

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

% *Judgment reserved on : 10.5.2011*
Judgment delivered on : 16.05.2011

+ **R.S.A.No. 45/2008 & CM No.2318/2008**

JAGDISH KUMAR SACHDEVA Appellant
Through: Mr.R.N.Jha, Advocate.

Versus

SUBHASH CHANDER SACHDEVA Respondent
Through: Mr.S.C.Singhal, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1 This appeal has impugned the judgment and decree dated 08.12.2007 which had reversed the finding of the trial judge dated 19.1.2005. Vide judgment and decree dated 19.1.2005 the suit filed by the plaintiff Jagdish Sachdeva against his brother Subhash Chander Sachdeva seeking a declaration (to the effect that the family settlement dated 17.3.1991 arrived at between the parties qua suit property i.e. the property bearing No.B-1/277, Yamuna

Vihar, Delhi as also shop at Bhajanpura, Delhi is legal and binding upon the parties with a further prayer of permanent injunction qua the suit property) had been decreed in his favour. Impugned judgment had reversed this finding. Suit of the plaintiff stood dismissed.

2 Parties are real brothers. Plaintiff had filed a suit for declaration and permanent injunction claiming the aforementioned papers. His averment was that their father died intestate at which time the plaintiff was a minor aged six years. The defendant was the eldest brother in the family; their father had left behind four properties; they are as follows:

1. House No.45, Kunjpura, Distt, Karnal (Haryana), land measuring 970 sq. ft.
2. Shop at Main Bazar Kunj Pura, Distt. Karnal (Haryana), built on land measuring 330 sq. ft. having size 15 ft. x 22 ft.
3. House No.1239, New Housing Colony, Panipat (Haryana), and
4. Plot No.374, Gali No.6, Monga Karawal Nagar, Delhi

3 The defendant was looking after the affairs of the family. The aforementioned ancestral property had devolved upon the aforementioned two brothers. Intention of the defendant thereafter became dishonest. Parties had entered into a family settlement dated 17.3.1991 whereupon it has been agreed that the aforementioned suit property will be retained by the plaintiff. In spite

of repeated requests the defendant had failed to hand over the suit property to the plaintiff. Present suit was accordingly filed.

4 In the written statement this stand was refuted. In para 3 (iii) of the written statement it was stated that a Criminal Misc. 4572/1993 had been filed in the Punjab and Haryana High Court by him for quashing the criminal complaint filed by the wife of the plaintiff which is pending; it is pointed out that in para 6 and 7 of the reply affidavit filed by the wife of the plaintiff she had clearly stated that the agreement dated 17.3.1991 was not an agreement arrived at out of the free consent of the parties; it was thus not binding. It is pointed out that the aforementioned suit property had been purchased by the defendant from his own funds and it was not out of the ancestral funds; their father had in fact left no estate.

5 On the pleadings of the parties the following 13 issues were framed.

- "1. Whether the suit is not maintainable as is time barred? OPD
2. Whether the present suit is devoid of cause of action, as alleged? OPD
3. Whether the plaintiff is not entitled to any relief as is guilty of suppression of facts and has brought a false and frivolous litigation? OPD
4. Whether the suit is not maintainable as the plaintiff is estopped by conduct and pleas obtained previously as alleged? OPD
5. Whether the suit is liable to be stayed under Section 10 CPC as

alleged? OPD

6. Whether the court has no pecuniary jurisdiction to try and entertain the present suit, as alleged? OPD

7. Whether the suit is not maintainable as is based on Benami Transaction, as alleged?

8. Whether the plaintiff is not entitled to any relief as the same is barred under Section 41(h) of the Specific Relief Act, as alleged? OPD

9. Whether the suit is barred by Order 2 Rule 2 CPC, as alleged? OPD

10. Whether the suit is not maintainable for non-joinder of necessary parties, i.e. Smt. Shanti Devi, as alleged? OPD

11. Whether the suit is bad on account of misjoinder of causes of action, as alleged? OPD

12. Whether the plaintiff is entitled to the relief of permanent injunction, as claimed? OPP

13. Relief.”

6 Oral and documentary evidence was led. Trial judge had decreed the suit of the plaintiff.

7 Impugned judgment had reversed this finding. Suit of the plaintiff stood dismissed.

8 This is a second appeal. It has been admitted and on 18.07.2008, the following substantial questions of law were formulated.

(1) Whether the document of family settlement is admissible in view of the alleged admission of the respondent before the criminal proceedings in Chandigarh Court and, if so, to what effect?

(2) Whether the appellant can rely upon the family settlement in view of his alleged admission that it was got executed from him under duress?

9 On behalf of the appellant, it has been pointed out that the impugned judgment suffers from a perversity for the reason that the family settlement dated 17.3.1991 had been discarded only for the reason that the original of the said document was not produced; it is pointed out that this document was never a disputed document; in fact, it has been admitted by the defendant in his written statement and he mentioned this factum of the family settlement in the Criminal Misc. No.4572/1993 which had been filed by him seeking quashing of the said criminal complaint. Attention has been drawn to para 6 of this Criminal Misc. petition wherein the family settlement dated 17.3.1991 had been adverted to. It is pointed out that the defendant has admitted this document; in view of this admission the question of producing the original of this document did not arise. It is further pointed out that the family settlement requires no registration; it is only a re-distribution of the shares of the ancestral properties in which the parties already have an interest. For this proposition reliance has been placed upon 119 (2005) DLT 295 Amarjeet Lal Suri Vs. Moti Sagar Suri; as also another judgment reported in 2003(71) DRJ 732 Madan Lal Kapur Vs. Subhash Lal Kapur. It is pointed out that even without registration a family settlement is per se permissible. The impugned judgment holding otherwise is an

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illegality and is liable to be set aside.

10 Arguments have been countered. It is submitted that the impugned judgment in no manner can be said to be perverse; it calls for no interference. It is submitted that even if the family settlement dated 17.3.991 was admitted, the defence of the defendant all along was that it was never acted upon and in fact this has also been noted in the Criminal Misc. Petition No.4572/1993 wherein in para 7 it has been averred that the petitioner's younger brother (plaintiff- Jagdish) had tried to wriggle out of this agreement. It is pointed out that the plaintiff had himself rescinded this document; he cannot now claim shelter under this document; even otherwise this family settlement necessarily requires a registration as it was a creation of new rights and interests inter se the parties. Learned counsel for the respondent has placed reliance upon AIR 1977 Jammu & Kashmir 61 Dewan Chand Barbar Vs. M/s Jay Pee Finance Corp. as also another judgment reported in AIR 1968 Yasodammal Vs. Janaki Ammal to support his submission that even if it is assumed that a document has been admitted and it requires no proof; nevertheless such a document cannot be used to circumvent other provisions of law which restrict or prohibits the use of such a document. It is pointed out that a partition deed requires

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compulsory registration and this fact cannot be overlooked. The impugned judgment had rightly ignored this document.

11 Record has been perused.

12 This is an unfortunate dispute between the two brothers. Family settlement dated 17.3.1991 is admitted; this is clear in view of the averment of the defendant/respondent in the Criminal Misc Petition No.4572/1993. This has also been noted by the two courts below. However, the defence of the defendant in his written statement was that this family settlement was never acted upon and in fact the plaintiff himself had also tried to wriggle out of this agreement. This has been noted in para 7 of the written statement where the defendant had averred that the plaintiff Jagdish Sachdeva wanted to get out of this agreement; PW-1 in his cross-examination had also admitted that his wife had filed an affidavit in Punjab and Haryana High Court regarding this agreement wherein it was stated by her that her husband Jagdish Sachdeva and she herself had signed this agreement under duress. It has thus come on record that this agreement although initially transacted between the parties on 17.03.1991 (yet even as per the case of the plaintiff) it was under duress and compulsion. Contention of the defendant that this agreement was never acted

upon has thus been correctly appreciated. This thus not being an

admission; Section 58 of the Evidence Act would have no application.

13 The question that now has to be answered is as to whether this family settlement requires a compulsory registration or not. PW-1 on oath had admitted that this agreement (Mark X) was not executed on a stamp paper and nor was the same registered. The suit property i.e. the property bearing No.B-1/277, Yamuna Vihar, Delhi as also shop at Bhajanpura, Delhi are admittedly in the name of the defendant. Contention of the plaintiff that these properties were HUF purchased out of the funds left by their father is negated. In his cross-examination PW-1 has admitted that his father did not leave behind any property nor did he purchase any property during his life time; admittedly house No.B-1/277 is in the name of the defendant; house tax receipts are also in her name.

14 In AIR 1976 SC 807 Kale & Ors. Vs. Deputy Director of Consolidation & Ors., the Supreme Court had held that a document which effects a partition in fact creates or extinguishes right, title or interest in the immovable property and requires compulsory registration under Section 17 of the Registration Act. In this case the evidence brought on record shows that this suit

property is in the name of the defendant; it is not borne from the

evidence that these properties had been purchased out of the ancestral funds left by the deceased father of the parties. As such transfer of such a right, title or interest in the immovable properties (exclusively in the name of the defendant) by one party to another would require registration; in the absence of registration it would suffer from the vice of Section 17 of the Registration Act. Such a document is compulsorily registrable. This document dated 17.3.1991 was admittedly not registered. Impugned judgment had noted this fact and appreciated it in the right context. In AIR 1996 SC 196 Bhoop Singh Vs. Ram Singh the Apex Court had held that if a document creates new rights by way of a family arrangement the same requires compulsory registration. Thus this finding in the impugned judgment call for no interference.

15 Both the substantial questions of law are answered accordingly in favour of the respondent and against the appellant. Appeal has no merit. The appeal as also the pending application is dismissed.

INDERMEET KAUR, J.

MAY 16, 2011
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