

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 13th January 2014
Judgment pronounced on: 12th March 2014

CS(OS) 42/2010

SABINA SABLOK

..... PLAINTIFF

Through Mr. Ashish Bhagat, Mr.
Abdhesh Chaudhary and
Ms. Manish Suri,
Advocates

Versus

PROMILA MEHRA & ANOTHER

..... DEFENDANTS

Through Mr. Lovekesh Sawhney,
Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.

1. The Plaintiff has filed the present suit for recovery of a sum of Rs.7,16,66,666/- (Rupees seven crores sixteen lakhs sixty six thousand six hundred and sixty six only) being one-third share of 50% of the undivided share left behind by her father late Sh. Prem Mehra in residential property being No. 208, Golf Links, New

Delhi, (hereinafter referred to as the suit property).

2. Plaintiff and Defendant No. 2 are sisters and the daughters of Defendant No. 1, Mrs. Promila Mehra and Late Mr. Prem Mehra. The grandfather of the Plaintiff Mr. Harbans Lal Mehra was allotted the above residential plot by virtue of a perpetual lease deed dated 24.10.1961. The grandfather constructed a residential house and structure on the said plot. The grandfather died on 27.04.1988 and left behind his Will dated 22.04.1988 whereby the property was bequeathed in favour of his wife Mrs. Sushila Devi Mehra. Mrs. Sushila Devi Mehra expired on 11.11.1989 and by virtue of her Will dated 10.05.1988 followed by a codicil dated 18.05.1988 she bequeathed the said property to her sons Mr. Joginder Kumar Mehra and Mr. Prem Mehra (father of Plaintiff and Defendant No. 2).

3. Mr. Prem Mehra, thus, became an owner of 50%

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undivided share of the above said property along with his brother. Mr. Prem Mehra died on 30.06.1997 intestate leaving behind his wife (Defendant No. 1), Plaintiff and Defendant No. 2, his only two daughters. The parties, thus, succeeded to the 50% undivided share of Mr. Prem Mehra equally. Disputes arose between Mr. Joginder Kumar Mehra, the uncle of the Plaintiff and the parties to this suit and, accordingly, the parties hereto filed a suit for injunction in this Court being CS(OS) 241/2004. The suit culminated into a settlement and, accordingly, a memorandum of family settlement dated 23.8.2004 was recorded and the suit was decreed on the basis of the family settlement. Pursuant to the family settlement and the compromise decree, the property was mutated in the name of Mr. Joginder Kumar Mehra and Mrs. Promila Mehra, (Defendant No. 1) The property was subsequently converted from leasehold to freehold and a conveyance deed dated 08.04.2008 was executed.

4. In Execution petition No.181/2006 filed by Mr. Joginder Kumar Mehra, the property was sold by way of auction for a total consideration of Rs. 43,00,00,000/- (Rupees Forty Three Crores Only). As per Plaintiff, since the 50% share belonged to the parties to the present suit. Rs. 21,50,00,000/- (Rupees twenty one crores and fifty lakhs only) fell to the share of the Plaintiff, Defendant No. 1 and Defendant No. 2. The Plaintiff consequently filed the present suit for recovery of her $\frac{1}{3}^{\text{rd}}$ share of the 50% of the sale consideration received by Defendant No. 1 being Rs. 7,16,66,666/- (Rupees seven crores sixteen lakhs sixty six thousand six hundred and sixty six only).
5. The Defendants have filed a joint Written Statement wherein they take a stand that Defendant No.1 had spent her entire married life in the suit property and as she had no other accommodation, consequent to the handing over of the possession of the property to the purchaser, Defendant No.1 was residing with family

friends and at rented lodgings. The Defendants have further contended that she was constraint to sell the property on account of insistence of Mr. Joginder Kumar Mehra. The Defendants have relied on the family settlement recorded in the memorandum of family settlement dated 23.08.2004 to contend that Defendant No.1 was to be substituted as the co-owner of the property along with Mr. Joginder Kumar Mehra and the property was to be put to sale and Defendant No.1 was to receive the 50% share of the sale consideration. As per the Defendants, the said arrangement was arrived at to ensure that Defendant No.1 was able to acquire an alternative accommodation at par with or close to the nature of the residence she had been living in, i.e., the suit property. As per the Defendants, the names of the Plaintiff were mentioned below the name of Defendant No.1 under the headings 'Second Party' in the memorandum dated 23.08.2004 at the insistence of

Mr. Joginder Kumar Mehra to permanently quell any future attempts at claiming inheritance qua the property that could be raked up. As per the Defendants, the family settlement, as recorded in the memorandum, excluded the names of the Plaintiff and Defendant No.2 from being recorded as the co-owners of the property.

6. As per the Defendants, Defendant No.2 accepted the memorandum of family settlement and the Plaintiff during the entire litigation kept quiet. However, at the time of the execution proceedings in the execution filed by Mr. Joginder Kumar Mehra, the Plaintiff requested for being paid her 1/3rd share of the 50% of the sale consideration. As per the Defendants, Defendant No.1 has been recorded as the co-owner with Mr. Joginder Kumar Mehra and as such is entitled to the entire sale consideration.

7. By order dated 28.09.2010, the following issues were

framed:

“1. Whether the Plaintiff is entitled to a recovery of a sum of Rs.7,16,66,666/-? ...OPP

2. If issue No. 1 is decided in favour of the Plaintiff, whether Plaintiff is entitled to interest on the said sum of Rs. 716,66,666/- If so, the rate of interest and the period for which the interest is payable? ...OPP

3. Relief.”

8. The order dated 28.09.2010 records that both the parties relied upon the memorandum of family settlement dated 23.08.2004 and, accordingly, the memorandum of family settlement was exhibited as Exhibit P-1.

9. Since both the issues are interconnected I shall deal with both of them together. The onus of the issues was on the Plaintiff. The Plaintiff relied upon only Exhibit P-1 and chose to lead no oral evidence. Evidence has been led by the Defendants whose witnesses have

been cross-examined as well.

10. The Defendants have examined four witnesses. (1) Defendant No.1 Mrs. Promila Mehra was examined as DW1 who retendered the memorandum of family settlement dated 23.08.2004 which was exhibited once again as Exhibit DW1/1, (2) Defendant No. 2 Rubina Mehra was examined as DW2, (3) Mr. Ramesh Arora, brother of Defendant No. 1 and uncle of the Plaintiff and Defendant No. 2 was examined as DW3 and (4) Mr. Maharaj Krishan Khanna, Advocate, was examined as DW4.
11. The Defendants admit that the Plaintiff is the daughter and legal heir of Mr. Prem Mehra and Mrs. Promila Mehra. Mr. Prem Mehra, admittedly, had $\frac{1}{2}$ share in the suit property. Mr. Prem Mehra, died intestate leaving behind the parties as the three class 1 legal heirs under the Hindu Succession Act. Since Mr. Prem Mehra had died intestate, his estate devolved

upon his three legal heirs, i.e., Defendant No. 1 his wife and the two daughters (Plaintiff and Defendant No. 2). The mother of Mr. Prem Mehra had predeceased. The Plaintiff, accordingly, became an owner of $1/3^{\text{rd}}$ share in the 50% undivided share of Mr. Prem Mehra. This factum is not denied by the Defendants, so on the death of Mr. Prem Mehra, the property in $1/6^{\text{th}}$ share devolved upon the Plaintiff.

12. The defense raised by the Defendants is that by virtue of memorandum of the family settlement Exhibit P-1, Defendant No. 1 alone became the owner of the entire one half share of Mr. Prem Mehra. Since, admittedly, the Plaintiff had become the owner of $1/6^{\text{th}}$ share of the property, the Plaintiff would be entitled to her proportionate share in the sale proceeds. As the Defendants contend that after the Plaintiff succeeded as a legal heir by virtue of Exhibit P-1, her share was transferred in favour of the Defendant No.1, the burden of establishing the subsequent transfer of

rights by the Plaintiff in the property in favour of Defendant No.1 would be on the Defendants who allege this fact. In case the Defendants have failed to establish this fact the Plaintiff is entitled to her proportionate share in the sale proceeds of the property. The Plaintiff has not challenged the transfer of the property to the purchaser in the execution proceedings by Defendant No.1 but has only restricted her claim to her share in the sale proceeds along with interest.

13. The Defendants in support of their plea that the Plaintiff has transferred her rights in favour of Defendant No.1 have relied upon oral family settlement and as recorded by Exhibit P-1. The contents of the memorandum of family settlement need to be examined to ascertain whether any such transfer took place by the Plaintiff in favour of Defendant No. 1.

14. The memorandum of family settlement dated 23.08.2004 is between four sets of parties. First party being Mr. Joginder Kumar Mehra, the second party (collectively) being Defendant No.1, Plaintiff and Defendant No.2, the third party Mrs. Minna Bhasin and Mrs. Rajni Bhasin as the fourth party, third and fourth parties are the sisters of Mr. Joginder Kumar Mehra and Mr. Prem Mehra.
15. The recitals of the memorandum of family settlement would throw light on the reason and purposes for which the oral settlement between the parties to the memorandum took place and as to what was agreed upon between them which was then recorded by way of the memorandum of family settlement. The relevant recital are as under:

“AND WHEREAS late Smt. Sushila Devi Mehra also executed a will dated 10.05.1988 and a codicil dated 18.05.1988 during her lifetime by virtue of which she

bequeathed her self acquired properties and assets acquired by her namely a house bearing municipal No. 74, Golf Links, as well those bequeathed and left behind in her name by the above said will of Late Sh. Harbans Lal Mehra. By her above said will late Smt. Sushila Devi Mehra bequeathed the house bearing municipal No. 74, Golf Links, N. Delhi in the name of the THIRD and THE FOURTH PARTY in equal shares and further bequeathed the house bearing municipal No. 74. Golf Links, N. Delhi to the FIRST PARTY and Late Sh. Prem Mehra in the manner as stipulated in her above said will, late Smt. Sushila Devi Mehra also named the FIRST PARTY as the executor of the above will.

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AND WHEREAS the FIRST PARTY has instituted probate proceedings in the High Court of Delhi with respect of the above said will of Late Sh. Harbans Lal Mehra and Late Smt. Sushila Devi Mehra being Probate

Petitions Nos. 31/1988 and 14/1990 respectively.

AND WHEREAS the FIRST PARTY has moved an Application in Suit No. 489/86 before the Hon'ble High Court of Delhi for effecting inter-se partition amongst the remaining legal heirs and the said Application is pending consideration.

AND WHEREAS differences and disputes had arisen between the FIRST and the SECOND PARTY with regard to interpretation of the terms of the above referred wills of Late Sh. Harbans Lal Mehra and Late Smt. Sushila Devi Mehra leading to their taking up adversarial stands in various fora in respect to the nature of bequest and also to the institution of various cases – civil, criminal and revenue – against each other.

AND WHEREAS with a view to end the internal family quarrels, rancour and the continuing bitterness arising out of the adversarial stance taken by the FIRST and

the SECOND party in the above mentioned cases and proceedings and also for a mutually beneficial and peaceful enjoyment of the properties under the aforesaid wills. The PARTIES first above mentioned have, in the larger interest of the family and of their own free will agreed to put an end to such a situation and entered into a Family Settlement/Arrangement on 03.05.04 and have, on the said date of 03.05.04, amicably distributed among themselves all the properties, movable and immovable and all other assets under the above wills in the manner narrated hereunder.”

16. The recitals are indicative of the fact that the family settlement had been arrived at since differences and disputes had arisen between Mr. Joginder Kumar Mehra and the parties to the present suit with regard to the interpretation of the terms of the Will of late Mr. Harbans Lal Mehra and Mrs. Sushila Devi Mehra (grandparents of the Plaintiff). The recital records that with a view to end the internal family quarrels arising

out of advertorial stances taken by the first party (Mr. Joginder Kumar Mehra) and the second party (parties hereto) and also for mutually beneficial and peaceful enjoyment of the properties.

17. Exhibit P-1 records that the oral family settlement/arrangement was arrived at on 03.05.2004 and the parties to the said settlement had amicably distributed money themselves of the properties, moveable or immovable and all assets in the said Will.
18. The terms of the memorandum of the family settlement that have been relied upon by the Defendants to contend that the Plaintiff transferred her rights in favour of the Defendants and other relevant terms are under:-

“1 A) It has been agreed and decided by the FIRST and the SECOND PARTY and the said parties have taken and apportioned unto themselves equal (50%) share, rights, title and interest in the house bearing municipal No.

208, Golf Links, N. Delhi.

B) It has been agreed and decided by the FIRST and the SECOND PARTY to get the mutation of the house No. 208, Golf Links, N.Delhi in the joint names of Sh. Joginder Kumar Mehra and Smt. Promila Mehra, NOC's and all the other requisite documents shall be simultaneously executed and submitted by both the parties to the appropriate authorities.

C) It has been agreed and decided by the FIRST and the SECOND PARTY that the house bearing No. 208, Golf Links, shall be put to sale and the sale consideration shall be divided equally between the FIRST and the SECOND PARTY.

D)

E)

F)

G)

H) It has been agreed and decided that all

the PARTIES shall act simultaneously and sign all applications/affidavits/ No Objection certificates and do all such further acts before the requisite Government/municipal agencies to facilitate expeditious mutation of the names of the FIRST and the SECOND PARTY in respect to the premises No. 208, Golf Links, N. Delhi.

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3. The agricultural land at Village Passonda, District Ghaziabad, U.P. admeasuring 8690 sq. meters situated in Khasra Nos. Mentioned below has been agreed to be dealt with in the following manner:

<u>1724</u>	<u>1725</u>	<u>1726</u>
0-11-9-10	2-2-19-10	0-14-16-0

A) It has been agreed and decided that the entire agricultural land at Village Passonda, Ghaziabad, U.P., barring the portion of the lands set out in sub-clause B below, shall be sold by the FIRST PARTY for a fair market price and the proceeds thereof shall be distributed

equally amongst the FIRST, SECOND, THIRD and the FOURTH PARTY. All the PARTIES, in furtherance of the above agreement have been enjoined with the responsibility of locating a purchaser for the above land. The above land shall be sold by the First PARTY, as presently registered in the revenue records, to an intending purchaser offering the highest price. All the parties and/or their expressly appointed nominees/representatives shall be present during all stages of negotiations with the prospective buyer/s and the vendee to ensure transparency during the negotiations.

B)

19. The Defendants have further relied upon the Sale Deed dated 24th November, 2009 to contend that the Plaintiff did not challenge the sale of the property and in terms of the recitals therein she confirmed the transfer in favour of the Defendant No. 1. The recitals of the Sale Deed record as under:

“F. Prem Mehra, son of late Shri Harbans Lal

Mehra and one of the co-owners of the said property expired intestate at on 30.6.1997 leaving behind the following heirs in Clause I of the Schedule to Section 8 of the Hindu Succession Act, 1956, namely;

- (i) Ms. Promila Mehra – Wife (Vendor herein)
- (ii) Ms. Sabina Sablok (as she is now known) – Daughter
- (iii) Ms. Rubina Mehra – Daughter, all three of whom collectively inherited said Shri Prem Mehra's 50% undivided share in the said property.

G.

H. The said Shri Joginder Kumar Mehra and the heirs of Late Shri Prem Mehra namely : Ms. Promila Mehra, Ms. Sabina Sablok and Ms. Rubina Mehra therefore became the co-owners of the said property in which Shri Joginder Kumar Mehra owned 50% and the said three heirs of late Shri Prem Mehra collectively owned the balance 50%, undivided share.

I.

J. In terms inter-alia of the aforesaid Family Settlement and filed before the Hon'ble Delhi High Court and the resultant Compromise Decree in the said Injunction Suit:

(i) It was confirmed and decided that the ownership of 50% undivided share in the said property shall be held by Shri Joginder Kumar Mehra and the other 50% undivided share shall, after mutation, be held in the name of Ms. Promila Mehra;"

20. Clauses of Exhibit P-1 clearly establish that the property had to be apportioned in equal shares between first party and the second party to Exhibit P-1. All the three parties to the present suit were collectively shown as the second party. The fact that the parties to the suit were collectively shown as Second Party establishes that the property was to be apportioned equally between first party and the second party jointly. No distinction is made in any rights of the parties comprised in the second party.

Clause 1 B, no doubt, indicates that the first and second parties had consented that the mutation would be got done in the joint names of Mr. Joginder Kumar Mehra and Mrs. Promila Mehra. However, Clause 1 H further records that the parties shall sign applications, affidavits, no objections to facilitate expeditious mutation in the names of the first party and second party. Clause 1 B and 1 H gave an option to the second party to either get mutation done in favour of Defendant No. 1 alone or all the parties comprised in the second party. Merely because the Plaintiff had agreed that the mutation would be carried out in favour of the Defendant No. 1 alone does not establish that there is transfer of ownership rights by the Plaintiff in favour of the Defendant No. 1.

21. Mutation *per se* is not a conclusive proof of title merely because mutation is carried out in favour of one party does not make that party as the absolute owner of the property. The mutation and registration of a

Conveyance Deed in favour of one party with the consent of a co-owner may amount to estoppel against the co-owner qua third parties but inter se the owners mere mutation would not extinguish the title of one party and vest the title completely in favour of the one in whose favour the mutation has been carried out. Owning a property and getting the name entered in revenue record are two different and distinct things. Mutation entry does not confer right or title to the property. Mutation entry neither creates nor extinguishes title or ownership. **(SUMAN VERMA V. UNION OF INDIA, (2004) 12 SCC 58)**. Mutation entries do not confer any title to the property. It is only an entry for collection of the land revenue from the person in possession. The title to the property should be on the basis of the title they acquired to the land and not by mutation entries. **(DURGA DAS V. COLLECTOR, (1996) 5 SCC 618)**. Change in mutation in the corporation records for the purposes of property tax. Mutation

neither confers any title in the property nor is a document of title. **(SMT. KAMLESH ARORA Vs. MUNICIPAL CORPORATION OF DELHI 92 (2001) DLT 246 & JAGDISH CHANDER Vs. LT. GOVERNOR AND ORS (2009) 112 DRJ 229.**

22. Clause 1C that deals with the sale of the suit property clearly stipulates that the sale consideration shall be divided equally between the first party and the second party. There is no distinction made in the parties comprised in the second party insofar as the entitlement to receive the sale consideration is concerned. If the intention had been that the sale consideration was to be exclusively received by Mrs. Promila Mehra, the Defendant No. 1, similar distinction as made in Clause 1B (relating to mutation) would have also been made in Clause 1C.

23. The fact that a distinction is made *inter se* the parties comprised in second party in Clause 1B which is not

made in Clause 1C indicates that the Plaintiff was neither contemplating nor had transferred her ownership rights in favour of Defendant No. 1. The memorandum of family settlement Exhibit P-1 was executed to record the settlement of disputes between the extended family i.e. the legal heirs of Mr. Prem Mehra and his brother Mr. Joginder Kumar Mehra and his sisters. The said memorandum of family settlement Exhibit P-1 was not executed to record the settlement of any dispute *inter se* the legal heirs of Mr. Prem Mehra, i.e., parties to the present suit.

24. The Defendant No.1 in her evidence by way of affidavit, over and above what has been pleaded in the written statement, has in paragraph 19 deposed as under:

“I had discussed the terms of the above family settlement with my daughters i.e. Plaintiff and Defendant No. 2 as well as my brother Mr. Ramesh Arora. I had also discussed the financial implications of the sale of the house

and my receiving 50% of the sale consideration with the Chartered Accountant Shri M.K. Khanna who was handling the accounts of the Estate of Late Shri H.L. Mehra. As I would become shelter less after the sale of the above house, I was extremely anxious to purchase an alternative residential accommodation with the sale consideration received by me which would be at par with the above said house. The Plaintiff and the Defendant No. 2 with whom I held deliberations agreed with my desire and wish and expressly acceded to it. It was also extremely and categorically agreed by my daughters i.e. the Plaintiff and the Defendant No. 2 that only I shall be the joint owner of the above house along with Sh. Joginder Mehra and that the family settlement will not have a clause/term for mutation/recording of the names of the Plaintiff and the Defendant No. 2 as joint owners of the above house along with me and Shri Joginder Mehra. The Plaintiff and Defendant No. 2 also agreed that I must use my part of the 50% of sale consideration received from the sale of the above house for purchase

of an appropriate and matching residential accommodation. The Plaintiff and Defendant No. 2 also agreed and emphasized that neither the Plaintiff nor Defendant No. 2 would get any share of the sale consideration received by me from the sale of the above house as they stated that the sale consideration was my exclusive entitlement. It is for this reason that the said terms i.e. regarding mutation and recording of joint ownership of the above house only in my name as joint owner along with Shri Joginder Mehra finds express narration in the Above Memorandum of Family Settlement. That also in terms of the above discussions and agreement amongst me, the Plaintiff and the Defendant No. 2 the term/clause/narration that the Plaintiff and Defendant No. 2 would received any respective share of money from the sale consideration received by me from the sale of the above house was not stated, intentionally excluded and not expressed in any manner in the above memorandum of family settlement.”

25. Defendant No.2 has filed an identical evidence affidavit to that of Defendant No. 1 and paragraph 18 of her affidavit is a verbatim copy of paragraph 19 of the affidavit of Defendant No.1. With regard to the cross-examination of Defendant No. 1, who appeared as DW1, on the same date as Defendant No. 2 both the counsels made a statement to the effect that the cross-examination and the answers given by Defendant No. 2 in her cross-examination be adopted as the cross-examination and answers of Defendant No. 1 as the deposition of DW1 was identical and verbatim.
26. Defendant No.2, during her cross-examination, was confronted with sale deed dated 24.11.2009 (Exhibit DW2/P1) and notice dated 14.12.2009 (Exhibit DW2/P2 and postal receipt (Exhibit DW2/P3).
27. Defendant No.2 during the cross-examination admitted that the facts stated in paragraphs 18, 19, 20 and 21

of her affidavit by way of evidence Exhibit DW2/A did not find mention in the written statement. The Joint Registrar by order dated 31.05.2011 ordered that in view of the said admission of the witness and after comparing the written statement with the affidavit, the paragraphs No. 18,19,20 and 21 cannot be read in evidence as the same were beyond pleadings. No Appeal was filed against the said order of the Joint Registrar, however a grievance has been raised qua the rejection during the final arguments.

28. DW3 Mr. Ramesh Arora in his affidavit by way of evidence has deposed as under:

“8. That in the year 2004, an oral family settlement was reached which was reduced in writing and the same was signed as the memorandum of family settlement, and was duly filed in the Hon’ble High Court of Delhi at New Delhi.

9. In 2004, my sister Defendant No. 1 and both of my nieces (Plaintiff and Defendant No.

2) brought to my notice their concerns of the family settlement.

10. That my niece Mrs. Sabina Sablok i.e. the Plaintiff had recently shifted to Melbourne along with her husband and children and were trying to establish themselves in Melbourne. My niece i.e. the Plaintiff expressed her insecurity and was of the opinion that no money/funds should come in her hand, from sale of any asset or otherwise, as the same may be used up by her husband for establishing himself in a new Country/environment. She wanted the mutation and ownership of the property of 208, Golf Links, to be in the sole name of her mother Promila Mehra Defendant No. 1.

11. That Plaintiff wanted her mother to live in a suitable property befitting her stature and therefore it was agreed amongst the Defendant No. 1 and Plaintiff and Defendant No. 2 that both the daughters would not make a claim in the share of Lat Shri Prem Mehra on the strength of being his legal heir and had

agreed to give up their share in favour of my sister namely Promila Mehra Defendant No. 1 so that Defendant No. 1 can utilize the share of Late Shri Prem Mehra to acquire an alternate accommodation which is at par with or close to the nature of residence which Defendant No. 1 had been living in till recently. Accordingly, Sabina Sablok i.e. Plaintiff and Rubina Mehra i.e. Defendant No. 2 did not want any share and would not make a claim as they both knew the consequences of getting the mutation done in the sole name of their mother Mrs. Promila Mehra Defendant No. 1. They had agreed to give up their rights and share in favour of their mother Promila Mehra Defendant No. 1. It was on their insistence that my sister Defendant No. 1 agreed to mutate the said property in her sole name.

12. The Plaintiff Sabina Sablok and Defendant No. 2 Rubina Mehra had reached an oral understanding and agreement with the Defendant No. 1, that the Plaintiff and Defendant No. 2 will give away all the rights

and share of their father Late Shri Prem Mehra estate. The same will go entirely & in absolute to his wife Promila Mehra Defendant No. 1, and, that Defendant No. 1 can acquire a property in her absolute name.

13. However, Mr. Joginder Kumar i.e. Defendant No. 1's brother-in-law to create confusion and misunderstandings between Prem Mehra's family insisted to put the name and signatures of both my nieces in the name of parties in the memorandum of family settlement saying that they are only perform parties, as he did not want any further litigations with him with regard to the memorandum of family settlement.

14. That the terms of the family settlement, as agreed, were recorded and reduced into a Memorandum of Family Settlement duly signed by all the parties and the same was filed in the court and it was implemented and acted upon. The family settlement dated 23.8.2004 did not deal with the settlement in the family of my sister comprising herself and her two

daughters. The property was mutated in the names of Promila Mehra and Joginder Kumar Mehra.

15. The property bearing No. 208, Golf Links, N. Delhi was mutated exclusively in the names of Defendant No. 1 and Shri Joginder Kumar Mehra, brother-in-law of Defendant No. 1. Both Plaintiff and Defendant No. 2, as orally agreed earlier, without any pressure and out of their free will had given up their rights, share, interest and entitlement of any kind in the estate of Late Shri Prem Mehra in favour of their mother Promila Mehra, i.e. Defendant No. 1 and the entire 50% share of Late Shri Prem Mehra went to the exclusive share of Defendant No. 1 as per absolute property.”

29. By his testimony DW3 has tried to establish that there was a separate family arrangement *inter se* the parties to the present suit separate from the family settlement recorded in Exhibit P-1. He has contended that the Plaintiff had expressed insecurity and did not want any money to come in her hands as the same could be

used by her husband for establishing himself in a new country/environment. He has referred to an understanding that the Plaintiff wanted her mother to live in a suitable property and that the Plaintiff and Defendant No. 2 wanted to give away all the rights and shares in favour of Defendant No. 1. He has categorically stated that the family settlement dated 23.04.2008 (Exhibit P-1) did not deal with the settlement in the family of Defendant No. 1, i.e., between the parties to the suit. As per him both the Plaintiff and Defendant No. 2 had agreed without any pressure and with their own free will had given up their right, share, interest and entitlement in the estate of late Mr. Prem Mehra, in favour of their mother Mrs. Promila Mehra.

30. In the cross-examination DW3 has stated that the oral agreement with regard to the surrender of rights by his two nieces in favour of their mother was made sometime in the beginning of 2004. He has stated that

he did not remember the month, date and time. He has admitted that he was not present when the alleged oral understanding was arrived at between the Plaintiff and Defendants. He has volunteered that he was aware of the oral agreement as mutually decided course of action as the parties were in touch with him on telephone also. He has further admitted that the alleged conversation of the course of action stated by him has not been reduced into writing in the family settlement nor any other documents has been executed by either of the sisters in favour of their mother. The testimony of the said Witness of the Defendant falsifies the stand of the Defendants that the Memorandum of Family Settlement (Exhibit P-1) also dealt with the alleged family settlement between the Plaintiff and the Defendants. The Defendants have sought to rely upon Exhibit P-1 to establish the alleged oral family settlement between the parties hereto. Whereas DW 3 has stated that the oral family

settlement was never reduced into writing.

31. DW4 Maharaj Krishan Khanna by his evidence by way of affidavit has contended that his professional advice was sought by Defendant No. 1 on tax related issues including issue of capital gain. He has deposed that Defendant No.1 and her family wanted to understand the capital gain and tax implementation in case the mutation of property was done in the sole name of Defendant No. 1 as well as in case the mutation was done in the name of all the family members of late Mr. Prem Mehra. He has deposed that Defendant No. 1 informed him that property in question would be mutated in the sole name of Defendant No. 1 and she would purchase a residential property solely in her name as per the provisions of capital gains tax.
32. In his cross-examination, DW4 has admitted that he never had any discussion with the Plaintiff with regard to capital gain tax account. The testimony of the said

witness does not establish that there was any family settlement or any agreement by the Plaintiff to give up her rights in the property. At best it establishes that the Defendant No. 1 had sought advice from him. The seeking of advice by the Defendant No. 1 does not in any manner bind the plaintiff.

33. Learned counsel for the Defendants has submitted that the direction by the Joint Registrar directing that paragraphs 17 to 19 of the evidence affidavits of the Defendants are struck off being beyond the pleadings was beyond the purview of the powers of the Registrar and thus the said paragraphs should not be read in evidence.
34. Learned counsel for the Plaintiff per contra relied upon Rule 3 Chapter 2 of the Delhi High Court (Original Side) Rules to contend that the Registrar has been given certain powers and one such power is listed in Item 29 which is to decide objections as to questions

put in examination-in-chief. Learned counsel for the Plaintiff further submits that as the evidence is by way affidavit, no questions are put to the witness in affirmative and the affidavit is prepared and brought by the witness. Since the Registrar has the power to disallow a question put in examination-in-chief he also has the power to strike off parts of the evidence affidavit that are beyond the pleadings.

35. It is not necessary, in the facts of the present case, to decide the said controversy. The facts stated in the evidence affidavit even if taken on their face value do not advance the case of the Defendants.
36. The Defendants have attempted to improve upon their case at every state. Learned Counsel for the Defendants submitted that there were two family settlements around the same time. One, between the extended family which was recorded by Exhibit P-1 and the other between the nuclear family, i.e., legal

heirs of late Mr. Prem Mehra. It is this second oral family settlement that was relied upon by the counsel for the Defendants to contend that the Plaintiff agreed and transferred her rights in favour of the Defendant No. 1. During arguments the Defendants have tried to improve upon their own case. Second family settlement was neither pleaded nor proved. On the other hand the plea of second family settlement contradicts the earlier stand in the written statement that the transfer was recorded by the memorandum of family settlement recorded in Exhibit P-1.

37. There is also an ambiguity as to when the so called settlement took place between the nuclear family. Learned counsel for the Defendant submitted that the said second family settlement took place also around the same time when the first settlement took place but he could not indicate whether the so called second family settlement between the nuclear family took place prior to the discussion of the family settlement

recorded in Exhibit P-1, during or after the same. Further no explanation could be provided as to why it was not so expressly recorded separately or even mentioned in the Exhibit P-1.

38. The plea of second family settlement or transfer of ownership rights by the Plaintiff in favour of the Defendant No.1 is contradicted by Clause H of Exhibit P-1 that records that the mutation may be carried out in favour of the second party, i.e., of the parties to the suit jointly and also by Clause B that records that the sale proceeds would be apportioned equally between Mr. J.K. Mehra and the second party to the said settlement. No distinction was made in the rights of the plaintiff and the Defendants herein who jointly comprised the second Party. This is further contradicted by the cross-examination of DW4 who has deposed that Defendant No. 1 had made an enquiry from him in respect of capital gains, in case, the property was mutated only in favour of Defendant

No. 1 and the property was mutated in favour of all the three parties to the suit. This clearly indicates that there was no family settlement whereby the Plaintiff had agreed to relinquish or transfer her share in favour of Defendant No. 1.

39. It is an admitted case of the Defendant that there is no document regarding the transfer of the share of the Plaintiff in favour of Defendant No. 1. It is only a plea of Defendant No. 1 that she had become the owner of the property by virtue of the fact that property has been mutated in favour of Defendant No. 1 and the conveyance deed executed in her favour. No registered document has admittedly been executed by the Plaintiff relinquishing or transferring her share/rights in favour of Defendant No. 1.

40. The transfer of ownership rights can only be by way of a registered document. No such registered document has been pleaded or proved. The oral family

settlement has neither been sufficiently pleaded in the written statement nor established by any cogent evidence.

41. Even if the case of the Defendants were to be taken at face value and at its highest, it only establishes that there were discussions between the Plaintiff and the Defendants to transfer the rights of the plaintiff in favour of the defendant No. 1. It does not establish that any transfer of ownership rights ever took place.
42. Since the Plaintiff has established that the Plaintiff had originally succeeded to the 1/6th share in the suit property and the Defendants have failed to prove that the Plaintiff was thereafter divested of her rights, I am of the opinion that the Plaintiff has established her claim to her share of the sale proceeds of the said property. Accordingly, the Plaintiff is entitled to 1/6th share of the sale proceeds, i.e., Rs.7,16,66,666/- (Seven Crores sixteen lakhs sixty six thousand six

hundred and sixty six only).

43. By order dated 30.04.2010 read with order dated 24.05.2010, the sum of Rs. 7.16 Crores was directed to be deposited in an interest bearing account with a bank. The Defendant No. 1 initially deposited the amount in an interest bearing account, but subsequently on 30.09.2010 withdrew the same without seeking permission of the court and deposited it in the Capital Gains Account. It is not clear from the record whether the amount is still lying in the Capital Gains Account or was withdrawn by the Defendant No. 1 for the purchase of a Property.
44. Now as regards the award of interest and the rate of interest, it is the discretion of the Court to award the same. The Court while determining the rate of interest has to consider both inflation rate and bank rate/market rate, reasonable rate of pendent lite interest. Payment of interest is basically compensation

for being denied use of the money during the period the same could have been made available to the claimant. In the present case the Plaintiff was deprived of the money and in case the Plaintiff had been given her due share the Plaintiff could have invested the same and earned interest or appreciation. Since the Plaintiff has been deprived of the money, the plaintiff is entitled to interest @ 9% per annum from the Defendant No. 1 on the principal amount of Rs. 7,16,66,666/- (Seven Crores sixteen lakhs sixty six thousand six hundred and sixty six only) from the date of deposit of the said amount in the interest bearing account i.e. 28.07.2010 till the date of realisation.

45. The issues are accordingly decided in favour of the Plaintiff. The suit is decreed in favour of the Plaintiff and against the Defendant No. 1 in the sum of Rs. 7,16,66,666/- (Seven Crores sixteen lakhs sixty six thousand six hundred and sixty six only) alongwith interest @ 9% per annum on the principal amount

from 28.07.2010 till the date of realisation with costs.

46. Since the Plaintiff has succeeded to the 1/3rd share in the 50% undivided share of late Mr. Prem Mehra, the Plaintiff shall be proportionately liable for any capital gains tax liability.

47. Decree sheet be prepared accordingly.

SANJEEV SACHDEVA, J.

March 12, 2014
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