

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

**RESERVED ON: 24.04.2012
PRONOUNCED ON: 30.01.2013**

+ **RFA 732/2003, C.M. APPL. 1696/2003, 6452/2004, 11416/2004,
13190-13191/2004, 13877/2008 & 10055/2010**

MRS. MADHUR BHARGAVA AND ORS. Appellants
Versus
MS. ARATI BHARGAVA AND ORS. Respondents

**RFA 855/2003, C.M. APPL. 2099/2003, 2182/2003, 4688/2004,
13259/2006, 10056/2010 & 5670/2012**

MS. ARATI BHARGAVA AND ANR. Appellants
Versus
MRS. MADHUR BHARGAVA AND ORS. Respondents

RFA 878/2003, C.M. APPL. 2144/2003

M/S. EKTA AGRO INDUSTRIES LTD. Appellant
Versus
MRS. MADHUR BHARGAVA AND ORS. Respondents

RFA 912/2003, C.M. APPL. 2235/2003

MR. AJAY SANGHI Appellant
Versus
MRS. MADHUR BHARGAVA AND ORS. Respondents

Appearance: Sh. Ram Jethmalani, Sr. Advocate with Sh. Alok Kumar, Ms. Lata Krishnamurti, Sh. Karan Kalia, Sh. Ashish and Sh. Pranav Diesh, Advocates, for appellants in RFA 855/2003 and for respondents in RFA 732/2003, RFA 878/2003 & RFA 912/2003.

Sh. Kailash Vasdev, Sr. Advocate with Ms. Shraddha Bhargava and Ms. Richa Kapoor, Advocates.

Sh. Virender Goswami with Ms. Soni Singh and Sh. Sankalp Sharma, Advocates, for appellant in RFA 912/2003.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

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1. This common judgment will dispose of four first appeals (RFA Nos. 732, 855, 878 and 912 of 2003) which challenge the judgment dated 23.08.2003 of the learned Additional District Judge (hereafter “the Trial Court”) in Suit no 188 of 2000. The suit, was instituted by Ms. Madhur Bhargava, Ms. Gayatari Bhargava and Ms. Shraddha Bhargav; (hereafter “the plaintiffs”); the defendants were Arati Bhargava, Bharati Bhargava, (hereafter referred to as D-1 and D-2 or collectively as “the sisters”) and Ajay Sanghi (third defendant) and Ekta Agro Industries Ltd. (fourth

defendant) (hereafter referred to as “the tenants” or “D-3” and “D-4”). The plaintiffs’ appeal (RFA No. 732/2003) is restricted to the denial of *mesne profits*. The sisters’ appeal (RFA 855/2003) challenges the findings and decree of the trial court denying their title to the suit property as well as the decree for possession; whereas the tenants’ appeals (RFA NOs. 878/03 and 912/03) challenge the decree for possession granted to the plaintiffs, against them.

2. The plaintiffs sought a decree for possession and *mesne profits* in respect of the second floor terrace with construction thereon of Property no. 2522/X (i.e. front and hind portions on the 3rd floor) on plot no. 3/13-B, Asaf Ali Road New Delhi (hereinafter referred to as “suit property”). The suit was decreed partially to the extent that the claim for recovery of possession was allowed, and the claim for recovery of *mesne profits* was denied.

3. The facts emerging from the pleadings and admitted at the stage of the appeals by the parties are that one Mrs. Savitri Devi Bhargava (“Savitri Devi”) married one Shri Dularey Lal Bhargava (“Dularey Lal”) in 1940/1941. Their marriage did not work out and Savitri Devi left the matrimonial house at Lucknow. She took her eldest child and at that time only son, Kavi Kumar Bhargava (referred to as “Kavi Kumar” or “the son”) with her. At the time of separation, Savitri Devi’s mother-in-law gave her substantial cash and jewellery. While the plaintiffs claim that the cash and jewellery were given to Savitri Devi as her *Stridhan*, the sisters assert that these were given for creating a trust in favour of the children (of Savitri Devi and Dularey Lal). Even after leaving Lucknow, Savitri Devi stayed on and off with her husband Dularey Lal. They had two daughters, first in 1950 and

then in 1952 (D-2 Bharti, and D-1 Arti,). Using this jewellery, Savitri Devi made prudent investments and bought the following properties in the years 1953-54:

(1) Commercial plot measuring 44.44 sq. yards being No. 3/13-B, Asaf Ali Road, Delhi from the Delhi Improvement Trust. A three storeyed construction on this plot (ground, first and second floor) and a basement was completed;

(2) A two storeyed residential built up property No. E-15, 16, Nizamudin West, New Delhi and a *barsati*. This was acquired on September 1, 1959 with the help of a loan raised from bank.

4. The son and the two daughters were brought up by Savitri Devi. Kavi Kumar, the son, on completion of his college education joined Indian Police Service and some time thereafter married the first plaintiff, daughter of a member of Delhi Higher Judicial Service on 21st April 1969. This marriage, allege the Plaintiffs, however, did not carry the approval of Savitri Devi and on that count serious differences arose between the son and his wife on the one hand, and the mother, on the other. The plaintiffs alleged that the sisters exploited the situation for their personal gain.

5. Kavi Kumar and his wife (the first plaintiff) had a girl child, Pooja, who unfortunately did not survive; her birth was not taken too kindly by Savitri Devi. The suit alleges that this was followed by an era of abortions/ miscarriages suffered by the first plaintiff for a period of about ten years and she (i.e. the daughter in law) could neither win love nor sympathy of Savitri Devi despite her being respectful and courteous to her through-out. Savitri Devi was too headstrong and domineering to reconcile with her son

and daughter in law. A few years later, she stopped giving Kavi Kumar his share of the income from the trust properties of which he was one of the beneficiaries. His sisters, after graduation were gainfully employed as journalists in leading daily newspapers, Indian Express and Hindustan Times and were enjoying a luxurious life with their mother. In order to keep a firm hold over Kavi Kumar, his mother told him bluntly that she was the exclusive owner of the properties which she herself had purchased and they stood in her name (although that was so only on account of her children being minors at that time), and declared that she possessed an absolute right of disposal over them.

6. The suit alleged that by reason of his mother's irksome utterances and conduct, Kavi Kumar, who knew the truth about acquisition of the said properties, instituted Suit No. 477 of 1974 ("the previous suit") for partition and rendition of accounts against Savitri Devi and his sisters in July, 1974 narrating how he had become suspicious about the intentions of her mother and was seeking separation of his share in the two properties by metes and bounds and also for the rendition of accounts. In the suit, the plaintiff (Kavi Kumar) alleged that the cash and jewellery given by her grandmother to his mother was for the creation of a trust for the maintenance and education of the children (i.e. himself and his two sisters). His mother, Savitri Devi, on the other hand, argued that the cash and jewellery had been given to her as her *stridhan* and she was the absolute owner of all the properties purchased from its proceeds. During the course of the suit, the parties agreed to refer the disputes to arbitration by the (Retired) Chief Justice of India B. P. Sinha. He made his award on 28.03.1975 whereby it was held that the cash and jewellery had been given for the benefit of all, and thus "*each one of*

the four persons should, in law and equity, have one-fourth share each". The award, (hereafter called "the award") which has a bearing on the issues in this case, reads as follows:

Award (dated March 28 1975)

This unfortunate dispute between very close relations is pending decision in the High Court. Parties have been well advised to have the matters in dispute settled through Arbitration. By consent of the parties, the High Court has referred the whole case to me as the sole Arbitrator. I have heard the parties, as also the counsel for the plaintiffs and heard the parties, as also the counsel for the plaintiff, and recorded the summary of their statements, in support of their respective cases.

2. *The Crucial issue between the parties is whether the properties in dispute consisting of (1) the commercial building on near Ali Road, New Delhi, and (2) the residential house in Nizamuddin West, New Delhi, are the exclusive properties of the first defendant, the mother of the plaintiff, and the second and the third defendants, its claimed by her or are the joint properties of all the four persons as asserted on the other side. After considering all the facts and circumstances of the case, I have come to the conclusion that the properties in question were required for the benefit of all to them.*

3. *As it is a suit for partition, my award is that each one of the four persons should, in law and equity, have one-fourth share each.*

4. *As the properties in suit are not capable of division by metes and bounds, they have to be divided in such a way that there should be the least possibility of friction in the future, in the enjoyment of their respective shares. Accordingly, I make the following allotments.*

(a) *The Plaintiff (Shri Kumar Bhagava) is allotted the first floor of the property NO. 3/13-B, Asaf*

Ali Road, New Delhi as absolute owner from 31st March, 1975 and the second floor of the said Asaf Ali Road, property, and the residential house at 15 & 16 E Nizamuddin West, New Delhi, subject to the life interest of the first defendant, Smt. Savitri Bhargava, who shall continue to possess and enjoy the aforesaid second floor of the property at Asaf Ali Road and the Nizamuddin Property aforesaid, after the demise of the first defendants.

- (b) The first defendant Smt. Savitri Bhargava is allotted a life interest in the second floor of the property at 3/13-B, Asaf Ali Road, New Delhi at 15 & 16-E, Nizamuddin West, New Delhi, which on her demise will become the absolute property of the plaintiff.*
- (c) The second defendant, Kumar Bharati Bhargava, is allotted the ground floor of the property at 3/13-B Asaf Ali Road, New Delhi in absolute right as the full owner.*
- (d) Finally, the third defendant, Kumar Arati Bhargava, is allotted the Basement of the property at 3/13-B, Asaf Ali Road, New Delhi in absolute right as the full owner.*

5. The aforesaid allotments shall effect on the night of 31st March, 1975. The tenants occupying portions of the aforesaid Asaf Ali Road, Property, shall become respectively the tenants of the party allotted that portion, with effect the tenants of the party allotted that portion, with effect from 1st of April, 1975, i.e. the first defendant will continue to realize rent of the premises as hitherto before until the end of March 1975.

6. As the property at the Asaf Ali Road has common staircases passages, corridors and other amenities of common convenience, those will remain the joint property of all the shares and the parties shall be entitled to use them as heretofore, and be responsible for the proper maintenance and repairs of those common conveniences. In respect of the portions allotted as aforesaid to each one of the parties, they will be entitled to realize rent from their respective tenants

from 1st April, 1975 and be responsible for payment of the proportionate share of ground rent, income tax wealth tax, other municipal taxes and all other public demands in respect of the portions of the properties allotted to them. Be it noted that all the outstanding dues for the aforesaid properties upto 31st March 1975 shall be paid by all the parties proportionately, i.e. one for the share each. It follows that each party will be entitled to have its name separately registered in the Municipal Records, the records of separately registered in the Municipal Records, the records of Delhi Development Authority and other public bodies concerned with the property. A portion of the residential house at Nizamuddin West is in occupation of a tenant. The first defendant shall continue to realize the rent thereof during her life time even as she will be entitled to the full use and occupation of the Nizamuddin Property. She will be liable for the payment of ground rent and other public demands in respect of this property.

7. There is a claim for accounts against the first defendant. I see no reason to make her responsible for rendition of accounts and accordingly disallow that part of the claim.

8. A further question was raised by the first defendant of to the valuation of the suit properties. After taking into consideration the latest valuation report made by an approved Valuer, I fix the value of the property at 3/13-B, Asaf Ali Road, New Delhi in round figures at Rs.5,75,000/- and that of the property at 15 & 16 -E Nizamuddin West, New Delhi at Rs.1,25,000/- This being a suit for partition, the award has been engrossed on non-judicial stamp papers valued at Rs.5,300/- which I understand is sufficient, if there is any deficiency, the same shall be made good by the parties in equal shares.

10. In this circumstances of the case, there shall be no order as to costs. ”

7. The award remained unchallenged by all the parties; consequently it was made a rule of court, and a decree was drawn, by this Court, in its terms. The said decree- dated 15th May, 1975, reads as follows:

“DECREE DATED 15.05.1975

“The four parties to the suit shall have ¼ share in the properties in the suit in the following manner.

a) The plaintiff Sh. Ravi Kumar Bhargava shall be the owner in possession of the first floor of the property bearing No. 2/12-B, Asaf Ali Road, New Delhi as from the midnight of 31st of March 1975, and he shall also be the absolute owner of the second floor of the said building and the residential house at 15 and 16-E, Nizamuddin West, New Delhi subject to the life interest of Smt. Savitri Devi Bhargava who shall continue to possess and enjoy the aforesaid second floor of the property at Asaf Ali Road and the house at 15 and 16E, Nizamuddin West, New Delhi, during her life time.

b) The Second defendant Kumar Bharti Bhargava shall be the absolute owner with possession of the ground floor of property at 2/12-E, Asaf Ali Road, New Delhi and the shall be deemed to be the owner of that property as from the midnight of 31st March 1975.

C) The third defendant Kumari Arati Bhargava shall be the absolute owner of the basement of the property at 2/12-B. Asaf Ali Road, New Delhi and th4e shall enjoy the rights as full owner in that property as from the midnight of 31st March, 1975.

It is further ordered that the tenants occupying portions of the properties, mentioned above, shall attorn to the respective owners as determined by this decree. The owners

shall be entitled to realize rents from the tenants as from the 31st April, 1975. The common stair cases, passages corridors as well as other amenities of common convenience, which the property as Asaf Ali Road, shall remain the joint property of all the parties to the litigations, who are very clearly related.

It is further ordered that those who have become absolute owners in terms of this decree shall be responsible for proportionate payments of the ground rent, income tax, wealth tax, house tax and other municipal taxes as well as all other public demands in respects of the portions of the properties of which they have become the owners. It is further ordered that in case it is found that there are any outstanding dues, the parties to this suit shall pay to the extent of 1/4th share each so as to satisfy the dues. Each of the person to whom she ownership has been decreed shall be entitled to get his/her ownership registered with the Municipal Corporation of Delhi and all other authorities where it may be essential to get it noticed of registered a portion of the residential house at Nizamuddin West is in the occupation of a tenant. Defendant No. 1 Smt. Savitri Devi Bhargava who is the mother of the rest of the parties to this litigation, shall continue to realize the rent during her life time and shall be entitled to full and occupation of the Nizamuddin Property, and she shall be liable for the payment of ground rent and other public demands in respect of that property.

It is further ordered that there shall be no decree for rendition of accounts. It is hereby lastly ordered that the parties shall bear their own costs. ”

8. After the award, and the decree arising out of it, on 9th June 1983, a Deed of Family Arrangement was entered into between Kavi Kumar, Savitri Devi, and the daughters, Bharti and Arti. In that, the parties agreed that the top portion i.e. the terrace of the Asaf Ali Road property would be

divided into two parts. The front part was to belong to Bharti (D-1) and the rear part was agreed to belong to Arti (D2). The deed further stated that the daughters shall be the absolute owners of the share allotted to them, and that Kavi Kumar and Savitri Devi had thereby waived all their rights in the portion allotted to the said two sisters. The deed,- after reciting the previous dispute leading up to the award and the decree arising out of it (in which the first party was Savitri Devi, the second party was Kavi Kumar, and the third and fourth parties were Arti and Bharti)- recorded as follows:

“AND WHEREAS the sole arbitrator made an award which was accepted by the parties and was ultimately made a decree of the court.

AND WHEREAS the parties having accepted the award and the decree of the court, are in possession of the respective shares as allotted by the decree of the court.

And Whereas parties one and two are residing in their respective shares in the house, difficulty may arise in future in respect of parties Three and Four.

And Whereas all the parties as to this deed realise that the parties Three and Four may experience difficulty in future and they therefore approached the First and Second parties to agree to an arrangement, by way of family settlement for providing additional source of income to parties Three and Four and they have very generously agreed to the following arrangement for the benefit of parties Three and Four:

Wherefore, all the parties to this deed of family settlement have agreed to make the following provision for the benefit of parties Three and Four:-

- 1. The top portion of the house, the terrace, on 03/13-B, Asaf Ali Road, New Delhi, which belongs to party No. Two*

subject to the life interest of party No. One, shall be divided into two parts as follows:

The First part, that is to say between the staircase and facing the main Asaf Ali Road (Front Portion) measuring approximately 1200 sq. Ft. should be allotted in absolute right to Miss. Arati Bhargava, Party No. Four. And the rear half that is to say between the staircase and the back of the building (Back portion) measuring approximately 1165 sq. Ft allotted in absolute right to Ms. Bharati Bhargava, party No. Three.

- 2. Parties Three and Four will enjoy the respective allotted portions as aforesaid as absolute owners.*
- 3. Parties Three and Four will have the right to use the property in any way convenient to them including the right to build upon their respective portions.*

The parties one and two have hereby waived whatever rights they had or have in future in the portions allotted to the parties Three and Four as aforesaid.

All the parties to this deed have agreed to the aforesaid terms of this deed for family settlement after considering all the pros and cons, with a view of removing the difficulty felt by the parties Three and Four.

The value of this deed of family settlement is put at ` 5000 for the purpose of registration.”

9. The plaintiffs – who filed the suit, on 25-09-2000- claimed that D-2 (Bharati) married one of her colleagues while in London in 1977, without incurring any conventional marriages expenditure and thereafter returned to India. Her husband was well settled in life being the only son in his family (besides one sister) which owns moveable and immovable properties of considerable value in Mumbai and Hyderabad. Arti, the D-1 preferred to

remain single. She is a senior journalist working with the Hindustan Times since May 1984 and holds huge deposits. The suit alleges that she got her name added to the Bank deposits and accounts of Savitri Devi and appropriated to herself all the money left by her. Besides this, she appropriated to herself a large range of expensive items of furniture, jewelery and clothing etc, in fact everything that her mother had acquired and saved in her life time. The plaintiffs contended that after the arbitral award (which was made a rule/decreed of Court) there was nothing left undivided which could have been the subject matter of a family arrangement The suit further alleged that:

“In 1983 defendant 1 and 2 and Mrs. Savitri Devi Bhargava entered into a criminal conspiracy to grab the terrace of the second floor on he plot NO. 3-13-B, Asaf Ali Road, which had fallen to the share of Mr. KK Bhargava subject to life interest of Mrs. Savitri Devi Bhargava to possess and enjoy the same during her life time. the instigation having come from defendants 1 and 2 Mrs. Savitri Devi Bhargava made misrepresentations about the extent of her rights and powers in the terrace rights of Mr. KK Bhargava and perpetrated fraud by exercise of undue influence and even coercion on him as to be detailed hereinafter, and got his signature on typed draft of family arrangement dated 9th May 1983, which had been got prepared through an advocate known to defendant No.1

According to the alleged deed of family arrangement, the terrace on the second floor of property on plot no. 3/13-B Asaf Ali Road, New Delhi, which was the absolute property of Mr. KK Bhargava subject only to the life interest of Mrs. Savitri Devi Bhargava to possess and enjoy during her life time was split up into portions measuring 1200 sq. feet in the front and 1165 sq., ft on the hind for defendants 1 and 2 respectively, with right to posses and enjoy and raise such construction as sanctioned for the benefit of he defendants 1 and 2 may

experience difficulty in future. Some thing patently false, frivolous and them.

13. The aforesaid alleged family arrangement is not a family arrangement at all in the eye of law. It is void, nonest and ineffective on the undisputable rights acquired by Mr. K.K. Bhargava and declared by the Hon'ble High Court of Delhi and after his untimely demise in 1993, vested in the plaintiffs as only legal heirs representative..."

10. The plaintiffs also alleged that in 1984, when Savitri Devi was seventy years, a chronic diabetic and heart patient, she actually suffered two heart attacks during the period from 1984 to 1986 and remained in the National Heart Foundation, an institute of repute, in East of Kailash New Delhi at the cost of Kavi Kumar, she was under the undue influence of the sisters especially D-1 who was always scheming and planning to grab the properties (of Kavi Kumar) by using the mother as a tool. On 22nd July 1984 D-1 got a fictitious lease deed prepared purporting to be executed by her mother in respect of the first floor and the *barasati* floor of house No. F- 15-16 Nizamuddin West, on monthly rental of a ridiculous and repulsive figure of Rs.500/- against the then prevailing market rent of more than Rs.15,000/- per month in her favour through *ex-parte* hands and got it signed by her mother but kept it as a closely guarded secret. It came to notice only in September 1990 after the demise of Savitri Devi Bhargava when D-1 secured an *ad-interim ex-parte* injunction order against her brother in this Court restraining him from dispossessing her from the floors of the Nizamuddin House by mis-stating facts, since Savitri Devi's life interest had ended with her death on 7th March 1990. Thereafter, she delayed the proceedings of that suit in several ways including forging of documents containing fictitious admissions of Kavi Kumar that she was a

tenant on payment of Rs.500/- per month in respect of the first and *Barsati* floors and that the said tenancy propounded by her was protected by the provisions of the Delhi Rent Control Act, 1958. On these pleadings, the plaintiffs sought a decree for possession and *mesne profits*. The suit impleaded the tenants, because they had been let into the portions which had fallen to the share of the sisters. The relief sought against them too was a decree for possession in respect of the concerned portions under their occupation.

11. The daughters contended, in their written statements, that by a Family Arrangement between their mother, their brother (predecessor in interest of the plaintiffs,) and themselves, they were given portions of terrace floor demarcated in that deed (family arrangement). The sisters argued that the predecessor in interest of the plaintiffs was privy and party to the arrangement with respect to the terrace and it was voluntary and they cannot be dispossessed of the same after having invested their resources therein and having enjoyed the same all these years as owners thereof. The preliminary objections have also been taken with respect to the valuation of the suit as well as to the jurisdiction of the civil court. They also urged to having acquired ownership by adverse possession. They contend that the plaintiffs are not entitled to any of the reliefs claimed in this suit and that the suit was time barred (to say this, it would appear that the sister's case was that the suit, for questioning the legality of the settlement was barred by limitation, as it was filed 7 years after the death of Kavi Kumar, who expired in 1993. Savitri Devi had died in 1990) .

12. The other defendants' (D-3 and D-4) plea is that they are tenants in occupation of respective portions under D-1 and D-2 respectively and they are not concerned with dispute, if any between their landlords and the plaintiffs and they cannot be called upon to vacate their respective premises or to pay any damages to the plaintiffs.

13. After considering the pleadings, the Trial Court framed the following issues:

- 1. Whether the document dated 9th June, 1983 relied upon by defendant no. 1 and 2 is not a family arrangement as recognized by Hindu law and marriage?*
- 2. If Issue no. 1 is found not affirmative whether the said family settlement is initiated by conspiracy and fraud, undue influence and action etc as alleged in the plaint?*
- 3. Whether the suit is barred by time?*
- 4. Whether terrace on second floor was included in the judgment and decree of suit no. 477 decided on 15th May, 1975 by the Hon'ble High Court of Delhi?*
- 5. Whether defendant no. 1 and 2 were estopped from taking the contrary plea mentioned in Issue 4?*
- 6. Whether construction on the terrace was made by defendant no. 1 and 2 at their expense, if so it effects on plaintiff?*
- 7. Whether defendant no. 1 and 2 and defendant no. 3 and 4 are liable to pay damages to plaintiffs, if so for what amount?*
- 8. Whether the suit is not correctly valued for the purposes of court fees and jurisdiction?*
- 9. Whether this court has jurisdiction to try the suit?*
- 10. Whether defendant no. 1 and 2 have become owners of the property in possession by adverse possession and whether this plea is available to them?*
- 11. Whether para no. 6, 10, 11 and 14 are liable to be struck down from the pleadings in view of Order 6 Rule 16 CPC?*

12.Relief.

14. The first plaintiffs, examined herself; the two sisters, D1 and D2 examined themselves as witnesses to support their case. Ajay Sanghi (D-3) examined himself, and for D-4, one T. C. Chandel was examined. After considering the arguments and the material on record, the Trial Court decreed the suit in favour of the plaintiffs. Issue 1, 3, 4, 5, 6, 8, 9 and 10 were answered in favour of the plaintiffs. Issue 7 and 11 were answered in the affirmative. The Trial Court held that the terrace of the Asaf Ali Road property was given by Kavi Kumar to his two sisters as a license. It was reasoned that since the sisters had known and understood that the suit property belonged to him, there was no question or any possible dispute concerning the title to the suit property- being the basis of a family arrangement. The Trial Court held that since Issue No.1 had been answered to the effect that the family arrangement was not recognized under Hindu law, there was no need to make a finding on Issue 2. The relevant findings of the Trial Court are as follows:

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24. The certified copy of the decree in the partition suit No. 477/1974 is Ex. C-7 and C- 6, the judgment on the basis of which the decree is drawn up is Ex. C-5 the award on the basis of the which the suit was decree is Ex. C-4 Ex. C-3 is the certified copy of the written statement of defendants 1 and 2 in that suit wherein they are defendants 2 and 3. The certified copy of the written statement of defendant No.1, who was the mother of the plaintiff and defendants 2 and 3 is Ex. C- 7 Ex. DW 2/ P1 is the certified copy of the plaint in the partition suit from the aforesaid documents and in particular the certified copy of the judgment and the decree there is no scope for any argument that any part of the suit property situated at Asaf Ali Road, was left undivided. There was no third floor as such

when the decree was drawn up and it was for that reason only that the terrace floor as it is now being described was actually a part of the second floor of the building which fail to the share of predecessor in interest of plaintiffs. I have no hesitation, therefore, to hold that the terrace on the second floor of the property situated suit has been filed was definitely included in the judgment and decree of the suit no 477/74 decided on 15.5.75 by the Hon'ble High Court of Delhi. This issue is, therefore, answered in affirmative.

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28. In view of my findings on issue no. 4 above, Kavi namely the brother of defendants 1 and 2 was the absolute owner of the suit property by virtue of the decree in the partition suit on 15.05.1975 and was clearly understood by all the parties to that suit thereafter as well and in any case atleast till 9th June 1983 there was no suit by any of the parties to that partition suit seeking to re open the decree in the circumstances in which it was voluntarily suffered by all the parties to the partition suit.

29. As on 9th June 1993 when the impugned arrangement, which is the subject matter of controversy in the present suit, was arrived at, the document itself speaks as to what was understood by the parties as on 09.06.1983. The document in question namely Ex. PW1/ DX, which is also exhibited as Ex. C- 8, clearly records that the top position of the house, the terrace, on the Asaf Ali Road, property belongs to party No. 2 and the party no.2 is described as Kavi Kumar Bhargav namely the brother of the defendants 1 and 2. Thus, there is no scope for argument that as on 9.6.83 the parties to the document of that date had any illusion as to who owned the second floor including the terrace of the second floor and it was clearly understood by defendants 1 and 2, their brother and their mother as well that the property belonged to Kavi.

30. By virtue of the said document there has been no transfer of any interest in the immovable property to defendant 1 and 2 within the meaning of the term transfer of property under the transfer of property Act. 1887.

31. *This document can only be construed to be a licence, namely a permission for Kavi to his two sisters Arti and Bharti, to do something which, but, for this permission would have entailed civil and penal consequences it is pertinent that Smt. Savitri Devi purports to give nothing by way of this document and her presence in the document appears to be a facilitator for the concession from her son to her daughters. Defendants 1 and 2 were, therefore permitted to enjoy the fruits, if any, from out of the terrace floor so long as the aforesaid concession subsisted which this court considers to be nothing more than a licence. Being a licence by the very nature of it the same was revocable at any time during the lifetime of the grant or namely the predecessor in interest of the plaintiffs and after his death by the plaintiffs and the filing of the present suit is a stick towards the recall of the aforesaid arrangement.”*

15. The present appeals were preferred, by the defendants; the plaintiffs filed an appeal insofar as the Trial Court denied *mesne profits*. During the hearing of these appeals from the impugned judgment, this Court, - on an application made, by its order dated 25-8-2004, remanded the matter with a direction that the Trial Court should return its finding on Issue No. 2 (i.e. “*whether the said family settlement is initiated (sic vitiated) by conspiracy and fraud, undue influence and action etc as alleged in the plaint*”). By order dated 24.9.2004, the Trial Court (after such remand) answered the issue in favour of the defendants, holding that the plaintiff was unable to prove that the family settlement was vitiated by conspiracy and fraud, undue influence and action etc as alleged in the plaint. The relevant findings of the Trial Court’s, on this aspect, are as follows:

“PW-1 Smt. Madhur Bhargava is wife of Shri. K.K. Bhargava. She deposes that her mother in law Smt. Savitri Devi Bhargava knew number of influential people (persons) in Delhi and Shri K.K. Bhargava used to shiver under her

threats specially at the time of making so called family arrangement. Mrs. Savitri Bhargava had in the presence of witness and otherwise repeatedly been saying not to talk about this so called family settlement to her father (witnesses' father) because in case Shri. K.K. Bhargava and the witness spoke to the father of the witness about this, she (Mrs. Savitri Bhargava) would reopen the case and put both the properties in litigation forever. Her husband was left with no choice but to scumble (sic succumb) to her wishes.

7. In cross examination, it is denied that no coercion or fraud was applied by Smt. Savitri Bhargava in the execution of the family settlement.

8. It is worth noting that PW1 Smt. Madhur Bhargava, in cross examination, deposes that the family settlement was signed by Shri K.K. Bhargava before the Sub-Registrar. Document Ex. PW1/DX bears the signatures of Shri. K.K. Bhargava at point A on all the pages. Further PW1 Smt. Madhur Bhargava deposes that her husband is B.A. Hons and LLB from Delhi University. After completing his education he joined the IPS cadre of police and he rose to the post of Suptd of Police and subsequently to Inspector General of police. It is worth noting that PW1 deposes in her evidence that her husband filed a suit in 1994 against his mother and sisters.

9. In view of the admission by PW-1 about the signatures of Shri. K.K. Bhargava on all the pages of the deed of family arrangement dated 9.9.1983, in view of educational qualification of Shri. K.K. Bhargava and also in view of the fact that Shri K.K. Bhargava filed a suit for partition against his mother and sisters, I am of the considered view that family settlement was not initiated by conspiracy, fraud, undue influence and action, etc as alleged in the plaint. Accordingly, issue No. 2 is decided against the plaintiffs and in favour of defendant Nos 1 and 2."

16. The plaintiffs had complained that the order deciding Issue No. 2 was made without hearing them. They filed CM No. 13191/2004, i.e objections against the order, and sought that it be set aside. Later, they

moved an application (CM. 13877/2004) stating that the Issue No. 2 itself be struck off. It was contended, by the plaintiff, in the said latter application (CM 13877/2008, in their appeal RFA No. 732/2003, which was affirmed by Ms. Madhur Bhargava) that:

“ The Plaintiffs-Appellants herein moved CM No. 13191 of 2004 praying that proceedings may be set aside in the entirety and fresh finding be procured through some other learned Additional District Judge. This application was taken up by this Hon’ble Court and during the course of hearing of RFA No. 855 of 2003 query was made if it was really desired to have a fresh finding to which it was submitted on behalf of the Appellants that Issue No. 1 alone required being framed in as much as Kale’s case (supra) after review of a large number of decided cases 12 principles were enunciated at Page 813 out of which the first two, are:

- (i) That the Family settlement must be a bona fide one as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;*
- (ii) The settlement must be voluntary and should not be induced by fraud, coercion or undue influence.*

The absence of vitiating elements like fraud and undue influence is vital and essential for holding Family Settlement as valid. It is something implicit and it was on this consideration that issue No.2 was held to be redundant in view of the finding recorded in the affirmative under issue No.1. In the peculiar facts and circumstances of the case where right to construct over the terrace of the floor of the property was not included in the grant nor procured subsequently there could be no giving or taking of right /property.

In the premises, it is humbly prayed that the Finding recorded by the learned Trial Judge under issue No.2 be upheld and issue No.2 be taken as having been answered as stated in the

impugned judgment or appropriate order as may be deemed just and expedient may be pass to keep the record straight.”

17. During the hearing of the appeal, arguments were addressed on all issues except Issue 8, 9 and 11. This court proposes to record its findings on the basis of the arguments addressed by the parties.

Analysis and findings

Issue 1: Whether the document dated 9th June, 1983 relied upon by defendant no. 1 and 2 is not a family arrangement as recognized by Hindu law and marriage?

18. Learned senior counsel for D1 and D2, (the appellants in RFA 855/2003) Mr. Jethmalani contended that the family arrangement was valid and enforceable under law. He placed reliance on *Sahu Madho Das and Ors. v. Mukand Ram and Anr.*, AIR 1955 SC 481 *Ram Charan Das v. Girjanandini Devi and Ors.* AIR1966 SC 323; *Kale and Ors. v. Deputy Director of Consolidation and Ors.*, AIR 1976 SC 807. It was urged that these cases recognize love and affection as a sufficient cause for an arrangement. It was asserted that the concept of family settlement/arrangement is not necessarily restricted to Hindu law. Counsel submitted that the Trial Court fell into an obvious error in holding that once division took place as a result of an award, which resulted in a decree, the parties knew their shares, took charge of it, leaving no scope for a future family arrangement. It was submitted that the award in substance directed partition by metes and bounds; it left no grey area for future disputes. In these circumstances, the question of the parties entering into a settlement in regard to their disputes, did not arise.

19. Counsel for the plaintiffs, on the other hand, contended that after the partition pursuant to the decree in the 1975, there was no joint family which had ceased to exist. Furthermore, argued Counsel, that there was no Hindu family in 1983 of which Kavi Kumar, D1 and D2 were members. Therefore, there was no question of entering into any family arrangement. It was argued that at the relevant time in 1983, D1 and D2 were well-off, and were not likely to experience any financial difficulty. None of the parties, i.e Savitri Devi, or D-1 and D-2 had any antecedent title in respect of the portions of the property that was subject matter of the family arrangement. Savitri Devi no doubt, had a life interest, but on account of the award and decree, the daughters had none. On the other hand, Kavi Kumar had title – subject to his mother’s interest. Therefore, in the absence of any dispute or claim, or antecedent title, or a potential dispute over a matter left out from the award and decree, which effected a complete partition, there could be no valid and binding family settlement, as claimed by the sisters, that conferred any interest upon them. For their arguments, the plaintiffs placed reliance on *Ramesh Chand v. Raj Kumar* JT 2002 (5) SC 69, *Potti Lakshmi Perumallu v. Potti Krishnavenamm* AIR 1965 SC 825. It was held in the latter decision (*Potti Lakshmi Perumallu*) that:

“No doubt, a family arrangement which is for the benefit of the family generally can be enforced in a court of law. But before the court would do so, it must be shown that there was an occasion for effecting a family arrangement and that it was acted upon. It is quite clear that there is complete absence of evidence to show that there was such an occasion or the arrangement indicated in the will was acted upon. The letter Ex. B12 upon which reliance was placed before the High Court on behalf of the defendant has not been found by it to be

genuine. The defendant had also pleaded that the provisions under the will were given effect to but no satisfactory evidence has been adduced to prove that the plaintiff was in enjoyment of the properties allotted to her under the will.”

In *Ramesh Chand*, the Supreme Court held that:

“16. Coming to the question, whether the document exhibit-P-4 can be said to be a family arrangement/family settlement we are of the view that in stricto sensu it cannot be said to be a family arrangement/settlement for the simple reason that all the members of the family are not signatories to the document. Nothing has been indicated therein that the arrangement was purportedly to settle any existing dispute or apprehended dispute amongst members of the family.”

20. This Court has considered the arguments. The Supreme Court has, starting from the decision in *Madho Das* (supra) to *Kale* (supra) and subsequently in *Hansa Industries (Ltd) v. Kidar Sons (P) Ltd.* 2006 (8) SCC 531, has consistently ruled on the sanctity of family arrangements. The following extracts from *Kale* (supra) briefly sums up the position:

“9.... A family arrangement is 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. The Court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal

to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.

10. In other words to put the binding effect and the essentials of a family settlement in a concretized form, the matter may be educed into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangements may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in Immovable properties and therefore does not fall within the mischief of Section 17(2) (sic) (Section 17(1)(b)?) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property 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;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

13. In *Sahu Madho Das v. Mukand Ram* AIR 1955 SC 481 , this Court appears to have amplified the doctrine of validity of the family arrangement to the farthest possible extent, where Bose, J. Speaking for the Court, observed as follows:

“It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary. But, in our opinion, the principle can be carried further and so strongly do the Courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid in anticipation, future disputes which might ruin them all, and we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and simple from him or her, or as a conveyance for consideration when consideration is present.”

13. In *Ram Charan Das v. Girjanandini Devi* [1965]3SCR841 this Court observed as follows:

“Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family. The word 'family' in the context is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute.... The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another. That consideration having been passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter. ” (emphasis supplied)”

This Court also recollects the ruling in *Maturi Pullaiah and Anr. v. Maturi Narasimham and ors.* (AIR 1966 SC 1836) that even if there was no conflict of legal claims but the settlement was a *bona fide* one it could be sustained by the Court. Similarly it has also held that even the disputes based upon ignorance of the parties as to their rights were sufficient to sustain the family arrangement. In this connection the Court observed as follows: -

"It will be seen from the said passage 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.

* * * * *

Briefly stated, though conflict of legal claims in praesenti or in future is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family...”

The crucial proposition in *Kale* on this aspect may once again be underlined, namely that *“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.”*

21. In the present case, it is clear that the parties to the family arrangement had antecedent claim to interest/title in the suit property. Kavi Kumar claimed that the properties were to be held in trust by his mother, and sought partition. The previous suit led to a reference to an Arbitrator, an award, which was embodied in a decree of court. That decree no doubt, spelt out the rights of parties. The subject matter of the family settlement however was not only Kavi Kumar’s share. His share, (first floor of the Asaf Ali Road property and absolute title to the second floor subject to his mother’s life interest) remained undisturbed. The position remains that antecedent interest in the suit property was held amongst the parties to the family arrangement only and none else. The decision in *Ram Charan* clarifies that the expression “family” would have to be understood broadly. Merely because there had been partition of properties between the parties earlier would not imply that the same parties (mother and her children) would not constitute a family for the purposes of executing a family arrangement. It is also clarified that the concept of family arrangement is not exclusive to Hindu law. As explained in the extract quoted above, their purpose is to avert/compromise disputes, present or future, and to maintain harmony

within the members of the family. This being so, there exists no reason why the same would be applicable only under Hindu law. *Kale* clarifies beyond any doubt that the most important ingredient is the existence of *bona fides* of the parties to the family settlement. If this were to be satisfied, 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*”.

22. The Plaintiffs relied on two decisions, *Ramesh Chand* (supra) and *Potti Lakshmi Perumallu* (supra). The former case held that before the court enforces a family arrangement, it must be satisfied that there was an occasion for effecting a family arrangement, and that it was acted upon. The plaintiffs, during the appeal, contended that the purported reason (of the family settlement of 1983) being amelioration of the financial position of D1 and D2, was actually not correct. On this score, this is what the recitals in the document had to say:

“And Whereas parties one and two are residing in their respective shares in the house, difficulty may arise in future in respect of parties Three and Four.

And Whereas all the parties as to this deed realise that the parties Three and Four may experience difficulty in future and they therefore approached the First and Second parties to agree to an arrangement, by way of family settlement for providing additional source of income to parties Three and Four and they have very generously agreed to the following arrangement for the benefit of parties Three and Four..”

23. The plaintiffs argued that the provision made in the award and decree, which was understood and accepted unreservedly by the sisters implied that there was no occasion for them to complain of inadequacy of the portions or shares falling to them. Furthermore, after the decree was drawn, and parties took charge of their shares, there was nothing to establish that the sisters were facing hardship, or financial constraints, to lead the parties to agree to the family arrangement. There was no new development that resulted in the basis of the award being rendered iniquitous or onerous to the sisters, requiring the family to revisit their shares. They too did not lead any evidence on this point. Consequently, the court should go behind the document and see that it was not *bona fide*.

24. This Court discerns a palpable fallacy in the argument of the plaintiffs. The law governing the binding nature of family settlements, as noticed earlier, is clear that judges would be circumspect to place themselves in the shoes of the family members who enter into such deeds or arrangements. Therefore, facts such as adequacy or otherwise, of the shares given in a previous arrangement, whether final consensually or through decree of court, cannot be gone into. In any event, the plaintiffs, if they were so minded, had the opportunity of leading evidence to show that the document was a sham, and that the apprehension of future difficulty or hardship, arising from the award, to the sisters, was not *bona fide*. Nothing worthwhile in the form of objective material was brought on record. Therefore, it cannot be said that the premise of the family settlement, i.e that the shares given to the sisters could possibly lead to their financial difficulty during later years, was baseless or unfounded. This Court cannot therefore engage in a fact finding exercise on the likelihood of the

difficulty, had there been no family arrangement in which D1 and D2 were made beneficiaries. The Court is mindful of the position that family arrangements may be executed for purposes other than settling present or future legal disputes. Even bringing harmony in a family, doing justice to its various members, and avoiding, in anticipation, future disputes which may ruin them all, are accepted and recognised purposes of a family arrangement (*Sahu Madho Das*). The consideration for such a settlement, if one may put so, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another. Keeping this in mind, this Court is of the opinion that the observation made in *Ramesh Chand* does not assist the plaintiffs.

25. In the second decision relied upon by the plaintiffs, i.e. *Potti Lakshmi Perumallu*, the Court had observed that the joint-ness in the Hindu family comes to an end when a partition is proved. This observation was made in a case where the plaintiffs-appellants claimed partition. The defendants' case was that there had already been a partition between the parties, and therefore, the suit was maintainable; their view being accepted by the courts till the appeal before the Supreme Court. In this Court's opinion, the observations in *Potti Lakshmi* cannot be made applicable to the case at hand since the observation there was made specifically with regard to a setting where upon partition, the joint nature of the family, ceased. A prior partition, as in this case, would not debar the parties – as long as the settlement is *bona fide* – from anticipating a future conflict. The matter could also be looked at in another way. In the facts of the present case, there was no mention of the rights of any of the parties regarding terrace

rights (over the second floor of the Asaf Ali Road property). Seen from the backdrop of the circumstance that the sisters were allotted the basement and first floor of the said property, and the son was given first floor rights absolutely and the second floor, subject to his mother's life interest, besides the Nizamuddin property, there is no reason to doubt the *bona fides* of the apprehension felt by the sisters as well as the need for additional income. At any rate, the Court cannot substitute its judgment, to conclude whether such needs were justified or otherwise. These are, at the best of times, left to the wisdom of the parties concerned.

26. Further, *arguendo*, assuming that the family arrangement were invalid, it was argued on behalf of D1 and D2 that they had become owners of the suit property. In support of this argument, it urged that the suit property had become absolute property of Savitri Devi since she had been granted a life interest in the second floor and the said interest stood enlarged due to operation of section 14, Hindu Succession Act, 1956. Reliance was placed on the decision in *V. Tulasamma and Ors. v. Sesha Reddy (Dead) by Lrs.* [1977] 3 SCR 261. The plaintiffs, in response to this argument, asserted that the case fell within the ambit of sub-section (2) of section 14, Hindu Succession Act.

27. Section 14 of the Hindu Succession Act reads as:

“14. Property of a female Hindu to be her absolute property

(1) Any property possessed by a Female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation: In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

28. It is undeniable that the decree in the 1974 suit created a life interest in favour of Savitri Devi in the second floor of the Asaf Ali Road property. The terrace of the suit property at that time of the award in the 1974 suit was not expressly provided for. It could therefore be argued that it was left undivided as joint property of Kavi Kumar, Savitri Devi, and the sisters. In this light, the question whether or not the estate of Savitri Devi (in respect of the suit property) stood enlarged by virtue of section 14 of the Hindu Succession Act, 1956 does not arise. This court is mindful that this aspect was not explored in detail, or argued elaborately and therefore rests its findings on the above reasoning.

29. In view of the above discussion, it is held that the first issue has to be answered in favour of the first two defendants, i.e the sisters, and against the plaintiffs. The issue is answered accordingly; the findings of the Trial Court, on this score are set aside.

Issue 2: If Issue no. 1 is found not affirmative whether the said family settlement is initiated by conspiracy and fraud, undue influence and action etc as alleged in the plaint?

30. At the outset, the Court hereby records that the counsel for the plaintiffs did not advance arguments on this issue, though a faint attempt was made to say that the findings of the Trial Court recorded after remand cannot be sustained. The counsel for the sisters, on the other hand, pointed out the pleadings in 13877/2008 stating that the Issue No. 2 itself be struck off. The Court nevertheless, proposes to deal with the issue, on the basis of the pleadings and the materials on record.

31. The 1983 family arrangement was challenged on the ground that it was induced by misrepresentation, fraud, coercion and undue influence. This family arrangement was entered into between the mother, the son (Kavi Kumar) and his sisters, under which the former two parties waived their share/rights in the terrace in favour of the latter two parties, who were made the absolute owners of separate parts (front and rear) of the terrace. The basis for the waiver, as per the Family Arrangement, was that Kavi Kumar and his mother (Savitri Devi) realized that D1 and D2 may experience difficulties in future, and thus intended to provide additional source of income to them.

32. PW-1 Smt Madhur Bhargav, wife of Kavi Kumar, deposed during the trial of the suit that Savitri Devi used to know several influential people, and Kavi Kumar used to shiver under her threats, especially at the time when the family arrangement was made. She further stated that due to Savitri Devi's threats, her husband was left with no choice but to succumb to her wishes. In her cross-examination, she denied that any coercion or

fraud was applied by her mother in law in the execution of the family arrangement. She identified the signature of her husband, Kavi Kumar, on the family arrangement at all the pages. Undeniably, that Kavi Kumar completed his BA (Hons) and LLB from Delhi University, and had joined the IPS cadre rising to the post of Superintendent of Police, subsequently to Inspector General of Police. It is also an admitted fact that in 1994, he filed a suit against his mother and sisters. It is also a matter of record that Savitri Devi died in 1990, and Kavi Kumar lived for three years after his mother's death but there was no challenge made to the validity of the family arrangement during his lifetime. D1 and D2 relied on these facts to discredit the allegations made by the plaintiffs.

33. The plaintiffs, on the other hand, argued that both D1 and D2 had Marriage Insurance Policies in the sum of Rs. 35,000/- each which they duly realized upon attaining maturity. The Plaintiffs re-iterated their allegations in the suit that both D1 and D2 had been gainfully employed after their graduation as journalists. It was also argued that in 1984, Savitri Devi had been a heart patient, and suffered two severe heart attacks during 1984-1986. It was further pointed out even if Kavi Kumar did sign some document, the same was done under immense pressure and undue influence from his mother whom he had always held in awe since childhood. It was emphasized that the son, Kavi Kumar had put his signature believing that his rights which were absolute would, on the demise of his mother, not be effected. Lastly, it was pointed out that after the mother's demise, Kavi Kumar requested D1 and D2 to vacate the third floor; they evaded for some time, and eventually D1 filed a suit for injunction to restrain Kavi Kumar

from evicting her contending that she was a lawful tenant (of the mother by virtue of Lease Deed dated 27.7.1984)

34. The burden of proving invalidity of a family arrangement lies on the party who alleges it; in this case it lay upon the plaintiffs. Kavi Kumar was an educated person, who joined the IPS cadre and was promoted to the post of Inspector General. Moreover, during his lifetime the family arrangement was never challenged on the ground of being induced by fraud, undue influence, misrepresentation or coercion. Previously, Kavi Kumar had instituted the 1974 suit against his mother. Even PW-1 Smt Madhur Bhargava identified his signatures on the family arrangement. Had he been aggrieved by the terms of the family settlement, there was no reason why during his life time, he did not impeach it. Instead, he accepted it, and expired 10 years after its execution, in 1993. It is a settled principle of law that even pleadings in relation to fraud, undue influence or misrepresentation have to be specific; the party alleging it also has a responsibility of proving it. Order VI, Rule 4 of the Code of Civil Procedure reads as under:

"4. Particulars to be given where necessary In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

The Supreme Court underlined this requirement, in *A.C. Ananthaswamy v. Boraiah* [(2004) 8 SCC 588], in the following observations:

“Fraud is to be pleaded and proved. To prove fraud, it must be proved that representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. The level of proof required in such cases is extremely higher. An ambiguous statement cannot per se make the representor guilty of fraud. To prove a case of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation. [See: Pollock & Mulla on Indian Contract & Specific Relief Acts _ (2001) 12th Edition page 489].”

35. In the present case, there was no specific pleading how the plaintiffs’ predecessor in title, Kavi Kumar was coerced, or fraud played on him. Neither was there any such pleading in regard to those vitiating circumstances as far as Savitri Devi was concerned. Indeed, the plaintiffs’ case was that Kavi Kumar was prevailed upon to execute the family arrangement. Therefore, to say that Savitri Devi too was subjected to undue influence or coercion would have been inconsistent. In any case, the suit alleges that Savitri Devi was a chronic diabetic, and was hospitalized in the National Heart Institute, in 1984, which is after the family arrangement was entered into. During the evidence too, no material to establish that either Kavi Kumar was prevailed upon, or coerced, or undue influence was brought to bear on him, or that he was the victim of a fraud, was brought on record. In light of these circumstances, the Court is of the opinion that the plaintiffs did not discharge their burden of proving that Kavi Kumar (the first plaintiff’s husband and the father of the other plaintiffs) was made to enter into the family arrangement under coercion, fraud, misrepresentation or undue influence.

36. The plaintiffs had sought to challenge those findings, on the ground *inter alia*, that they were not given a hearing on this aspect after the remand. This is one of the important grounds urged in CM 13191/2004. It was contended, by the plaintiff, in a subsequent application (CM 13877/2008, in their appeal RFA No. 732/2003, which was affirmed by Ms. Madhur Bhargava), *inter alia*, that:

“...The absence of vitiating elements like fraud and undue influence is vital and essential for holding Family Settlement as valid. It is something implicit and it was on this consideration that issue No.2 was held to be redundant in view of the finding recorded in the affirmative under issue No.1. In the peculiar facts and circumstances of the case where right to construct over the terrace of the floor of the property was not included in the grant nor procured subsequently there could be no giving or taking of right /property.

In the premises, it is humbly prayed that the Finding recorded by the learned Trial Judge under issue No.2 be upheld and issue No.2 be taken as having been answered as stated in the impugned judgment or appropriate order as may be deemed just and expedient may be pass to keep the record straight.”

This Court would be justified in concluding the above issue, regarding lack of hearing on the basis of the above averments alone. Yet, in order to satisfy its conscience, the court examined the Trial Court records, *especially* the proceedings after remand, in 2004. The order sheet of the Trial Court discloses that after receipt of this court’s order on 10-9-2004, the matter was directed to be transferred to another judge. The District Judge, on 14th September, 2004, was directed to be listed back to the concerned Additional District Judge, who on the next day, i.e 15th September, 2004, initially recorded that none of the parties were present. Later, the same day, the third

plaintiff, Ms. Shraddha Bhargava (who is also a counsel) appeared; the Trial court directed the office to receive back the file from this court, and listed the suit for compliance of his directions, the next day, i.e 16th September, 2004. The suit was again listed on 16-9-2004. That day, the plaintiff was unrepresented; the matter was again listed on 20-9-2004. On the latter date of hearing, the plaintiffs were unrepresented. The court waited for the appearance of counsel for plaintiff and later heard arguments. The Court directed the matter to be listed for orders on 24th September, 2004. On that day, the order was pronounced. The plaintiffs were aware that the matter had been remanded for recording finding on Issue No. 2 (by the order of this Court dated 25-8-2004); the third plaintiff was in fact present, when the case was listed on 15-9-2004; the next date of hearing was made known to her. The plaintiffs chose not to appear on the subsequent dates of hearing, or ensure their appearance through counsel. In these circumstances, they cannot complain of denial of right to hearing.

37. This Court, consequently is in agreement with the finding of the Trial Court in the order dated 24.9.2004 that the plaintiffs were unable to prove issue No. 2. The said issue is accordingly answered against the plaintiffs, and in favour of the first two defendants/sisters.

Issue Nos 3: Whether the suit is barred by time?

Issue No.10 Whether defendant no. 1 and 2 have become owners of the property in possession by adverse possession and whether this plea is available to them?

Issue No. 6: Whether construction on the terrace was made by defendant no. 1 and 2 at their expense, if so it effects on plaintiff?

38. The sisters, D1 and D2 contended that the suit was barred due to limitation. this claim was based on firstly, the 1983 Family Agreement, and secondly, on their continuous and exclusive possession of the suit property. They contended that for a declaration that the 1983 family arrangement was invalid in law and therefore unenforceable, the limitation period was of only three years. Since the suit was filed much after the expiry of 3 years, it was barred by limitation. They urged that Article 59 of the Schedule to the Limitation Act applied. Additionally, it was argued that if Article 59 is assumed to be inapplicable, then Article 65 would be applicable, and thus, the suit was barred, nevertheless, as D1 and D2 had become owners of the terrace by way of adverse possession for more than 12 years. It was argued that it is an admitted position that the sisters took over possession of the suit property (ie the terrace to the Asaf Ali Marg property) in 1984, subsequently let it out to D3 and D4. Thus, it was asserted that the sisters, D1 and D2 have been in exclusive and continuous possession of front and hind portions of the suit properties respectively since 1984.

39. On the issue of limitation, the plaintiffs firstly contended that since the 1983 family arrangement was void *ab initio* (being induced by fraud, coercion, undue influence and misrepresentation), there was no need to seek a declaration to this effect. Thus, no limitation period would be applicable to such a suit. In this connection, reliance was placed on *Prem Singh v. Birbal* (2006) 5 SCC 353. Furthermore, relying on the decision *State of Maharashtra v. Pravin Jethalal Kamdar (dead) by Lrs.* AIR 2000 SC 1099, it was contended that when possession is taken under a void document, then suit for recovery of possession simpliciter can be filed, without the need to seek a declaration about invalidity of the documents. Moreover, even if such

relief of declaration is sought along with the relief of decree for possession, it would be governed by Article 65 and not Article 58. It was further contended that Kavi Kumar's right to sue for recovery of possession of the suit property arose only upon the death of Savitri Devi, on 7.3.1990 since during her lifetime, she had a life interest in it. To support this argument, plaintiffs placed reliance on *M.V.S. Manikayala Rao v. M. Narasimhaswami and others* AIR 1966 SC 470 stating that adverse possession begins only when the plaintiff becomes entitled to possession. To support the contention that Article 65 would apply to the case at hand, plaintiffs also relied on *Ramiah v. N. Narayana Reddy (dead) by Lrs.* (2004) 7 SCC 541. Lastly, in response to the defendants' claim of title based on adverse possession, the plaintiffs relied on *T. Anjanappa and Ors v. Somalingappa and Anr.* (2006) 7 SCC 570 to contend that the defendants were required to show by clear and unequivocal evidence that their possession was hostile to the real owner and amounted to denial of their title to the property claimed.

40. The suit from which appeals have been preferred was one for recovery of possession and *mesne profits*. The plaintiff's basis for recovery of possession has been that the title in the suit property vested in their predecessor-in-interest, Kavi Kumar. This title was based on the decree in the previous suit under which ownership rights over the second floor were conferred on him subject to the life interest of Savitri Devi, his mother. Thus, the question that arises is what, if any would be the period of limitation applicable for the present suit. It is pertinent to reproduce the relevant provisions:

“Limitation Act, 1963:

27. Extinguishments of right to property - At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

ARTICLE No.	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
59	To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him.
65	For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

Provisions of the Specific Relief Act, 1963.

“31. When cancellation may be ordered. (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such-officer shall not on the copy of the instrument contained in his books the fact of its cancellation.”

41. It is trite that to decide a question whether the suit is barred by limitation, averments in the plaint have to be read without looking into the defence. It is averred in the suit that Kavi Kumar was induced by coercion, undue influence, misrepresentation and fraud to enter into the family arrangement. A family arrangement is no doubt an agreement. Section 19 and 19-A of the Indian Contract Act, 1872 provide that an agreement consent to which is obtained by any of the aforementioned four means is voidable at the option of the party whose consent was so caused. Thus, the family arrangement was voidable, *in the terms of the pleadings in the suit*, at the option of Kavi Kumar. Section 31 of the Specific Relief Act provides for a relief of a cancellation of an instrument which is void or voidable. Article 59 restricts the period for cancelling an instrument as 3 years starting from the time of the plaintiff's knowledge of the facts entitling cancellation. Plaintiffs relied on the Supreme Court's decision in *Prem Singh* (supra) to contend that when a transaction/instrument is void *ab initio*, there is no need for a declaration stating so. However, the Court in *Prem Singh* also held that the Limitation Act would continue to apply in case of a plaintiff who, due to a void transaction, is not in possession of his property. It held that the Limitation Act would continue to apply since a right by reason of adverse possession may still be claimed. Here too, the facts present a similar situation. However, it must be noticed that the allegation that the family arrangement was induced by coercion, undue influence, misrepresentation and fraud, if assumed to be correct, causes the agreement (family arrangement) to be voidable at only Kavi Kumar's instance. The family arrangement would not become void *ab initio*. Therefore, the three year limitation period to get the family arrangement cancelled would still

apply. The plaint states that the cause of action first arose upon the death of Savitri Devi who had a life interest in the suit property. Thus, it can be assumed that Kavi Kumar had knowledge about the *voidability* of the family arrangement in 1990. The suit, which was instituted in 2000, was, thus, beyond the limitation period envisaged in Article 59, and therefore barred by time.

42. The plaintiffs relied on the decision in *Pravin Jethalal Kamdar* to contend that in such a case, the suit would be governed by Article 65, and not Articles 58/59. However, in that case, the transaction (a decree) in question was void, and considering that the Court held since same was a nullity, there was no need to seek a declaration about its invalidity. The Court concluded that instead of Article 58, Article 65 would apply. Thus, since the transaction therein was void, the case is of no assistance to the plaintiffs. In this case, the time from which the period begins to run would have to be determined. The suit property in 1984, when the sisters (D1 and D2) first took over possession (of the terrace) was either a joint property of the mother, Savitri Devi and her children, or its ownership rights belonged to Kavi Kumar subject to the life interest of the mother. Savitri Devi passed away in 1990. In both the cases, the intention of the sisters D1 and D2 would be relevant.

43. Interestingly, the plaintiffs aver, in the suit (Para 14) that during Savitri Devi's lifetime, after the family arrangement, the existing tenant, Sheri Daulat Ram Prem, vacated the portion over the second floor of the Asaf Ali Property. After this, state the plaintiffs,

“It would be sufficient to mention only one fact by way of demonstration that at or about the same time Defendant No. 2 let out the hind flat poorly built with constructed area of 550 sq. Feet and that too on the 3rd Floor at Rs. 5500/- per month with 10 per cent increase after every three years...”

The written statement of the sisters states as follows:

“14. The said family settlement settling the terrace of the said property in favour of the sisters was given effect to. The defendants No. 1 and 2 the charge of the respective portions assigned to them of the said top floor. They have been leasing out the property, realising rents, paying taxes and exercising all other incidents of ownership in the said suit property, right from 1983 till date peacefully, continuously and without any objection from anybody including the plaintiffs.

15. The plaintiffs owned the first and second floors of the said property. The terrace floor is above the second floor of the property. The assertion and exercise ownership rights in the terrace tops floor by the defendants No. 1 and 2 had always been in the knowledge of the plaintiffs.

16. Thus, the defendants No.1 and 2 categorically state that by virtue of the said registered family settlement Institute and by their brother, the husband of plaintiff no. 1 and the mother in 1983, they had become and continue to be the absolute owners of the portions of the suit property respectively allotted to them.”

PW-1, Ms. Madhur Bhargava, in deposition during cross examination, stated that:

“It is correct that M.G. Motors was inducted as tenant in the premises in suit by Arti Bhargav in the year 1986. It is also correct that the tenancy was created during the lifetime of Sh. K.K. Bhargav. My husband Sh. K.K. Bhargav raised an objection to the creation of tenancy by Arti Bhargav in the year 1986. No letter or notice was given by my husband to Arti Bhargav or to M.G. Motors objecting to the creation of tenancy in the year 1986. My husband did not initiate any

action objecting to the creation of tenancy...My husband raised objection to the creation of tenancy by Arti Bhargav with discussions to her..”

She further deposed that:

“ Mrs. Savitri Bhargava died on 7-3-1990. Mr. K.K. Bhargav expired on 29-5-1993. It is correct that the suit property was let out the defendant no. 04 during the lifetime of Savitri Bhargava with the consent and knowledge of Sh. K.K. Bhargav... I did protest against letting to defendant no. 04 after the death of Sh. K.K. Bhargav. I am not placed on record any document of protest against defendant no. 04 in view of whatever as stated above...”

The affidavit evidence of the sisters (D-1 and D-2) that they asserted ownership rights in respect of their portions of the terrace went unchallenged. In fact, during the cross examination of DW-1 (Arti) specifically she was asked whether the previous partition after the decree included ownership to the terrace; she deposed that such portion was not included. She also explained, later, in the cross examination, that the family arrangement was necessary because she had turned 31, and her mother was 70 and there was need for more income. The cross examination also shows that the value of the Nizamuddin Property at the time of partition (1975) was Rs. 1,25,000/- (it fell to the share of the brother) and the total value of the Asaf Ali Road property was a little more than Rs. 4 lakhs. DW-4, Ajai Sanghi, partner of the fourth defendant, stated that the said defendant was a tenant of the plaintiffs in the second floor, and had a tenancy in respect of the terrace portion of the third floor. Possession of the third floor premises by the sisters, during the lifetime of their mother and brother, (during which time even tenants were inducted and leases created afresh), clearly established that all these events were within the knowledge of the others.

This clearly amounted to asserting title. The leasing out of premises – unless by a lessee or person authorized by the owner to sub-lease or create an interest to third parties, is quintessentially an act of asserting ownership and title to the property; in this case, the two portions of the terrace. As to what are the necessary ingredients to prove adverse possession was explained thus, in *Karnataka Board of Wakf v. Government of India and Ors.* (2004) 10 SCC 779 by the Supreme Court:

“11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina AIR 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC 375 and D.N. Venkatarayappa v. State of Karnataka (1997) 7 SCC 567) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his

favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma : (1996) 8 SCC 128.”

44. In view of the above discussion, it is held that the suit for possession, on the basis that the family arrangement was void and inoperative, was clearly time barred. The defendants have also been able to establish that they enjoyed open, hostile and continuous possession in respect of the portions of the third floor/terrace of the Asaf Ali Road property, pursuant to the family arrangement of 1983. They could clearly assert – and have proved title by adverse possession. Issue Nos. 3 and 10 are answered in favour of the sisters, the first two defendants and against the plaintiffs. The findings in the impugned judgment and decree, to this extent, are set aside.

45. The discussion on issue No. 6 by the Trial Court and its findings were hinged largely on the findings recorded about legality and efficacy of the family settlement/arrangement. It held that the sisters did not prove that they had spent money and built the structures on the third floor.

46. In two affidavits in evidence dated 8th July 2002, affirmed by Arti and Bharti, respectively, they affirmed that the structures on the second floor had existed before the Plan for the area came into force and that they renovated or repaired the structure, as that had become dilapidated due to passage of time. This is to be seen in Para 30 (of Arti’s affidavit) and Para 28 (Bharti’s affidavit). The plaintiffs did not challenge the sisters’ assertion during cross examination. Even otherwise, the evidence on record suggests that tenants were inducted in the terrace portion as early as 1986, during the lifetime of both Savitri Devi and Kavi Kumar.

47. In view of the findings recorded regarding efficacy and legality of the family arrangement, and the discussion above, it is held that Issue No. 6 too has to be answered in favour of the sisters, i.e the first two defendants. The findings of the Trial Court on this issue are accordingly set aside.

Issue 4: Whether terrace on second floor was included in the judgment and decree of suit no. 477 decided on 15th May, 1975 by the Hon'ble High Court of Delhi?

Issue 5: Whether defendant no. 1 and 2 were estopped from taking the contrary plea mentioned in Issue 4?

48. The plaintiffs contended that the decree in the 1974 suit conferred the ownership rights over the suit properties to Kavi Kumar, subject to the life interest of Savitri Devi. Counsel for the plaintiffs contended that the subject matter of roof rights was unknown to the parties because the 1952 Lease entered into with the Central Government confined the grant (or the demise) to those portions. The sisters, D1 and D2 contended that the rights in the suit property were not specifically divided by the decree in the 1974 suit, and thus the suit property (of this suit) had remained the joint property of all four parties to the 1974 suit.

49. The 1974 suit resulted in an arbitral award in terms of which the properties in question were divided in specific terms to Savitri Devi, her daughters and her son. Savitri Devi was conferred life interest in the second floor of the Asaf Ali Road property, and after her death, the property was to devolve absolutely upon the son, Kavi Kumar. D1 was given ownership of the basement, D2 was made the absolute owner of the ground floor of the Asaf Ali Road property. The Nizammudin West property went in entirety to the son, Kavi Kumar. The award – (and consequently the decree arising out

of it), makes no mention of the terrace rights. However, the basis for the Arbitrator's decision was that the properties therein in question had been acquired for the common benefit of all. The arbitrator thus, divided the property equally in the aforementioned manner. The plaintiffs had strenuously argued that at the time of making the award, the Delhi Ajmeri Gate Scheme (pg. 1138 of the Trial Court records) permitted construction of only three storeyed (i.e. ground, first and second floor) buildings and thus, though in 1984 a floor above the second one was built, it may have been the case that at the time of the award, a third floor was not permissible due to the then bye-laws, and therefore the learned arbitrator did not deem it necessary to mention the terrace rights in the division. This Court cannot comment on the legality of the constructions above the second floor.

50. A plain construction of the award reveals that there is no mention of any rights over the terrace. This absence, has to be seen in the light of the other rights, which the Award conferred on all members of the family, equally:

“6. As the property at the Asaf Ali Road has common staircase, corridors and other amenities of common convenience, these will remain the joint property of all the sharers and each of the parties shall be entitled to use them as heretofore, and be responsible for the proper maintenance and repairs of those common conveniences.”

51. All the parties to the 1974 suit consented to the award, and a decree was made in terms of the award partitioning the properties in question therein in the aforementioned manner. The silence, on the one hand, and clause 6 (of the award) in one sense led to ambiguity which could have potentially been a source of future conflict. This Court holds therefore, that

the terrace was not separately given to any of the parties to the 1974 suit. Instead it remained the joint property of Savitri Devi and her children (Kavi Kumar, and D1 and D2). Even if the finding were to be otherwise, and Savitri Devi, as life owner (and after her, Kavi Kumar) were to be owners of terrace rights, as the owner(s) of the second floor, this issue would nevertheless be answered in favour of the sisters (Defendant Nos. 1 and 2) because the family settlement was lawfully entered into, and bound Savitri Devi as well as Kavi Kumar, who gave up such rights.

52. The plaintiffs contended that since the family arrangement itself states that the suit property fell to the share of Kavi Kumar subject to the life interest of Savitri Devi, D1 and D2 are estopped from taking a contrary plea. The relevant extract of the family arrangement is extracted below:

“And whereas all the parties to this deed realize that the parties Three and Four may experience difficulty in future and they therefore approached the First and Second parties to agree to an arrangement, by way of family settlement for providing additional source of income to parties Three and Four and they have generously agreed to the following arrangement for the benefit of parties Three and Four:

1. The top portion of the house, the terrace, on 3/13-B Asaf Ali Road, New Delhi, which belongs to party no Two subject to the life interest of party No. One, shall be divided into two parts as follows:

Parties One and Two have hereby waived whatever rights they had or have in future in portions allotted to parties Three and Four as aforesaid.

(emphasis supplied)

53. The above reveals that at the time of execution of the family arrangement, all the parties (including D1 and D2) believed Kavi Kumar to be the owner of the suit property subject to the life interest of the mother. This recital of course binds the parties, particularly D1 and D2. However, the question of estoppel does not arise, because even though at the time of execution of the family settlement, the understanding might have been that the brother had unfettered rights to the terrace subject to the mother's life interest, nevertheless the parties were clear that the brother would give up those rights, in order to assure his sisters (D-1 and D-2) additional income; he did so by executing the deed of family arrangement. As this court has already held, in respect of Issue No. 1 that the family arrangement was valid and binding and further, in regard to Issue No. 2 that the plaintiffs could not prove that the document was vitiated by fraud, undue influence, or coercion, the question of the first two defendants (i.e the sisters) being estopped in any manner, does not arise. Issue No. 5 is accordingly answered against the plaintiffs and in favour of the defendants; the findings of the Trial Court are hereby set aside.

Issue No. 7 Whether defendant no. 1 and 2 and defendant no. 3 and 4 are liable to pay damages to plaintiffs, if so for what amount.

54. The issue of damages was struck at the behest of the plaintiffs, in view of the relief of decree for possession, damages and *mesne profits* claimed by them. However, this court, as held in the previous discussion, has recorded findings to the effect that the sisters – as well as Kavi Kumar and Savitri Devi, had acted on the family arrangement which is valid and binding. The court has further held that the suit as brought by the plaintiffs, is time barred.

Therefore, the plaintiffs' claim for damages has to fail. In any case, the Trial Court had not granted this relief. The issue is accordingly held in favour of the defendants and against the plaintiffs.

Issue Nos 8,9 and 11

55. As noticed at the outset, the parties had not made any arguments on these issues. There is no need to address the same.

56. In view of the above findings, the Court holds that the suit filed was not maintainable; it is accordingly dismissed. The plaintiffs' appeal, RFA No. 732/2003 is dismissed. The appeals of the defendants (RFA Nos. 855/03, 878/03 and 912/03) have to succeed, in view of the findings recorded by this court. They are accordingly allowed. The Plaintiffs shall bear the costs of each appeal, quantified at Rs. 50,000/-. The costs shall be shared by all defendants in equal shares.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

JANUARY 30, 2013