

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

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Date of decision: 1st July, 2014.

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FAO(OS) 416/2013, CMs. No.14405-06/2013 & 14408/2013

HARVINDER SINGH CHADHA

..... Appellant

Through: Mr. Sachin Chopra and Mr. Kamal Bansal, Advocates.

Versus

SARAN KAUR CHADHA & ORS.

..... Respondents

Through: Mr. Abhishek Vikram, Mr. Chetan Lokur, Mr. Vikram Pradeep and Mr. Mayank Mukherjee, Advocates for R-1 to 3.
Mr. Virender Mehta, Advocate for R-4.

AND

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FAO(OS) 252/2014

HARVINDER SINGH CHADHA

..... Appellant

Through: Mr. Sachin Chopra and Mr. Kamal Bansal, Advocates.

Versus

SARAN KAUR CHADHA & ORS.

..... Respondents

Through: Mr. Abhishek Vikram, Mr. Chetan Lokur, Mr. Vikram Pradeep and Mr. Mayank Mukherjee, Advocates for R-1 to 3.
Mr. Virender Mehta, Advocate for R-4.

AND

+ **CS(OS) 1333/2002, IAs No.2052/2004 & 16382/2013**

S. HARVINDER SINGH CHADHA **Plaintiff**

Through: Mr. Sachin Chopra and Mr. Kamal Bansal, Advocates.

Versus

S. UJAGAR SINGH CHADHA & ORS. **Defendants**

Through: Mr. Abhishek Vikram, Mr. Chetan Lokur, Mr. Vikram Pradeep and Mr. Mayank Mukherjee, Advocates for D-1 to 3.
Mr. Virender Mehta, Advocate for D-4.

AND

+ **CS(OS) 1150/2002 & IA No.6053/2002**

S. HARVINDER SINGH CHADHA **Plaintiff**

Through: Mr. Sachin Chopra and Mr. Kamal Bansal, Advocates.

Versus

SARAN KAUR CHADHA & ORS. **Defendants**

Through: Mr. Abhishek Vikram, Mr. Chetan Lokur, Mr. Vikram Pradeep and Mr. Mayank Mukherjee, Advocates for D-1 to 3.
Mr. Virender Mehta, Advocate for D-4.

AND

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CS(OS) 1102/2003

S. HARVINDER SINGH CHADHA

..... Plaintiff

Through: Mr. Sachin Chopra and Mr. Kamal Bansal, Advocates.

Versus

S.UJAGAR SINGH CHADHA & ORS.

..... Defendants

Through: Mr. Abhishek Vikram, Mr. Chetan Lokur, Mr. Vikram Pradeep and Mr. Mayank Mukherjee, Advocates for D-1 to 3.
Mr. Virender Mehta, Advocate for D-4.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. FAO(OS) No.252/2014 arising from CS(OS) No.1333/2002 came up first for admission on 20th May, 2014 when, not finding any clarity in the memorandum of appeal, while renotifying the same on 26th May, 2014, the file of CS(OS) No.1333/2002 was also sent for. FAO(OS) No.416/2013 also arising from CS(OS) No.1333/2002 was listed on 20th May, 2014 and was also ordered to be renotified on 26th May, 2014.

2. On perusal of the file of CS(OS) No.1333/2002 on 26th May, 2014, it *prima facie* appeared to us that the suit itself was not maintainable. The

counsel for the appellant/plaintiff however stated that he was not prepared to address on the said aspect and on his request, the appeals and the suit were adjourned to 29th May, 2014.

3. On 29th May, 2014, we heard the counsels for the parties on the maintainability of CS(OS) No.1333/2002 as well as on the merits of the two appeals. During the course of hearing, it transpired that CS(OS) No.1150/2002 and CS(OS) No.1102/2003 were also connected to CS(OS) No.1333/2002. Accordingly, while reserving judgment, with the consent of the counsels, the files of CS(OS) No.1150/2002 and CS(OS) No.1102/2003 were also requisitioned. The counsels concurred that if CS(OS) No.1333/2002 was to be held to be not maintainable, CS(OS) No.1150/2002 and CS(OS) No.1102/2003 filed by the same plaintiff shall also go.

4. We have perused the files of all the three suits.

5. CS(OS) No.1150/2002 was filed by the appellant/plaintiff for the relief of declaration that the Sale Deed executed between the defendants No.1 to 4 therein was non est and for setting aside thereof and for declaring the appellant/plaintiff to be the owner “of the property in question” to the extent of 25% and for permanent injunction restraining the defendants in the said suit

from selling, alienating, creating a third party interest or parting with possession of property No.H-2/5, Model Town-II, Delhi, pleading:

- (i) that the appellant/plaintiff Sh. Harvinder Singh Chadha is a 'Non Resident Indian' (NRI);
- (ii) that the parents of the appellant/plaintiff (the erstwhile defendant No.1 Sh. Ujagar Singh Chadha being the father and the present defendant No.1 Smt. Saran Kaur Chadha being the mother) were living in house No.H-2/5, Model Town-II, Delhi;
- (iii) that the two younger brothers of the appellant/plaintiff (defendant No.2 Sh. Harmeet Singh and defendant No.3 Sh. Ravinder Singh Chadha) were also residing along with the parents in the said house;
- (iv) that the said house No.H-2/5, Model Town-II, Delhi comprised of two and a half floors and was then mortgaged to Grindlays Bank;
- (v) that the grandfather of the appellant/plaintiff had his business in Kuwait and he died intestate in the year 1969; after his death, a Family Agreement was arrived at between all his heirs and by virtue of which all his assets were divided between his heirs; the said property No.H-2/5 Model Town-II, Delhi which was already registered in the names of the

father Sh. Ujagar Singh Chadha and his elder brother Sh. Mohinder Singh Chadha fell to their share; the other heirs were paid money in lieu of their his share in the property in question;

(vi) that the father Sh. Ujagar Singh Chadha and his elder brother Sh. Mohinder Singh Chadha divided the property into two parts;

(vii) that thus the father Sh. Ujagar Singh Chadha became half owner of the property;

(viii) that however the said half portion of the property “was essentially an ancestral property in the hands of the father Sh. Ujagar Singh Chadha”;

(ix) that the father and the younger brothers of the appellant/plaintiff took loan by mortgaging the said half portion of the property to Grindlays Bank but were unable to repay and the said half portion of the property was ordered to be auctioned;

(x) that the appellant/plaintiff sent approximately Rs.15 lakhs to repay the said loan and upon payment whereof, the auction of the property was stopped;

(xi) that the appellant/plaintiff then raised a dispute as to how the said property was mortgaged to the detriment of his interest and without his knowledge;

(xii) that the father Sh. Ujagar Singh Chadha, to avoid future disputes, made a Family Settlement/Agreement on 4th August, 2000 and it was agreed that 25% share in the property would belong to the appellant/plaintiff, 20% share would belong to the defendant No.2 Sh. Harmeet Singh, 25% share would belong to the defendant No.3 Sh. Ravinder Singh Chadha and the remaining 30% share was to remain with the parents Sh. Ujagar Singh Chadha and Smt. Saran Kaur Chadha; this Family Settlement was accepted by all by affixing their signatures thereon;

(xiii) that the appellant/plaintiff in the visit to India in July, 2002 learnt that the property was being sold without his knowledge, to the defendant No.4 Sh. Dharamvir Yadav;

(xiv) that the appellant/plaintiff was the owner of 25% share as property being ancestral, having been inherited by his father Sh. Ujagar Singh Chadha in turn from his father;

(xv) that in lieu of the said interest of the appellant/plaintiff, share to the extent of 25% had also been settled in his favour.

Accordingly, the suit for the relief of declaration and injunction as aforesaid was filed.

6. Considering that we are at this stage concerned with the maintainability of the suit, need is not felt to refer to the defense of the defendants therein or to the issues framed in the suit.

7. CS(OS) No.1333/2002 was filed by the appellant/plaintiff for cancellation of the Sale Deed dated 12th July, 2002 of the aforesaid property in favour of the aforesaid defendant No.4 Sh. Dharamvir Yadav and for delivery of possession thereof to the appellant/plaintiff, being the lawful owner to the tune of 25% of the said property, asserting the same rights in the said property as asserted in the previous suit No.1150/2002. It was stated that though the appellant/plaintiff had filed CS(OS) No.1150/2002 and vide *ex-parte* ad-interim order dated 17th July, 2002 therein, *status quo* qua title and possession of the property was ordered to be maintained but it was learnt that a Sale Deed dated 12th July, 2002 had already been executed in favour of said Sh. Dharamvir Yadav and possession of the property had also been handed over to him on 18th

July, 2002. It was further pleaded that the father Sh. Ujagar Singh Chadha, from the sale proceeds of the aforesaid property had purchased property No.33-A, North Avenue, Punjabi Bagh, near Punjabi Bagh Club, New Delhi vide Sale Deed dated 6th August, 2002. The appellant/plaintiff in the said suit thus also claimed the relief of declaration of the said Sale Deed dated 6th August, 2002 of purchase of Punjabi Bagh property to be non est and in the alternative for partition of the Punjabi Bagh property to the extent of his 25% share therein.

8. CS(OS) No.1102/2003 has been filed by the appellant/plaintiff for recovery of Rs.20,10,000/- from his father Sh. Ujagar Singh Chadha and his brothers Sh. Harmeet Singh and Sh. Ravinder Singh Chadha, being the amount sent by him in June, 2000 for saving the said property from auction at the instance of Grindlays Bank with which the said property had been mortgaged.

9. FAO(OS) No.416/2013 was filed impugning the order dated 30th November, 2011 of the learned Single Judge limiting the right of the appellant/plaintiff to examine himself only and closing the right of the appellant/plaintiff to lead any other evidence. The said appeal was accompanied with applications for condonation of delay in filing and re-filing

of the said appeal; notice only of the application for condonation of delay has been issued.

10. FAO(OS) No.252/2014 has been filed impugning the order dated 4th April, 2014 of the learned Single Judge of dismissal of the application filed by the appellant/plaintiff for recall of the aforesaid order dated 30th November, 2011 impugned in FAO(OS) No.416/2013.

11. We had during the hearing on 26th May, 2014 enquired from the counsel for the appellant/plaintiff, as to what was the right of the appellant/plaintiff to the Model Town property, asserting which CS(OS) No.1150/2002 and CS(OS) No.1333/2002 had been filed.

12. The counsel for the appellant/plaintiff had argued, (i) that the said property, though was purchased in the name of the father of the appellant/plaintiff i.e. Sh. Ujagar Singh Chadha and his elder brother Sh. Mohinder Singh Chadha but the father of the appellant/plaintiff at the time of purchase was 15 years old only and not earning; (ii) it was thus evident that the said property had been purchased by the grandfather of the appellant/plaintiff, though in the name of the father of the appellant/plaintiff; (iii) this was further evident from the Agreement dated 10th August, 1969 (regarding house No.H-

2/5, Model Town-II, Delhi) between all the legal heirs of the grandfather of the appellant/plaintiff including the father of the appellant/plaintiff, whereunder the father of the appellant/plaintiff Sh. Ujagar Singh Chadha and his brother Sh. Mohinder Singh Chadha paid of the share of the other legal heirs in house No.H-2/5, Model Town-II, Delhi already registered in the names of Sh. Ujagar Singh Chadha and Sh. Mohinder Singh Chadha, on the premise of the same being the property of the father of Sh. Ujagar Singh Chadha and Sh. Mohinder Singh Chadha. The counsel for the appellant/plaintiff further drew our attention to the Agreement dated 29th May, 1975 between Sh. Ujagar Singh Chadha and Sh. Mohinder Singh Chadha partitioning the said Model Town property by metes and bounds between themselves. The counsel for the appellant/plaintiff thus contended that the half share of property No.H-2/5, Model Town-II, Delhi in the hands of the father Sh. Ujagar Singh Chadha was ancestral property and the appellant/plaintiff also had a share in the same.

13. We enquired from the counsel for the appellant/plaintiff, whether not it was the plea of the appellant/plaintiff that the paternal grandfather of the appellant/plaintiff had died in the year 1969 i.e. after the coming into force of the Hindu Succession Act, 1956.

14. The counsel for the appellant/plaintiff replied in the affirmative.

15. We further enquired from the counsel for the appellant/plaintiff that if it was so, whether not the property inherited by the father of the appellant/plaintiff from his own father, would be personal property in the hands of the father i.e. Sh. Ujagar Singh Chadha and the appellant/plaintiff would have no share therein.

16. The counsel for the appellant/plaintiff then drew our attention to the Agreement dated 4th August, 2000 between the father of the appellant/plaintiff, mother and brothers and which is as under:

“AGREEMENT

I Ujagar Singh Chadha S/o Late Shri Gurbachan Singh Chadha R/o H-2/5 Model Town Part-II Delhi-9 hereby confirm this agreement that I have three sons (namely)

- 1) Harvinder Singh Chadha gifted him 25% of share in property bearing No.H-2/5 Model Town Delhi-9*
- 2) Harneet Singh Chadha gifted him 20% of share in property bearing No.H-2/5 Model Town Delhi-9*
- 3) Raminder Singh Chadha gifted him 25% of share in property bearing No.H-2/5 Model Town Delhi-9*
- 4) Remaining 30% of the share in property bearing No.H-2/5 Model Town Delhi-remains to my wife Mrs. Saran Kaur Chadha and myself Ujagar Singh Chadha.*

Dated: 4th August, 2000

Ujagar Singh Chadha

- 1) Harvinder Singh Chadha
Sd.*

*Sd.
Address H-2/5 Model
Town II Delhi-9*

- 2) *Harneet Singh Chadha* ”
Sd.
- 3) *Raminder Singh Chadha* ”
Sd.
- 4) *Saran Kaur Chadha* ”
Sd.

This agreement is made in four original copy as per proposal date 4th August made by me, my elder son who is at present residing at Kuwait will sign all four copies as agreed.

Witness: Ujagar Singh Chadha
Sd. Sd.
Des Raj Malhotra
E-144, Kamla Nagar
Delhi-110007.”

and contended that the appellant/plaintiff under the said document has a 25% share in the property.

17. We enquired from the counsel for the appellant/plaintiff, whether the aforesaid document is registered.

18. The answer was in the negative.

19. We further enquired that if the appellant/plaintiff did not have any share in the property as claimed, on the basis of the property being ancestral, how any share in the property in favour of the appellant/plaintiff could be created for the

first time by such an unregistered document and how there could be a gift of immovable property without a registered document.

20. As aforesaid, the counsel for the appellant/plaintiff on 26th May, 2014 sought adjournment to address on the aforesaid queries.

21. The counsel for the appellant/plaintiff on 29th May, 2014, to support his case, of the property being ancestral in the hands of the father of the appellant/plaintiff and the appellant/plaintiff having a right/share therein, relied on ***Rohit Chauhan Vs. Surinder Singh*** (2013) 9 SCC 419, ***Sheela Devi Vs. Lal Chand*** (2006) 8 SCC 581 and ***Baljinder Singh Vs. Rattan Singh*** MANU/SC/7926/2008.

22. Per contra, the counsel for the respondents/defendants referred to ***Commissioner of Wealth-tax, Kanpur Vs. Chander Sen*** AIR 1986 SC 1753, ***Yudhishter Vs. Ashok Kumar*** AIR 1987 SC 558, ***Commissioner of Income-tax, Jaipur Vs. Hirehmal Nawalakha*** AIR 2001 SC 3648 and ***Gomtibai Vs. Mattulal*** (1996) 11 SCC 681.

23. We had invited the attention of the counsel for the appellant/plaintiff to a judgment dated 30th January, 2013 of one of us (Justice Rajiv Sahai Endlaw) in CS(OS) No.823/2010 titled ***Neelam Vs. Sada Ram***, where on a conspectus of a

case law in this regard including *Chander Sen* and *Yudhishter* supra it was held that after the coming into force of the Hindu Succession Act, 1956, the property inherited by a male from his father is held as self acquired property in which children of such male do not acquire any right by birth. Thus, even if it were to be held that the Model Town property, though purchased in the name of the father of the appellant/plaintiff was not his self acquired property but held *benami* by him for his own father (and which plea of *benami* is also prohibited by the Benami Transactions (Prohibition) Act, 1988), even then the grandfather of the appellant/plaintiff having died in the year 1969 i.e. after coming into force of the Hindu Succession Act, the said property would be held by the father of the appellant/plaintiff as his personal individual property and the appellant/plaintiff would not have any right or share therein. It would matter not that the said property was, besides in the name of the father of the appellant/plaintiff was also in the name of elder brother of the father of the appellant/plaintiff and the father of the appellant/plaintiff and his brother partitioned the same between them. Similarly, it would matter not that the father of the appellant/plaintiff and his brother paid off the share of their other siblings in the said property. These facts would not change the character of the

inheritance in the hands of the father of the appellant/plaintiff from that of personal individual property to ancestral property.

24. As far as the judgments relied upon by the counsel for the appellant/plaintiff are concerned, in ***Rohit Chauhan*** supra, the question as has arisen herein, did not arise for consideration therein. It is a settled principle of law (see ***Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd.*** (2003) 2 SCC 111, ***Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate*** (2005) 2 SCC 489 and ***Inderpreet Singh Kahlon Vs. State of Punjab*** AIR 2006 SC 2571) that a judgment is a precedent on what arises for consideration therein and what is decided thereby and not on what can logically be deduced therefrom. The Supreme Court in ***Rohit Chauhan*** supra proceeded on the premise that the property was ancestral property and the only question for adjudication therein was, whether a male borne subsequent to the date of partition of ancestral property would have a share therein or not. The Supreme Court held that such a son would have a share in the property which was ancestral in the hands of the father. As far as ***Sheela Devi*** supra is concerned, though the counsel for the appellant/plaintiff merely handed over a copy thereof and did not chose to read any portion thereof but we find the same, rather than helping the appellant/plaintiff, being against the appellant/plaintiff. The Supreme Court in

the said judgment reiterated, what was held in ***Chander Sen*** supra i.e. that after coming into force of the Hindu Succession Act, 1956, it would be difficult to hold that a property which devolves on a Hindu under Section 8 of the Hindu Succession Act would be HUF in his own hands vis-à-vis his own son. Similarly, neither was any passage in ***Baljinder Singh*** supra referred to by the counsel for the appellant/plaintiff nor do we find any relevance thereof to the matter in issue.

25. It has thus but to be held that the appellant/plaintiff did not have any share in / right to the Model Town property on the ground of the same being ancestral property.

26. The counsel for the appellant/plaintiff also has pegged his case on the Agreement dated 4th August, 2000 supra. Though he agrees that there can be no gift without a registered document the reliance by the counsel for the respondents/defendants on ***Hirehmal Nawalakha*** and ***Gomtibai*** supra, both laying down that without registration there can be no gift, is apposite in this regard and admitted “that the appellant/plaintiff cannot claim partition of the property” but contended that the appellant/plaintiff “on the basis of the said Agreement dated 4th August, 2000, would still be entitled to stop his father from dealing with the said property”. Alternatively, it is contended that the said

Agreement would qualify as a Family Settlement. It is also faintly suggested that the said document is also indicative of the manner in which the father desired the property to be distributed.

27. We are unable to accept either of the aforesaid contentions. The father of the appellant/plaintiff by the aforesaid document dated 4th August, 2000, even if the same were to be read into evidence, purported to gift *in praesenti* undivided share in his aforesaid property. It is so clearly borne out from the repeated use of the word “gifted” in the said document. The rule of construction is well settled that the intention of the executant of a document is to be ascertained after considering all the words in their ordinary natural sense; the document is required to be read as a whole to ascertain the intention of the executant. Reference in this regard can be made to ***F.M. Devaru Ganapati Bhat Vs. Prabhakar Ganapathi Bhat*** (2004) 2 SCC 504. Such a reading of the document clearly shows the intention of the executant thereof i.e. of the father of the appellant/plaintiff to “gift” undivided shares in the property to his three sons. The signatures obtained of the three sons on the said document are in acceptance of the gift. The fact that the transfer of the said shares was to be in *praesenti* and the document was not to operate after the demise of the father, as was faintly suggested (and which is not even the case made out) is evident not

only from use repeatedly of the word “gifted” by the maker thereof but also from the ‘remaining undivided share’ in the property being described as “remains to my wife Mrs. Saran Kaur Chadha and myself Ujagar Singh Chadha”. Unless the intent was for the ‘gift’ to come into operation immediately, the father Ujagar Singh Chadha in his lifetime would have been the owner of 100% rather than 30% share in the property. Similarly, if it had been the intent of the parties to the document that all of them were the owners of the property and had the parties merely intended to by way of Family Settlement settle or define their respective shares, the word ‘Settlement’ or ‘Partition’ instead of the word “gifted” would have been used. Moreover, a Family Settlement envisages claims and counter-claims to property, which are settled thereby. An immovable property cannot be permitted to be transferred, even to family members, under the garb of a Family Settlement, without paying the stamp duty and without complying with the law of registration.

28. Rather, we enquired from the counsel for the appellant/plaintiff that whether not the appellant/plaintiff by signing the said document, accepted the factum of the father being the sole absolute owner of the Model Town property, in as much as if the father was not the sole absolute owner thereof, there would have been no question of his gifting the same to others.

29. We fail to understand as to on what basis the appellant/plaintiff, if not having any right of partition, because of not having any share in the property, can be said to have a right to prohibit his father from dealing with the property which was exclusively of the father.

30. In our opinion, the Agreement dated 4th August, 2000 supra cannot even be read in evidence since the same on the face of it is a gift and since the same is neither duly stamped nor registered.

31. We therefore hold that the plaintiffs in CS(OS) No.1150/2002 and in CS(OS) No.1333/2002, on a reading thereof do not disclose any right, title, claim or interest of the appellant/plaintiff to the Model Town property, neither for the reason of the same being ancestral property not on the basis of the document dated 4th August, 2000.

32. Once the appellant/plaintiff is not found entitled to have any right to / or share in the Model Town property, the appellant/plaintiff can have no right to the Punjabi Bagh property stated to have been bought out of the sale proceeds of the Model Town property, also.

33. In that view of the matter, CS(OS) No.1150/2002 by which the appellant/plaintiff sought to prevent the father from dealing with the Model

Town property and CS(OS) No.1333/2002 by which the appellant/plaintiff sought cancellation of the sale by the father of the Model Town property to the defendant No.4 Sh. Dharamvir Yadav and claiming 25% share therein as well for partition of the Punjabi Bagh property, on the averments in the plaint, are found to be not maintainable and not disclosing a cause of action and are liable to be dismissed summarily.

34. What saddens us is that the defendants/respondents allowed the suits to continue for a period of nearly 12 years and the suits put to trial exhausting the resources of this Court which could have been well spent on adjudication of *bona fide* disputes between the parties. When the counsel for the respondents/defendants, upon the question being raised by us as to the maintainability of the suits could cite the judgments to contend that the suits were indeed not maintainable and liable to be dismissed summarily, we fail to understand why they did not do so earlier and as to why they were satisfied with the suits remaining pending. Though we raised the said query to the counsels during the hearing but no reply was forthcoming.

35. Resultantly, CS(OS) No.1150/2002 and CS(OS) No.1333/2002 as well as FAO(OS) No.416/2013 and FAO(OS) No.252/2014 arising from CS(OS)

No.1333/2002 are dismissed. Decree sheet be drawn up. For the reasons aforesaid, no costs.

36. CS(OS) No.1102/2003 is only for recovery of money allegedly advanced by the appellant/plaintiff for saving the Model Town property. The same will have to be decided on its own merits.

37. Accordingly, the file of CS(OS) No.1102/2003 be returned and the same be listed before the learned Single Judge on 10th July, 2014, as already scheduled.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

JULY 01, 2014

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