

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

+ **RFA No.110/2011**

% **20th October, 2011**

SURINDER MALIK Appellant
Through: Mr. Ramesh Malhotra, Adv.

VERSUS

ASHA VERMA Respondent
Through: Mr. N. Prabhakar, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 12.7.2010 which has decreed the suit for partition filed by the respondent/plaintiff/daughter against the appellant/defendant/brother.

2. The facts of the case are that father/Sh. Inder Kishan Malik owned a property namely the residential house at F-52, Naraina Vihar, New Delhi. The father admittedly died intestate. Sh. Inder Kishan Malik on his death left behind four legal heirs, i.e. his widow/Smt. Raj Malik, two

daughters/Smt.Santosh Malik and Smt. Asha Verma/plaintiff and one son/Sh.Surinder Malik/defendant. Smt. Santosh Malik, the daughter was working in NAFED, a Government of India Undertaking, and she too acquired ownership of the property bearing No.JG-III/177-C, Vikas Puri, New Delhi. Smt. Santosh Malik did not marry and she also died intestate.

3. All the aforesaid facts are admitted between the parties. The net effect of the admitted facts is that there are two properties, one at Naraina Vihar and the other at Vikas Puri. The Naraina Vihar's property was owned by the father/Sh.Inder Kishan Malik and the Vikas Puri's property was owned by the daughter/Smt.Santosh Malik, and who is the sister of the parties to the present suit. The parties to the suit therefore being the legal heirs of the father/Sh.Inder Kishan Malik and Smt. Santosh Malik, are entitled to equal ownership in both the properties.

4. On behalf of the appellant/defendant, it was pleaded in the Trial Court that there was a family settlement as per which the respondent/plaintiff had got various amounts, and whereby the respondent/plaintiff is stated to have relinquished her share in both the properties in favour of the appellant/defendant. Admittedly, this alleged family settlement is not a documented fact. Neither any written family settlement was filed on record by the appellant/defendant nor was any other document filed to show that such a settlement ever took place between the parties. Accordingly, the Trial Court decided this relevant

issue no.1 in favour of the respondent/plaintiff by observing as under and with which findings I agree:-

"Issue no.1:

Whether there was any settlement between the parties as claimed for by the defendant in preliminary objection No.1 and in para 5 of his written statement if the answer of this question is in the affirmative, then whether any payment had been made by the plaintiff to the defendant in terms with the said settlement? OPD

The onus of proving the issue No.1 was on defendant. The defendant deposed in his evidence that the elder family members of both the parties amicably settled the dispute and in lieu of the same defendant paid a sum to account of the plaintiff and thereafter plaintiff is left with no claim. He further deposed that amount was transferred to the plaintiff as full and final payment against all claims. The defendant failed to adduce any documentary evidence for the same.

In the cross examination, Defendant admitted that neither he has filed any family settlement document with regard to the suit property or he has filed any bank statement of his individual account to show that any money was given by him to the plaintiff's sister in pursuance of the family settlement.

The plaintiff averred that as an after thought, the defendant has come forward with the vague, un specific and concocted plea of "some documents" having been executed by the sister of the plaintiff on an uncertain date in favour of the defendant.

Therefore, the defendant failed to prove his contentions. Hence, the issue does not hold any merit."

5. Learned counsel for the appellant has argued that this finding with respect to issue no. 1 of the Trial Court is required to be set aside inasmuch as the family settlement is proved by virtue of payments which

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are received by the respondent/plaintiff as stated in para 8 of the affidavit by way of evidence filed on behalf of the appellant/defendant in the Trial Court. This para 8 reads as under:-

“That the plaintiff from inception from her marriage started raising the unlawful demands and parents of the deponent as well sister namely Ms. Santosh Malik paid a huge amount from their bank account to the plaintiff and, even then the demands of the plaintiff were not stop. In order to settle the unlawful demands raised by the plaintiff once for all due to intervention of the family members and friends it was settled that deponent will pay a agreed sum and thereafter the plaintiff shall not raise any demand/claim from the deponent on any account and in acting upon the same, deponent through her mother and from other account transferred the amount in the name of the plaintiff as such plaintiff do not have any claim over the deponent on any account. Hence, on this ground alone this suit should be dismissed in lamini. That the detail of payment is given below:-

Punjab National Bank A/C No.11332 of Mrs. Raj Malik			
Date	Cheque No.	Amount	In Favour
11.01.2001	667372	2,00,000	Asha Verma
17.07.2001	669783	10,000	Asha Verma
Punjab National Bank A/C No.121643 of Mrs. Raj Malik			
05.08.1999	426842	10,000	Ghansham Lal Verma
28.11.2002	426847	5,000	Asha Verma
23.03.2005	426853	50,000	Asha Verma
05.04.2005	426854	1,00,000	Asha Verma
26.04.2005	426856	10,000	Asha Verma
26.04.2005	426855	30,000	Ghansham Lal Verma
Indian Bank A/c No.23032 of Mrs. Raj Malik			

05.08.2004	263203	75,000	M.K.Verma
Union Bank of India A/c No.9153 Joint Account of Mrs. Raj Verma & Mr. Surinder Malik			
06.09.1993	172544	20,000	Asha Verma

Copy of Passbooks of said accounts are Ex.CW-1/2-A to 2-F.

6. In my opinion, no fault can be found with the findings of the Trial Court on issue no.1 inasmuch as if valuable share in two immovable properties is sought to be taken away from the respondent/plaintiff by the appellant/defendant, the family settlement had to be proved beyond doubt. Besides the fact that there is no documentary evidence to prove the family settlement, it is admitted by counsel for the appellant in the course of the arguments before this Court that the details of the payments which are shown in para 8 of the affidavit by way of evidence are not payments made by the appellant/defendant to the respondent/plaintiff, but these are withdrawals made by the respondent/plaintiff from an account which was held jointly by the respondent/plaintiff with her mother. Surely, withdrawal by a person from an account in which she is a joint holder, cannot be taken as a proof of a family settlement, which seeks to deprive the respondent/plaintiff from 50% ownership share of the two immovable properties at Naraina Vihar and Vikas Puri. Further, there would have been any credibility on the issue of family settlement, if the respondent/plaintiff would not have been entitled to receive the amounts in the account with her mother. In addition to the fact that the respondent/plaintiff was a joint

holder of the account, even assuming that these amounts were received by the respondent/plaintiff, at best these would be amounts received by the respondent/plaintiff with respect to the amounts/property of the mother, and to which she was equally entitled along with the appellant/defendant/son. Therefore, to the monies of the mother, taking the case of the appellant at best, both the parties would have equal rights, and therefore, it cannot be said that withdrawal of the amounts by the respondent/plaintiff from the accounts stated in para 8 of the affidavit by way of evidence can, in any manner, show any family settlement. It is also admitted during the course of the arguments that it is not as if the entire amount in the account as shown in the para 8 of the affidavit by way of evidence filed on behalf of the appellant/defendant was the only amount lying in the account of the mother.

7. I accordingly, hold that the Trial Court was justified in finding that there was no family settlement between the parties as was the claim of the appellant/defendant.

8. A civil case is decided on balance of probabilities. The balance of probabilities, i.e. the preponderance of probabilities shows that there is no family settlement as was alleged by the appellant/defendant. If on such flimsy evidence, as is put-forth by the appellant/defendant, a family settlement can be said to have been proved, then, it would have catastrophic effect on valuable rights in immovable properties which have accrued to the respondent/plaintiff. This Court is not entitled to interfere in

appeal merely because the Trial Court has taken one plausible and possible view, unless that view causes grave injustice and prejudice. I do not find that the conclusions of the Trial Court cause any grave injustice or prejudice to the appellant/defendant and in fact, if the impugned judgment is set aside, grave prejudice and injustice will be caused to the respondent/plaintiff.

9. In view of the above, there is no merit, which is accordingly dismissed, leaving the parties to bear their own costs.

CM No.3525/2011 & CM No.3526/2011(for stay)

10. In view of the order passed in the appeal, no orders are required to be passed in these applications and which are accordingly dismissed.

October 20, 2011
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VALMIKI J. MEHTA, J.