Written Submissions**, has stated that no substantial question of law is involved in the present Appeal and that the Appellant is seeking to set aside a well-reasoned order of the learned Appellate Court, on so-called disputed questions of fact.

**83.** Reliance is placed on *Santosh Hazari vs. Purushottam Tiwari (Dead) By LRs*, (2001) 3 SCC 179, wherein it was held that the substantial question of law must be one that is debatable, not previously settled by law and one that materially affects the rights of the parties.

**84.** The re-interpretation of the evidence and substituting its own view by the learned Appellate Court is completely barred. Reliance is placed on *Ramathal vs. Maruthathal*, (2018) 18 SCC 303 and *Gurnam Singh vs. Lehna Singh*, (2019) 7 SCC 641.

**85.** Respondents have asserted that *locus standi* and maintainability of the First Appeal by Defendant No.2 / Mr. Sunil Dhingra have been questioned by the Appellant on the ground that he had failed to contest the Suit or file a Written Statement and had been merely brought in as LR of Defendant No.1.

**86.** However, *Mr. Sunil Dhingra had moved an Application for impleadment on 10.03.2006, which was allowed by the Court vide Order*



*dated 04.05.2006*. Consequently, he was brought on record as the LR of Defendant No.1. Having been so included, he was completely competent to represent the estate of Defendant No.1 and all remedies available in law.

**87.** In respect of the *litigation vide Civil Suit No.355/1987 in the Gurugram Courts*, it has been explained that those proceedings have not been ignored by the learned ADJ; rather, they have been examined in detail, and cogent reasons have been assigned for not relying on the Judgment delivered in the said Suit.

**88.** It has been asserted that, in any event, the Suit, being collusive on the face of it, could not have been relied upon, since the Property was situated in Delhi and therefore, only the Delhi Courts had territorial jurisdiction, as per Section 16 of CPC.

**89.** Plaintiff failed to place on record the copy of the Gurugram Suit at the appropriate stage, for admission for denial. It was only after the evidence of PW-1 that PW-2, Court Clerk of Gurugram Court, was summoned, who produced the said document in the Court for the first time. There were no issues framed in the Gurugram Suit. Mr. O. P. Dhingra had not impleaded, the other brothers in that Suit.

**90.** Moreover, all the contents of the Complaint were admitted by Defendant No.1 in his Written Statement, and the Suit was decreed *vide* Judgement dated 10.06.1987. Mr. O. P. Dhingra was neither called as a witness nor did he enter into the witness box, in the Gurugram Suit.

**91.** Furthermore, in the present Suit, no fact regarding the Gurugram Suit was pleaded, nor did Defendant No.1 state anything about the Suit, in his Written Statement.



92. Reliance is placed on Nagubai Ammal vs. B. Shama Rao, AIR 1956 SC 593, wherein it was observed that collusion in judicial proceedings is a secret arrangement between two persons that one should institute the Suit against the other, in order to obtain a decision of a Judicial Tribunal, for some sinister purpose. In such a proceeding, the claim put forward is fictitious, contest over it is unreal and the *Decree passed therein is a mere mask having the similitude of a judicial determination and worn by the parties to confound third parties.*

93. Reference is also made to Jaswant Singh vs. Jaspal Singh, (2019) 6 SCC 552, wherein it was observed that when a party appears in a Suit voluntarily without issuance of a formal summons on the very date of appearance and hurriedly admits the entire case of the Plaintiff, such a Decree is a collusive nullity. Similar observations have been made in Bhoop Singh vs. Ram Singh Major, (1995) 5 SCC 709.

94. Therefore, the so-called admissions made in the Gurugram Suit cannot be held binding on the other legal heirs of the deceased father / Defendant No.1, who were not party to the Gurugram Suit.

95. Likewise, Ex.PW-1/D1 records the financial assistance advanced as a loan, for the purpose of construction. It is a settled principle of law that any money given towards carrying out construction does not entitle a person to claim ownership in the Property.

96. The learned Appellate Court has gone through all the letters exchanged between the parties, including Ex.PW-1/D1, to arrive at a conclusion that the said letters merely proved that a loan was given by the children to their father for construction of the Property. Therefore, the said Letters did not establish the ownership of the children, in the suit property.



**97.** The sons cannot claim ownership over their father's self-acquired Property, merely because they had contributed financially towards carrying out construction of the Property, as has been affirmed by this Court in the case of Vinod Kumar Bali vs. Ashish Bali & Anr., 2024 Latest Caselaw 6678 Del.

**98.** It is asserted that the Appellant is effectively seeking re-appreciation of evidence and inviting this Court to substitute its own view for the one adopted by the learned Appellate Court, which exercise is impermissible in the Second Appeal.

**99.** The Appellant's contention that the Will and Codicil could not have been considered, since the father was still alive and the Will would create rights only in the future, is misconceived. The Will and the Codicil have been referred to by learned ADJ only as contemporaneous evidence reflecting the intention of Defendant No.1 regarding the nature of possession and occupation of the suit property and not as an operative instrument conferring the proprietary rights.

**100.** Such a reference for collateral and evidential purpose is legally permissible, and the technical objection regarding lack of Probate, is unsustainable.

**101.** It has been held in Sambhav Gupta vs. State, MANU/DE/0787/2013 that Probate under Section 57 read with Section 213 of the Indian Succession Act, is not mandatory in Delhi. The findings in this regard, are on appreciation of evidence and do not raise any substantial question of law.

**102.** It is further asserted that there is no inconsistency in the impugned Judgment. Learned First Appellate Court found that the Plaintiff had failed



to establish his Legal Title, but it held that the Plaintiff could not be dispossessed from the suit property without following due process of law.

**103.** The distinction between Title and Possession, is well-recognised in law. The protection of possession does not necessarily depend upon the proof of ownership, as a person in possession, can be dispossessed only by recourse to due process of law, as has been held in the case of Rame Gowda (Dead) by LRs vs. M. Varadappa Naidu (Dead) by LRs & Anr., (2004) 1 SCC 769, which later re-affirmed in Poona Ram vs. Moti Ram, (2019) 11 SCC 309 that *even if the Plaintiff failed to establish his absolute title in the Property, his long and continuous possession constituted 'settled possession', which the law protects against forceful extra-judicial eviction even by the true owner.*

**104.** *Learned First Appellate Court was therefore legally consistent and the Judgment is fully sustainable.*

**105. Learned counsel for the parties have addressed oral argument on similar lines as the Written Submissions.**

**Submissions heard and record perused.**

**106.** On appreciation of rival contentions, the following substantial questions arise in the present Second Appeal:

- i. *Whether the findings of the learned First Appellate Court committed error and its findings are perverse in appreciating the evidence, to negate the existence of a Family Settlement contrary to Kale vs. Deputy Director of Consolidation?*
- ii. *Whether the judicial admissions made by Defendant No.1 in the earlier proceedings in Suit No.355/1987 in Gurugram Courts were admissible in the present Suit as per Sections 17 and 18 of the Indian Evidence Act?*



iii. *Whether the Will and Codicil of Dr. Jai Chand Dhingra could bequeath the suit property, which was already divided by way of an oral family Settlement?*

***I. Whether there was an Oral Family Settlement inter se between the Parties:***

**107.** Lt. Col. I.S. Dhingra, Plaintiff herein, had filed a Suit for Declaration that he was the sole and exclusive owner in possession of the front portion of the Ground Floor of the suit property and that the other Defendants be restrained from interfering in his peaceful possession.

**108.** *To consider whether there was an oral family agreement*, it would be pertinent to refer to the testimony of the parties. Admittedly, Defendant No. 1, Dr. Jai Chand Dhingra (since deceased), being an officer in the Railways, became a member of East Punjab Railways Rehabilitation Society, which was planning to obtain land from DDA in Delhi for its members. A plot bearing No. A-3, G.K. Enclave-1, New Delhi, was allotted in 1970 by the Society to Dr Jai Chand Dhingra. *Thereafter, the question arose of raising the construction on this plot of land.*

**109.** **PW-1, Anjana Handa**, daughter of the Plaintiff, proved the letters Ex. PW-1/1 to Ex. PW-1/3 and PW-1/8 written by Dr. Jai Chand Dhingra to the Plaintiff, Late I.S. Dhingra, which reveal the events as they unfolded, *inter se* amongst the family members.

**110.** Dr. Jai Chand wrote a letter, Ex. PW-1/8, dated 27.11.1974, stating therein that he had never intended to convey that the Plaintiff had no share in the property, and stated that if the Plaintiff had understood any of his earlier letters to mean otherwise, he was prepared to face whatever consequence the Plaintiff thought fit. He further addressed to the Plaintiff



the urgency of completing the construction, since DDA had stipulated two years for raising construction, failing which the plot was liable to be resumed. He requested that all four brothers should purchase the plot as five years had passed by.

**111.** The second letter is Ex.PW-1/1 dated 05.05.1975, wherein Dr. Jai Chand Dhingra indicated the concerns raised about the finances required for construction on the plot of land. A reference was made that Defendant No. 2, A.K. Dhingra, had contributed ₹33,000, while I.S. Dhingra had paid ₹30,000. It was stated that *"urgent copies of an application to DDA, Delhi, for the plot were to be registered in the **name of five persons, myself and four sons, were to be sent; this was to avoid a heavy tax, gift tax, when I die on the building. Before it can be transferred, all four brothers will have to present themselves at Delhi Court to file affidavits etc. and a lot of running about will be necessary. Please write to Om asking him as to what he wants to do. I am also writing to Om.**"*

**112.** The third letter is dated 19.05.1975, wherein Dr. Jai Chand Dhingra stated that there should be an agreement between the brothers, and that the property should be in the name of the sons.

**113.** The fourth letter is Ex.PW-1/D9, dated 24.06.1975, written by Dr. Jai Chand Dhingra to the Plaintiff, wherein he mentioned the contributions made. He also stated that the obligations of the Agreement rested *equally on all four brothers and that they should not quarrel in the future, and that he had the least interest in the plot.* He wanted all four brothers to have an equal share, and that the share of I.S. Dhingra should be taken out and he could remain in one portion. It was reiterated that all four brothers must have a share in the property.



**114.** In the fifth letter, Ex.PW-1/2 dated 10.07.1975, Dr. Jai Chand Dhingra, with reference to the letter dated 25.06.1975 written by I.S. Dhingra, noted that *he and all three brothers should give in writing that "they agree to my spending for and occupying one lower half of the house in Greater Kailash."* Dr. Jai Chand Dhingra noted that there can be no objection to doing so. Further, he wrote that Smt. Kanta, wife of I.S. Dhingra, had come and a draft of ₹20,000 had been given by her to him. It was further noted that Defendant No. 2, A.K. Dhingra, had already contributed ₹50,000 towards the construction and that I.S. Dhingra is not making the contribution as promised by him. It was also stated in this letter that *I.S. Dhingra should not go back on his words and that Dr. Jai Chand could register the plot in his name, so that he may be able to borrow the money and later on the property could be evaluated and sold with all four brothers given their share."*

**115.** Dr. Jai Chand in this letter also indicated that being the eldest, it was the duty of I.S. Dhingra to take the burden of construction of the house, and such burden could not be pushed on to A.K. Dhingra (Defendant No. 2 / second brother).

**116.** The sixth letter is Ex. PW-1/3 dated 17.07.1975, wherein again he detailed the contributions that were made or were required to be made by I.S. Dhingra or A.K. Dhingra. ***It was stated that I.S. Dhingra could construct his own portion, or otherwise could pay the balance amount of 90,000/-. It was further stated that it was best for I.S. Dhingra to build his own portion.***

**117.** From all these letters, written between 1974 and 1975, at the time construction on the plot was being taken up, it is evident that Dr. Jai Chand



intended the plot to belong to all the sons and himself, and therefore to be treated as a family property. It was also discussed that, because each son had their own financial limitations, *they could construct their respective portions from their own funds.*

**118.** The next set of documents which may be referred to is Ex. PW1/4, a letter dated 01.06.1974 written by A.K. Dhingra, Defendant No. 2, to the Plaintiff, *expressing concern that DDA was resuming plots on which the construction was not being carried out, while they were waiting for the transfer of the land in the name of the four brothers.* It appeared that no action was taken by DDA on their Application, and the transfer of the plot was not possible within the short time available to them, and they had to look for other alternatives.

**119.** A.K. Dhingra, Defendant No. 2, further stated in the Letter, that the Plaintiff *should indicate the portion of the plot which he would like to construct.* Omi and Sushil (the other two brothers) had agreed to let the Plaintiff and A.K. Dhingra have the Ground Floor, *with the Plaintiff, as the elder brother, having the first choice to take the front or the rear portion.* It was also suggested that the proposed agreement may be gone through and approved so that the same could be typed on the judicial paper.

**120.** The second letter, Ex. PW-1/5 dated 30/12/1974, by A.K. Dhingra to the Plaintiff, mentioned the contributions of money made by him, for the construction. He stated that *"we as brothers are quite generous so as not to worry about small things and should maintain an attitude of give and take."*

**121.** *He stated that the draft Agreement, after correction, was sent to all the brothers for signatures. He further stated that the alternatives were as follows:*



1. *Each of the brothers constructs his own portion as per his own wish; or*
2. *Secondly, the property is constructed jointly, and thereafter divided.*

**122.** Mr. A.K. Dhingra preferred the first alternative, of each party constructing their own portion.

**123.** The third letter dated Ex. PW-1/7 dated 06.05.1975 from A.K. Dhingra to the Plaintiff again refers to his contributions being made and the difficulty in making the arrangement of finances. Regarding the transfer of the land, it was mentioned that they had visited the DDA and that it would be better if they all became co-partners with the father in a Hindu Undivided Family (HUF), since afterwards the transfer would attract heavy gift tax.

**124.** *He further stated that he wanted to construct his own portion of the house separately, as he had conveyed to their father, who had in turn requested the brothers to agree to allow him to construct his own house separately, but he stated this was being misconstrued, and he reiterated that the property was a joint property. Further, he understood that the Plaintiff intended to construct and occupy his own portion, and stated that he had no objection to this provided he paid his share.*

**125.** ***From all these letters, it is evident that though the property had been purchased in the name of Sh. Jai Chand, the father, the plaintiff and all the brothers had an understanding that it was to be used jointly and that each son was to have one portion of the property.***

**126.** Another significant document executed between the parties is the Settlement dated 21.02.1976, which is **Ex.PW-1/D1**, signed by Dr. Jai



Chand Dhingra and his sons. It recorded that money was required for construction of the house, and that it was agreed that all the members would authorize Wg. Cdr. A.K. Dhingra to raise the necessary funds and advance loans to Dr. Jai Chand Dhingra for that purpose. It was also decided that income accruing from the said house would first be used for clearance of the loans taken for its construction.

**127.** This, again, is a document evidencing that the family's understanding was that the property was jointly held and that the possession was for the benefit of all the family members.

**128. PW-1, Anjana Handa,** the daughter of I.S. Dhingra (since deceased), deposed that there was a Settlement *inter se* among the brothers and the father that all the brothers shall construct their own portions and reside therein. Her father, I.S. Dhingra, and A.K. Dhingra had put their money for raising the construction on the said portions. Defendant Nos. 3 and 4 were not financially sound and could not pool any money.

**129.** PW-1 further deposed that the Plaintiff retired in 1976 and started residing in his portion, the front portion, constructed from his own contributions, though the construction was initially incomplete and was later restarted and finished. There was no formal demarcation, but there was an understanding that I.S. Dhingra, being the eldest, would take the front Lower Ground Floor; the rear portion would be taken by Shri A.K. Dhingra, while the third and fourth brothers would occupy the front and rear portions of the First Floor, respectively.

**130.** She further explained that her father had shifted to the front lower portion, while Defendant No. 2, A.K. Dhingra, had been residing in the rear portion of the Ground Floor.



131. She admitted that there was no single date on which the parties reached an understanding as to who would take which portion; it was an ongoing process from 1966 to 1974. She further admitted that they did not sit together to arrive at a settlement and it was an understanding as contained in the letters also.

**132. *It has thus emerged from the testimony of PW-1 and the various letters and correspondence exchanged between the parties proved by her, that the distribution of the plot was agreed in 1974. Not only this, each brother constructed their respective portions and is in exclusive possession thereof.***

133. The evidence of PW-1 must be appreciated in the light of the evidence of **DW-2, Wing Cdr. A.K. Dhingra**. It is pertinent to note, before considering his evidence, that he had not contested the Suit or filed the Written Statement, but was brought on record as an LR of Dr. Jai Chand Dhingra, the father, ***who died in January, 1995.*** He appeared as DW-2 in support of the Written Statement, filed only on behalf of the Defendant No. 1.

134. He admitted in his testimony that the Plaintiff had made a contribution of Rs.64,000/-, to his father as a loan for the suit property, while he contributed Rs.1,02,000/- towards the same. The money that he contributed was by way of a loan.

135. He explained that the construction of the house commenced in February, 1975. At that time, the Plaintiff had not retired, but he retired in 1976. The construction was completed in July-August, 1976, by which time the Plaintiff had already retired.



**136. DW-2 admitted that the Plaintiff was in possession of the front portion of the Ground Floor.** DW-2 sought to explain that the Plaintiff had been allowed by his father to stay in his rear portion of the suit property until he obtained a job with the WHO, for which he was then trying. The Plaintiff occupied the rear portion from June 1976, and after 4-5 months, he broke open the locks of the front portion and started living in the front portion. The rear portion was then let out for rent in 1978-79

**137.** However, this assertion is contrary to his own Letter dated 01.06.1974, **Ex. PW1/4**, written by A.K. Dhingra, Defendant No. 2, to the Plaintiff, *wherein he stated that the Plaintiff, as the elder brother, had the first choice to take the front or the rear portion. It is established that in terms of oral settlement, the Plaintiff got possession of the front ground floor portion; raised construction thereon, and thereafter has been residing there since 1976-1977.*

**138.** Further, he stated that the property was divided amongst the four brothers, which is further corroborated by the admissions of DW-2 that he himself was in possession of the rear portion of the Ground Floor. He, however, qualified it by stating that he was staying as an owner of the rear portion of the Ground Floor of the suit property, it having been bequeathed to him by his father under the Will, though before his father's death, he was living as a son.

**139.** Not only this, but DW-2 also admitted that his other two brothers, Sh. O.P. Dhingra and Flt. Lt. S.P. Dhingra, had carried out construction in the respective portions on the First Floor, stating that Sh. O.P. Dhingra had constructed through their father, *and both were in exclusive possession of their respective portions on the first floor.*



**140.** *Thus, apart from the Letters proved by PW-1 as discussed above, the testimony of DW-2 also establishes that though the plot was originally purchased in the name of father, he and the four sons had a settlement/understanding pursuant to which each son would construct his own portion of the Property, which in fact, was done and all the four brothers constructed their respective portions and are in possession thereof.*

***Payment of House-tax:***

**141.** The next incidence supporting this settlement is the admission of DW-2 that ***he had been paying the ad hoc House Tax, based on self-assessment. The Plaintiff was supposed to pay the House Tax for his portion in which he is residing.*** While he also tried to state in the same breath that his father used to pay the House Tax in 1995, for which he also contributed and none of the other sons contributed, there is a clear admission that he was paying the House Tax for his portion, which again corroborates that each son got a demarcated specific portion in the suit property.

***Renting of Property:***

**142.** Another pertinent admission was that the rear Ground Floor portion in which he was presently residing was let out by his father on rent, initially at Rs.1,400/- per month and was subsequently increased to Rs.4,000/- per month. The tenants were first Mr. Riaz Ahmed, then Mr. Mittal, and thereafter, another. The rent was paid through cheques, the cheques being issued in the father's name, with the amount credited to his account.



**143.** However, he clarified that the amount might have been credited to his own account sometimes, though he was unable to state how many times this happened. When asked, he submitted that he would not be able to give the account number to which the rent was sent.

**144.** He then stated that the rent was going into his Bank Account in Nehru Place and that he sometimes used to deposit the rent in the Lucknow Branch, where he was posted. He denied the suggestions that the cheques/drafts were always issued in his name and deposited in his own account and never in his father's account.

**145.** He, at the same time, admitted that he maintained an account of rent payment and showed the rent in his income tax returns, after deducting the amounts paid towards construction of the house to the contractor. He sought to qualify these admissions by stating that he was his father's Power of Attorney Holder, *and in that capacity, was receiving and spending the rent on his father's behalf, though he was unable to give the details of the amounts so received or spent.*

**146.** While Mr. A.K. Dhingra asserted that the ownership of the Property always remained with their father, he admitted that the rear Ground Floor portion which came to him had been let out on rent through the father and that he himself received the rent. He sought to justify this by saying that he received the rent on his father's behalf and utilised it for his father's purposes, but this bare assertion is unsupported by any corroborative evidence.

**147.** *Thus to sum up the aforementioned letters as discussed in detail,* it emerges, and is not seriously denied, that the father had given each portion respectively to the four sons and each had raised construction in their



respective portions as per their own wish and from their own funds. The Plaintiff has been in occupation of the front rear portion since 1976 as per the Settlement, *inter se*, between the parties. Likewise, Mr. A.K. Dhingra continued in the rear portion, and it was his son who, *being aggrieved by the Judgment of the learned Civil Judge, dated 25.01.2012, filed the First Regular Appeal, even though the Suit per se had not been contested by Mr. A.K. Dhingra by way of a Written Statement.*

**148.** It is proved by overwhelming evidence that the father had divided the Property amongst the four sons in the manner stated above, and each son thereafter raised the construction on, and is in possession of, his respective portions. It is also admitted by Mr. A.K. Dhingra that even the House Tax for his own portion was paid on a self-assessment basis. Not only this, but each brother has also individually enjoyed the usufruct of his own portion.

**149.** All the evidence, when considered comprehensively, clearly shows **that an Oral Settlement *inter se* the parties was acted upon, under which the four brothers came in possession of their respective portions.**

**150.** It may also be relevant herein to consider the sanctity of the oral Settlements amongst the family members. To understand what arrangement can be termed as a family settlement, one may refer to the definition of Halsbury's Laws of England, Vol. 17, Third Edition, which defines 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.



151. 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.

152. 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.**

153. The same sentiment was reiterated in the case of S. Shanmugam Pillai and Others vs. K. Shanmugam Pillai and Others, (1973) 2 SCR 312, wherein it was also observed that **the Court would generally lean in favour of the family arrangement and would be reluctant to disturb the same.**

154. In the landmark judgment of *Kale (supra)*, it was further observed as under:

“10....

(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 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 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.”*

155. From the observations made in the case of Kale (supra), thus, evident that a Family Settlement need not always be in writing, but the law recognizes even an oral Agreement which has been duly acted upon between the parties. Furthermore, in terms of the observations made in Kale (supra), it emerged that though father was the exclusive owner of the suit property, he decided to put it in the common pool and thereafter, all the parties, i.e., the four sons along with the father, arrived at an oral Settlement, wherein each of the sons was accepted as an owner and put in possession of the portions of the property, as has been discussed above.

156. The sanctity of the family arrangement can rarely be questioned once the parties have arrived at a settlement; the general tendency is to uphold such family settlements. In the present case, there was a settlement dividing the property in question, which cannot be disturbed.

157. The Supreme Court in the case of Ravinder Kaur Grewal v. Manjit Kaur & others, (2020) 9 SCC 706, emphasized that *since the parties had 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.*



158. In the present case, the Settlement dated 21.02.1976, Ex. PW-1/D1, only recorded the existing arrangement and authorised the raising of funds for construction. The mere use of the expression “loan” in the document, while referring to the contributions made by the brothers towards construction, could not by itself negate the existence of the Family Settlement.

159. Therefore, the use of the word “loan” in Ex. PW-1/D1, by itself, cannot negate the Family Settlement established from the other evidence on record as discussed above, along with the subsequent conduct of the parties, which demonstrate that the arrangement had been acted upon. **Therefore, the finding of the learned First Appellate Court cannot be sustained on this aspect.**

***II. Whether the Admissions of Dr. Jai Dhingra in Suit No. 355/1987 filed by Sh. Om Prakash Dhingra, for Declaration of ownership of his portion on the basis of Settlement, were admissible:***

160. The existence of an oral Family Settlement is also established from the records of ***Suit No. 355/1987 for Declaration, filed by Sh. Om Prakash Dhingra, Defendant No. 3, third son of Jai Chand Dhingra, against Dr. Jai Chand Dhingra, the father, claiming to be the owner in possession of the front portion on the First Floor of the Suit Property.***

161. In the Plaint, Ex.PW-2/1, Mr. Om Prakash Dhingra, specifically stated that he was the owner in possession of the stated portion (i.e. front portion of the first floor of the suit property); that the father, as Defendant, had no right, title or interest in it, and that he was entitled to receive rent from the portion constructed by him. He further stated that since **he had no**



**funds to construct his portion at the time of Family Settlement, he could not immediately raise the construction and built his portion in 1985-1986. He thus sought a Declaration that he is the owner of the front portion of the First Floor.**

**162.** Significant admissions were made by Late Sh. Jai Chand Dhingra, in his Written Statement, Ex.PW-2/2 wherein he had admitted the entire case of the Plaintiff.

**163.** Based on these admissions, the Suit was decreed by learned Senior Sub-Judge, Gurgaon vide Judgment dated 10.06.1987, Ex PW1/11, declaring Mr. Om Prakash Dhingra as the owner of the front portion of the First Floor.

**164.** The Respondents contend that the Gurgaon Judgment cannot operate as *res judicata* against them, as they were not made parties to the said Suit, the statement made by Defendant No. 1 in his Written Statement, Ex. PW-2/2, was *independently relevant as a judicial admission under Section 17 and 18 of the Indian Evidence Act.*

**165.** As has been discussed in the case of Basant Singh v. Janki Singh, AIR 1967 SC 341, the Supreme Court held that an admission by a party in a *plaint signed and verified by him in a prior suit is an admission within the meaning of Section 17 of the Indian Evidence Act, 1872, and may be proved against him in other litigation. Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admissions. Under Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as conclusive, and it is open to the party to show that it is not true.*



**166.** This principle has been reiterated in the case of Bishwanath Prasad v. Dwarka Prasad, (1974) 1 SCC 78, wherein it was held by the Apex Court as under:

*“Admissions are substantive evidence by themselves, in view of Section 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. We are of the opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party, when appeared as witness, was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under Section 145 of the Evidence Act is very much different from the purpose of proving the admission. An admission is substantive evidence of the fact admitted, while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence.”*

**167.** The Supreme Court in a recent case of Rajiv Ghosh v. Satya Naryan Jaiswal, 2025 SCC OnLine SC 751, further observed that admissions are of general application. The admissions may be express or implied (constructive), in writing or oral, and may be made before the institution of the suit, after the suit is brought, or during the pendency of the proceedings.

**168.** *In view of the aforementioned, the statement of Late Sh. Jai Chand Dhingra made in earlier proceedings could not have been disregarded merely because the Respondents were not parties to the said Suit. The*



***admission made by him in the Written Statement, Ex. PW-2/2, can be considered as evidence in the present proceedings.***

**169.** These admissions, read with Ex. PW-1/1 to Ex. PW-1/9, corroborate the existence of an Oral Settlement between the parties and the same was duly acted upon by the four brothers.

**170.** It was also contended that this judgment dated 10.06.1987, Ex PW1/11, of Gurgaon Court was collusive as the suit property was located in Delhi. It has rightly been explained that it was a Declaratory Suit filed in respect of the status of the Parties who were both residing in Gurgaon, and thus, it is not correct to claim that the judgment is bad as it has been given by a Court which had no territorial jurisdiction.

**171.** It was next contended that the said judgment was a collusive Judgement and therefore not binding, relying upon the decisions in Jaswant Singh (supra) and Bhoop Singh (supra), wherein it was held that the conclusive decree is a nullity.

**172.** In the backdrop of the cases, as discussed above, ***it is evident that it was not a collusive suit, in so much as the factual possession inter se between the parties had been decided and admitted by all four brothers. In fact, it was only a documentation of the earlier settlement which was duly acted upon by the parties. Sh. O.P. Dhingra had merely sought a Declaration of the rights which had already crystallized inter se between the parties.***

**173.** ***Once there was an arrangement and the oral settlement, there was no reason for Late Sh. Jai Chand to have denied the oral Settlement based on which Sh. O.P. Dhingra had sought the declaration of his ownership in one portion of the property in question. In fact, the filing***



*of this Suit itself is a corroborative piece of evidence documenting the oral settlement entered into between the parties and acted upon by them during the period 1972 to 1976.*

**III. Whether Will and Codicil could be made in respect of A property which was already divided by an Oral Agreement:**

**174.** The Appellants' emphasis is essentially on the Will dated 10.11.1987, **Ex.PW-1/D3**, executed by Mr. Jai Chand Dhingra in respect of the Property, with which PW-1 was confronted, and she stated that the signatures on the document appeared to be those of Mr. Jai Chand Dhingra. The Will was also proved by the Defendants through DW-3, Mr. I.C. Narang, who deposed that the Will was signed and registered in the Office of the Registrar in his presence, and that he had himself signed it as attesting witness, at Mark 'A'. *The execution of the Will is not, therefore, under serious challenge.*

**175.** The Will, however, also reflects that, though Mr. Jai Chand Dhingra was the owner to whom the Property had originally been allotted, contributions had been made both by the Plaintiff, Col. I.S. Dhingra, and by Wg. Cdr. A.K. Dhingra, and thereby the construction was somehow completed. The Agreement, **PW-1/D1**, was also executed. It was also recorded that Col. I.S. Dhingra, who had initially shifted to the rear portion of the house, subsequently shifted to the front portion by breaking open the locks and took over that portion of the building.

**176.** The Will further stated that Dr. Jai Chand Dhingra had asked the Plaintiff to shift to the rear portion and to pay the balance amount for the house, but the Plaintiff remained adamant and, because of his conduct, the rear portion of the house remained vacant for nineteen months.



**177.** The Will further stated that its purpose was that neither had the Plaintiff given the full amount for construction of the house, nor had he maintained proper behaviour towards the tenants, whom he did not allow to remain in peaceful occupation. *He therefore stated that, as long as Iqbal and Kanta (the Plaintiff and his wife) were alive, they could stay in the front portion, provided he put a separate gate and maintained a separate access, so that there would be less chance of conflict. He bequeathed the other portions as earlier discussed.* He further stated that, after the demise of Iqbal and Kanta, the front portion, presently occupied by Iqbal, should be put on rent or sold, and the proceeds distributed equally to Iqbal's daughters.

**178.** The Codicil, dated 31.01.1992, **Ex.PW-1/D4**, proved by the two attesting witnesses, DW-1, Mr. H.R. Sardana, and DW-3, Mr. I.C. Narang, modified the Will by recording that, in view of the disgraceful acts of Iqbal (the Plaintiff) and his son-in-law, Defendant No. 1, he was convinced that they would not live in harmony and peace with the other sons, and reiterated that Iqbal and Kanta can live in the front portion during their lifetime. However, after their demise, this portion would be sold by an Executing Committee constituted by him, and the proceeds, after adjustment of obligations and dues, were to be distributed equally amongst Iqbal's three daughters.

**179.** Firstly, from the tone and tenor of the Will and Codicil, it is clearly evident that a settlement had taken place between the four brothers, and the specific portions had been demarcated, as also noticed in the Will and the Codicil themselves. The intention of the father, as reflected in both documents, was not to deprive the Plaintiff of his share in the front Ground



Floor portion of the Property; in fact, it recognized his right to the subject portion and also explained that after their demise the usufruct was to go to the daughters of the Plaintiff, thereby recognizing the ownership of the Plaintiff in the subject portion of the property.

**180.** Section 2(h) of the Indian Succession Act, 1925 defines the term will  
*“Will” means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.”*

**181.** Thus, a Will operates after the death of a testator and doesn't create any right of title in the property during his lifetime.

**182.** It is pertinent to note that the Will dated 10.11.1987 and Codicil dated 31.01.1992, which was to take effect after the demise of Dr. Jai Chand Dhingra in 1995, could not alter the right and title which had already accrued to the Appellants pursuant to the oral family settlement that stood implemented between 1974-1976. Once the Settlement had taken place and the Property was partitioned and possession given by 1997, there was no question of changing the ownership in the respective portions by way of the Will or the Codicil, which became effective in 1995.

**183.** Therefore, the Plaintiff was entitled to a decree that he was the sole and exclusive owner and in possession of the front portion of the Ground Floor of the property in question and was also entitled to Permanent Injunction for restraining the Defendants from interfering in the peaceful possession and title of the Plaintiff.

### **Conclusion:**

**184.** The learned Civil Judge had rightly decreed the Suit of the Plaintiff, while the Appellate Court fell in error in not appreciating the



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evidence as led by the parties. The importance of an oral settlement under law has also not been considered in the right perspective, as the Oral partition, when acted upon, does not require a written registered document to be considered as valid.

**185.** In view of the aforesaid discussion, the substantial question are answered in favour of the Plaintiff/ Appellant and it is held that the learned Appellate Court fell in error in setting aside the finding of the Learned Civil Judge that concluded family settlement existed between the parties, pursuant to which the Appellant came into exclusive ownership and possession of the front ground floor of the Suit Property. **The Judgment dated 21.12.2019 is accordingly set aside, and the Judgment and decree of the learned Civil Judge dated 25.01.2012 is restored.**

**186. The Appeal is allowed.** The pending Applications, if any, are disposed of.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**OCTOBER 01, 2026/RS**