

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

% *Judgment Reserved On: January 16, 2014*
Judgment Delivered On: February 24, 2014

+ **RFA(OS) 87/2012**

VIKRAM SINGH & ANR. Appellants
Represented by: Appellant No.1 in person

versus

AJIT INDER SINGH Respondent
Represented by: Mr.Rajiv Sawhney, Senior Advocate
instructed by Mr.Arjun Singh Bawa,
Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE R.V.EASWAR

PRADEEP NANDRAJOG, J.

1. Late Col.Inderjeet Singh, the husband of the respondent Ms.Ajit Inder Singh, filed a suit for partition against his sister Ms.Anant Verinder Singh (mother of the appellants) pleading that property bearing Municipal No.D-57, Defence Colony, New Delhi was owned by their late father Gurcharan Singh who died in June, 1968 leaving behind his wife Ms.K.Gurcharan Singh, his son Col.Inderjeet Singh and his daughter Ms.Anant Verinder Singh as the legal heirs. The three inherited the property, the mother having 2/3rd share and the two siblings 1/3rd each. (In what manner the inheritance was as in the shares pleaded in the plaint was not stated.) He further pleaded that on the demise of Ms.K.Gurcharan Singh on January 09, 2001, the two siblings executed a Memorandum of Family Settlement on April 09, 2001

acknowledging each having half share in the property. Pleading that the property was not partitioned, partition of the property was prayed for. Vide IA No.4137/2002 Late Col.Inderjeet Singh sought an interim injunction against his sister to restrain her from alienating the suit property, pleading an apprehension that she was trying to sell the same.

2. On summons being served in the suit and notice in IA No.4137/2002, on July 11, 2002 Ms.Anant Verinder Singh filed a written response to IA No.4137/2002. She did not file a written statement. In the response filed she admitted that vide perpetual lease-deed dated January 30, 1963, Late Sh.Gurcharan Singh had been conferred perpetual lease-hold rights in land bearing Municipal No.D-57, Defence Colony, New Delhi and that he expired in June, 1969. Admitting that he was survived by his widow Ms.Kartar Gurcharan Singh, a son Col.Inderjeet Singh (plaintiff) and a daughter Ms.Anant Verinder Singh (defendant), it was additionally pleaded that he was survived by another son named Sarbaland Singh. Stating that a will dated December 12, 1965 was executed by Gurcharan Singh, it was pleaded that as per the will half share in the property was bequeathed by Late Gurcharan Singh to his wife Ms.Kartar Gurcharan Singh and the remaining half share was bequeathed, in equal proportion, to the three siblings i.e. Sarbaland Singh, Col.Inderjeet Singh and Ms.Anant Verinder Singh; each having $\frac{1}{6}^{\text{th}}$ share. It was pleaded that on the demise of Sarbaland Singh on January 01, 1974, his $\frac{1}{6}^{\text{th}}$ share was inherited by his mother Ms.Kartar Gurcharan Singh and thus as of January 01, 1974 the share of Ms.Kartar Gurcharan Singh, Col.Inderjeet Singh and Ms.Anant Verinder Singh in the suit property was $\frac{2}{3}^{\text{rd}}$, $\frac{1}{6}^{\text{th}}$ and $\frac{1}{6}^{\text{th}}$ respectively. It was pleaded that in the year 1992, with consent of the three co-owners, Late

Brig.Verinder Singh, husband of Ms.Anant Verinder Singh constructed a second floor having built up area 838 square feet. Admitting that Ms.Kartar Gurcharan Singh died on January 09, 2001 and was survived by Col.Inderjeet Singh and Ms.Anant Verinder Singh as her legal heirs, it was pleaded that since Ms.Kartar Gurcharan Singh had executed a will on June 15, 1990 bequeathing her 2/3rd share in the property to Ms.Anant Verinder Singh, the share of the parties would be : Ms.Anant Verinder Singh – 5/6th share; Col.Inderjeet Singh – 1/6th share. Admitting that on April 09, 2001 a family agreement was executed between Ms.Anant Verinder Singh and Col.Inderjeet Singh, it was sought to be explained that the family arrangement would mean, and we quote para 11 of the reply:-

“11. On 9th April, 2001 a family agreement was signed between Mrs.Anant Verinder Singh AND Col.Inderjeet Singh. The said agreement gave Col.Inderjeet Singh and his family the right to reside on the ground floor premises currently occupied by a tenant against whom eviction proceedings are in progress. The clause “share the house bearing No.D-57, Defence Colony in equal share” contained in the family agreement, it is reiterated means the right to reside on the ground floor premises. Of the second floor premises 838 sq.ft. out of 1162 sq.ft. covered area have been constructed by Brig.Verinder Singh. Sh.Vikram Singh S/o Brig. Verinder Singh the Karta of the H.U.F. presently resides in this portion. Mrs.Anant Verinder Singh widow of Brig.Verinder Singh resides on the first floor premises with a spare room for the daughter & her children. The plaintiff has the right to reside on the ground floor premises with his family subsequent to the eviction of the tenant. His actual share in the property is 1/6th (524 sq. ft.). This is the factual position. (Total covered area (3985 sq. ft. covered area less loft area). $(3985-838 = 3147 \div 6 = 524.5$ sq.ft.).”

3. Relevant would it be to highlight that in the first written response to

the pleadings in the plaint, the stand of Ms.Anant Verinder Singh was that the Deed of Family Settlement dated April 09, 2001 could not be interpreted as was being claimed by the plaintiff. Its interpretation was as was pleaded by the defendant in paragraph 11 of the reply filed. Ms.Anant Verinder Singh did not plead that she was coerced into signing/executing the Deed of Family Settlement. We highlight that the aforesaid reply was filed on July 11, 2002.

4. The tenant referred to by Ms.Anant Verinder Singh in para 11 of the reply filed by her to IA No.4137/2002, was one Sh.J.K.Jain against whom a joint action had been initiated by Col.Inderjeet Singh and Ms.Anant Verinder Singh seeking a decree for ejectment. The decree was passed and in execution thereof Col.Inderjeet Singh took possession of the ground floor of the premises on June 30, 2004 which was under the occupation of the tenant. Ms.Anant Verinder Singh filed IA No.4004/2004 praying that Col.Inderjeet Singh be directed to deposit the key of the ground floor of the suit property in the Court. Said application was dismissed on January 12, 2006, but prior thereto for the first time, in an affidavit filed on May 05, 2005, Ms.Anant Verinder Singh took the stand that she was coerced into executing the Deed of Family Settlement on April 09, 2011. We quote from the affidavit. She stated as under:-

“The defendant has most respectfully decided after deep consideration that she desires to prove the above mentioned documents. The family agreement of 9.4.2001 it is respectfully reiterated was executed under coercion and threat of disruption of eviction proceedings by Col.Inderjeet Singh and as such is an invalid documents. Also it is most respectfully highlighted that when a registered will exists with respect to a property the testators to the will cannot on their own accord change the

mode of devolution of property by entering into a family agreement.”

5. Written statement under the caption : ‘*Reply on behalf of the defendant to suit for partition and injunction filed by the plaintiff*’ filed thereafter on May 31, 2005, elaborated as to what Kartar Gurcharan Singh meant when she pleaded that she was coerced into signing the Deed of Family Settlement. She pleaded as under:-

“The suit premises were in 1977 given on least to one Dr.J.K.Jain. In Sept. 1985 the first eviction petition under Section 14(1)(e) of DRC Act was filed by the owners of the suit premises against Dr.J.K.Jain. In February 1990, an eviction petition under Section 14(d) of DRC Act and in May 1991 an eviction under Section 14(1)(h) of the DRC Act were filed by Brig.Verinder Singh for evicting Dr.J.K.Jain from the suit premises.

From 1987 Col.Inderjeet Singh and his counsel Shri Girdhar Govind had manifested a lack of desire to pursue the eviction petition under Section 14(1)(e) filed in 1985. This fact is borne out by the analysis of the court order sheets which reveal only adjournments from 1987 onwards. It was for this reason that the management of the eviction petitions was handed over to Late Brig.Verinder Singh in 1990 along with counsel Shri Vijay Makhija.

In 1995, Brig.Verinder Singh was assaulted by Dr.J.K.Jain and his men and an FIR No.128/95 registered with the police under Sections 147, 148, 149, 323, 354, 307 and 506-II of the IPC. Prior to this in another incident FIR No.307/94 a security guard of Dr.J.K.Jain was convicted in 1995 U/s. 324 IPC for assaulting Brig.Verinder Singh. Dr.J.K.Jain to grab the property illegally had vitiated the atmosphere at the suit premises by his assaults on Late Brig.Verinder Singh and his family. After the assault of 1995, Late Brig.Verinder Singh to mitigate the tension prevailing at the suit premises involved

himself with the activities of Radhaswami Satsang, Beas and created an alternative residence for himself at Beas (Punjab) besides the existing one at the suit property.

Subsequent to this, the management of the eviction petition was once again taken over by Col.Inderjeet Singh. From 1995 onwards till Mrs.Kartar Gurcharan Singh's death in 2001, the eviction petitions stagnated with a staggeringly high number of adjournments being taken. Without approval from either Brig.Verinder Singh, Mrs.Kartar Gurcharan Singh or Mrs.Anant Verinder Singh compromise talks were initiated by Col.Inderjeet Singh with counsel for Dr.J.K.Jain unnecessarily delaying the eviction process. Incorrect professional advice was tendered by the erstwhile counsel Shri Vijay Makhija and an application to implead Mrs.R.Jain W/o Dr.J.K.Jain as co-respondent was moved in the Court 13 years after the filing of eviction petitions. All these acts were aimed at throwing the balance of convenience in favour of the tenant Dr.J.K.Jain and delaying the eviction proceedings. These facts have all been highlighted in a complaint that is pending against erstwhile counsel before the Bar Council of India.

Brig.Verinder Singh was murdered in 1998 in Beas. Mrs.Kartar Gurcharan Singh died in 2001. On her demise on 9.1.2001, Shri Vikram Singh s/o, Mrs.Anant Verinder Singh, the defendant perused the case files and discovered the mishandling of the eviction petitions. Given the state of eviction petitions wherein the counsel had attempted to throw the balance of convenience in favour of the tenant and compromise the eviction petitions and Mrs.Kartar Gurcharan Singh's recent demise, the primary task at that stage was to ensure that the eviction petitions reached their logical conclusion as swiftly as possibly without being jeopardized in any manner. Immediately after Mrs.Kartar Gurcharan Singh's demise, Col.Inderjeet Singh had threatened to withdraw from the eviction proceedings, in the process disrupt them and once again throw the balance of convenience in favour of Dr.J.K.Jain. It is also pertinent to highlight here that from

1987 onwards Col.Inderjeet Singh had developed strained relations with his mother after which he begun residing separately. On Mrs.Kartar Gurcharan Singh's demise, Col.Inderjeet Singh did not bear either her hospitalization of funeral expenses.

It was against this backdrop of the unexplained murder of Late Brig.Verinder Singh, recent death of Kartar Gurcharan Singh and threat of disruption of eviction proceedings by Col.Inderjeet Singh, that the family agreement of 9.4.2001 was executed. This was executed under threat and coercion of disruption of eviction proceedings. The Hon'ble Court is well aware that it is imperative that all landlords and owners must join in a suit to ensure eviction. In the absence of any one or more of them, a suit for eviction against a tenant may ordinarily not be maintainable. The family agreement of 9.4.2001 would not have been necessary if Col.Inderjeet Singh had not threatened to withdraw from the eviction petition and jeopardize the entire eviction process. The agreement was executed under threat and coercion of disruption of eviction proceedings by the plaintiff."

6. The Deed of Family Settlement dated April 09, 2001 reads as under:-

"DEED OF FAMILY SETTLEMENT"

This DEED OF FAMILY SETTLEMENT is made on this 9th day of April, 2001:

BETWEEN

Mrs.Anant Verinder Singh, W/o Brig.Verinder Singh, r/o D-57, Defence Colony, New Delhi, hereinafter called the party of the first part;

AND

Col.Inderjeet Singh, S/o Late Wing Comm.Gurcharan Singh, r/o 6-B, Kasturba Gandhi Marg, New Delhi, hereinafter called

the party of the second party.

The expression first party and second party shall bear and include all their respective legal representatives, heirs, successors, administrators, executors etc.

WHEREAS Mrs.Kartar Gurcharan Singh wife of Late Wing Comm. Gurcharan Singh unfortunately expired on 9th day of January, 2001 at New Delhi. (A copy of the death certificate is attached).

WHEREAS Mrs.Kartar Gurcharan Singh left behind the following legal heirs:

- i) Mrs.Anant Verinder Singh – Daughter*
- ii) Col.Inderjeet Singh – Son*

WHEREAS there are disputes between the parties to the settlement about the ownership and sharing of the premises bearing No.D-57, Defence Colony, New Delhi -24, which was initially owned and constructed by the father of the parties, Wing Comm. Gurcharan Singh.

WHEREAS after the demise of Late Wing.Comm. Gurcharan Singh and his elder son Mr.Sarbaland Singh, prior to Mrs.Kartar Gurcharan Singh's demise the shares in the said property were :

Mrs.Kartar Gurcharan Singh $\frac{4}{6}^{\text{th}}$; Mrs.Anant Verinder Singh $\frac{1}{6}^{\text{th}}$ and Col.Inderjeet Singh $\frac{1}{6}^{\text{th}}$.

WHEREAS Mrs.Anant Verinder Singh, the First Party maintains that there is a will in her favour dated 15.6.1990 made by Mrs.Kartar Gurcharan Singh in respect of her share in the property and as such she, the First Part is entitled to $\frac{5}{6}^{\text{th}}$ share in the said house and only $\frac{1}{6}^{\text{th}}$ share belongs to Col.Inderjeet Singh, Second Party. The said fact is disputed by the Second Party, i.e. Col.Inderjeet Singh.

WHEREAS all these facts are disputed and may lead to litigation and therefore, in order to maintain peace, harmony between the family, preserve the family property and to settle the matter amicably, the parties have voluntarily and mutually decided that the parties to this settlement i.e. Mrs.Anant Verinder Singh and Col.Inderjeet Singh would share the house bearing No.D-57, Defence Colony, New Delhi in equal share after the death of their mother Mrs.Kartar Gurcharan Singh.

WHEREAS the First Party Mrs.Anant Verinder Singh and her family namely, son Mr.Vikram Singh are residing on the first and second floor of the said property where they will continue to reside and remain liable for paying all statutory dues viz. water and electricity charges for that portion.

WHEREAS that the ground floor portion of the above said property is presently under the occupation of a tenant Dr.J.K.Jain, purely for residential purposes. It has been agreed and settled between the parties to the present settlement that the rent payable by the tenant shall be shared by the parties to the present settlement equally. Further all statutory taxes i.e. property tax, etc. shall be paid equally by both the parties in the present settlement.

WHEREAS to preserve the family property it is committed and agreed that the option of sale will not be exercised by either party. Both parties have agreed that in the eventuality of either party contemplating a sale of his/her share, he/she would first offer it to the other party by written registered post. In case the other party fails to accept the said offer within 60 days, then either party would be free to sell his/her respective share externally. It is reiterated that preservation of family property will be the endeavour for both the parties and the above is only a provision to be activated in dire need.

WHEREAS this family settlement/memorandum is being executed to write down/record the agreement which has

already been agreed and acted upon between the parties to the present settlement after the death of Mrs.Kartar Gurcharan Singh.

IN WITNESS WHEREOF the parties to this settlement have signed this DEED on the day, month and year first mentioned above in the presence of the following witnesses:”

7. In the suit after the demise of Ms.Anant Verinder Singh, her son Vikram Singh, the appellant in the appeal as the legal heir was not only substituted but started defending the suit and we find from the record that he has filed applications after applications seeking a right to lead evidence to make good the defence of inheritance under the will dated June 15, 1990 stated to have been executed by Ms.Kartar Gurcharan Singh. In other words, the appellant wants to establish that the share of his mother was 5/6th in the suit property and that the Memorandum of family settlement was a result of coercion.

8. The respondent Ajit Inder Singh, son of Col.Inderjeet Singh on being substituted as the legal heir of his father - the plaintiff, prayed to the learned Single Judge that a decree be passed on admission contained in the first written response dated July 11, 2002 to IA No.4137/2002 wherein the Memorandum of Family Settlement being executed was admitted. No coercion was pleaded. The document was sought to be given an interpretation as pleaded in para 11 of the reply i.e. limiting Col.Inderjeet Singh's right to reside on the ground floor premises currently occupied by a tenant against whom eviction proceedings were in progress. It was pleaded by Ajit Inder Singh that no evidence was required as per the reply containing the admission to the due execution of the Memorandum of family

settlement. Its interpretation was a legal issue not contingent upon adjudication of any fact in issue.

9. The appellant opposed no trial to be held.

10. Vide impugned judgment and order dated July 13, 2012, the learned Single Judge has passed a preliminary decree declaring share of the parties to be one half each in the suit property.

11. The learned Single Judge has firstly held that the admission by late Ms. Anant Verinder Singh in her first pleading admitted the execution of the Memorandum of Family Settlement without any demur. The learned Single Judge then proceeded to note the opposition to the admissibility of the Memorandum of Family Settlement on the plea of the appellant that the same not being a registered document was inadmissible in evidence. Lastly, the learned Single Judge has dealt with the issue of Court Fee paid on the plaint.

12. Referring to the decisions of the Supreme Court reported as AIR 1958 SC 706 Nanibai & Ors. vs. Geetabai Kom Rama Gunge, AIR 1976 SC 807 Kale & Ors. vs. Deputy Director of Consolidation & Ors., and AIR 2007 SC 18 Hansa Industries vs. Kidar Sons Industries Ltd., the learned Single Judge has held that the law declared therein was that a family settlement does not require registration if the same recognized an antecedent title and did not operate or purport to create, declare, assign, limit or extinguish any right of the parties in an immovable property. The learned Single Judge has held that family arrangements are governed by special equities and principles applicable to dealings between strangers do not apply to dealings within the family. Family arrangements will be enforced if honestly made. The learned Single Judge has negated opposition to the admissibility of the

Memorandum of family settlement predicated on Section 17 of the Registration Act, 1908. Plea of inadequate Court Fee paid has also been negated.

13. On the plea that late Ms.Anant Verinder Singh executed the Memorandum of Family Settlement as a result of coercion, the learned Single Judge has referred to Section 15 of the Indian Contract Act, 1872 and the law declared in the decisions reported as AIR 1951 SC 280 Bishundeo Narain & Anr. vs. Seogeni Rai & Ors. and AIR 2006 SC 3672 Ramesh B.Desai & Ors.vs. Bipin Vadilal Mehta & Ors. to hold that pleas pertaining to coercion, fraud etc. must contain material particulars of the acts constituting coercion or fraud. The learned Single Judge has found no such material particulars stated.

14. On the plea that the coercion was in the form of late Col.Inderjeet Singh threatening to withdraw from the eviction proceedings against Dr.J.K.Jain pertaining to the ground floor of the suit property, the learned Single Judge has referred to the decisions reported as 1977 (1) SCR 395 Sri Ram Pasricha vs.Jagannath & Ors., AIR 2002 SC 2572 Dhannalal vs. Kalawatibai & Ors., AIR 2004 SC 1321 M/s India Umbrella Manufacturing Co.& Ors.vs. Bhagabendei Agarwalla (dead) Through LRs and AIR 2006 SC 1471 Mohinder Prasad Jain vs. Manohar Lal Jain to hold that even one co-owner can maintain an action to eject a tenant.

15. With reference to decrees on admission the learned Single Judge has held that the law declared by the Supreme Court in the decisions reported as 1977 (4) SC 467 T.Aravandanam vs.T.V.Satyapal & Anr., AIR 1977 SC 577 M/s Mechelec Engineers & Manufacturers vs. M/s Basic Equipment Corporation and 2000 (7) SCC 120 Uttam Singh Dugal and Co.Ltd. vs.

United Bank of India & Ors. as also the decisions of this Court reported as (2004) 72 DRJ 540 Rajiv Sharma & Anr. vs. Rajiv Gupta and 166 (2010) DLT 84 P.P.A. Empex Pvt. Ltd. vs. Mangal Sain Mittal required moonshine pleadings to be ignored and either complaints rejected at the threshold or defences rejected at the threshold and claims decreed.

16. With respect to whether proper court fee was affixed on the plaint the learned Single Judge has held that proper court fee was paid in terms of Section 7(iv)(b) of the Court Fees Act, 1870 read with Article 17(vi) of the Court Fees Act, 1870 because it was not a case where plaintiff pleaded that he was ousted from the suit property.

17. The same pleas which were urged before the learned Single Judge being three in number i.e. (i) that the Memorandum of Family Settlement being not registered was inadmissible in evidence; (ii) the Memorandum of Family Settlement was the result of coercion; and (iii) that proper court fee was not affixed on the plaint were urged in appeal before us, with two additional pleas that if the owner of property had made a bequest, the legal heirs by consent could not alter the bequest, and that no decree on admission could be passed since a will dated June 15, 1990 statedly executed by Ms.Kartar Gurcharan Kaur had been set up as a defence as per which Ms.Kartar Gurcharan Kaur's 2/3rd share had been bequeathed to Ms.Anant Verinder Singh.

18. We deal with the three contentions urged before the learned Single Judge and the two more before us in the appeal; at seriatim.

19. In paragraph 6 above we have noted the contents of the Deed of Family Settlement, referred to by the parties in their pleadings as the Memorandum of Family Settlement. It records the past history of ownership

of property No.D-57, Defence Colony, New Delhi and traces title to the first owner under the Government i.e.late Wing Commander Gurcharan Singh. It refers to late mother of the parties Ms.Kartar Gurcharan Singh having 4/6th share and Col.Inderjeet Singh and Ms.Anant Verinder Singh having 1/6th share each in the property on the demise of Sarbaland Singh the eldest son born to late Wing Commander Gurcharan Singh and Ms.Kartar Gurcharan Singh. It refers to Ms.Anant Verinder Singh propounding a will dated June 15, 1990 executed by Ms.Kartar Gurcharan Singh, which assertion was disputed, as recorded in the Deed of Family Settlement, by Col.Inderjeet Singh. It records the reason why parties were executing the Deed of Family Settlement, and it would be better if we quote the language used in the recital by the parties. In the sixth recital, the parties have recorded : *WHEREAS all these facts are disputed and may lead to litigation and therefore, in order to maintain peace, harmony between the family, preserve the family property and to settle the matter amicably, the parties have voluntarily and mutually decided that the parties to this settlement i.e. Mrs.Anant Verinder Singh and Col.Inderjeet Singh would share the house bearing No.D-57, Defence Colony, New Delhi in equal share after the death of their mother Mrs.Kartar Gurcharan Singh.* In the tenth recital, the parties have recorded : *WHEREAS this family settlement/memorandum is being executed to write down/record the agreement which has already been agreed and acted upon between the parties to the present settlement after the death of Mrs.Kartar Gurcharan Singh.*

20. Two things emerge. The tenth recital records that a family settlement was being reduced into writing because it had already been acted upon by the parties. Thus, it is clear that the Deed of Family Settlement is a

Memorandum i.e. a written record of what the parties had orally agreed upon at an earlier point of time and had acted thereupon. The second thing which emerges is that parties have acknowledged antecedent title. Thus, we are in agreement with the view taken by the learned Single Judge that in view of the law declared in the decisions reported as AIR 1958 SC 706 Nanibai & Ors.vs.Geeta Bai Kom Rama Gunge, AIR 1976 SC 807 Kale & Ors. vs.Deputy Director of Consolidation & Ors., and AIR 2007 SC 18 Hansa Industries vs.Kidar Sons Industries Ltd. the Deed of Family Settlement does not require any registration and is a document admissible in evidence.

21. On the subject whether the Deed of Family Settlement was the result of coercion, as noted above the learned Single Judge has referred to the definition of coercion as per Section 15 of the Indian Contract Act, 1872, which reads as under:-

“15. Coercion’ defined.-

‘Coercion’ is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.”

22. The plea of coercion is, as per the pleading in the purported written statement filed under the caption : *‘Reply on behalf of the defendant to suit for partition and injunction filed by the plaintiff’*. We have noted its contents in paragraph 5 above. In a nutshell, the act of coercion pleaded is late Col.Inderjeet Singh threatening to withdraw from the eviction proceedings initiated against Dr.J.K.Jain who it is claimed had assaulted husband of

Ms.Anant Verinder Singh.

23. The learned Single Judge has dealt with the issue on two fronts. Firstly, with respect to law declared by the Supreme Court in the decisions reported as AIR 1951 SC 280 Bishundeo Narain & Anr. vs. Seogeni Rai & Ors. and AIR 2006 SC 3672 Ramesh B.Desai & Ors.vs. Bipin Vadilal Mehta & Ors. i.e. material particulars pertaining to the acts constituting coercion to be pleaded. The learned Single Judge has found no such material particulars stated. Secondly, with reference to the law declared by the Supreme Court in the decisions reported as 1977 (1) SCR 395 Sri Ram Pasricha vs.Jagannath & Ors., AIR 2002 SC 2572 Dhannalal vs. Kalawatibai & Ors., AIR 2004 SC 1321 M/s India Umbrella Manufacturing Co. & Ors.vs. Bhagabendei Agarwalla (dead) Through LRs and AIR 2006 SC 1471 Mohinder Prasad Jain vs. Manohar Lal Jain the learned Single Judge has held that assuming Col.Inderjeet Singh threatened to withdraw from the eviction proceedings, the same would not be coercion because any co-owner can maintain an action to eject a tenant.

24. The second limb of the reasoning of the learned Single Judge may not be sound for the reason the decisions noted by the learned Single Judge hold that all co-owners need not join in an action to eject a tenant and any one co-owner suing for ejectment of the tenant would be presumed to have the authority of the other co-owners to do so. The decisions recognize that if some co-owners do not desire a tenant to be evicted, the other co-owner cannot sue for ejectment of the tenant.

25. But on facts we find that the said plea taken is a ruse and has to be ignored evidenced by the fact that the pleadings of Ms.Anant Verinder Singh in IA No.4004/2004 would evidence her admission that Col.Inderjeet

Singh prosecuted the eviction proceedings and managed to obtain possession of the ground floor from the tenant. It assumes importance to note that Col.Inderjeet Singh took possession of the ground floor from the tenant on June 30, 2004 and immediately Ms.Anant Verinder Singh filed an application that he be directed to deposit the key in the Court. It is only thereafter that Ms.Anant Verinder Singh changed her stand.

26. Inconsistent pleadings of parties can be given consistency by a Court with reference to admitted facts. On the one hand, Ms.Anant Verinder Singh pleaded for the first time in the affidavit filed by her on May 05, 2005 that she was coerced into signing the family arrangement and explained as to what acts of coercion were when she filed the further pleadings on May 31, 2005; being the threat of Col.Inderjeet Singh to withdraw from the eviction proceedings and on the other hand much prior to such pleadings, in her pleadings in IA No.4004/2004 she wanted the key of the ground floor of the suit property to be deposited by Col.Inderjeet Singh who took possession of the ground floor from the tenant on June 30, 2004.

27. Thus, Ms.Anant Verinder Singh would be estopped from pleading the fact that Col.Inderjeet Singh was not co-operating in the ejectment proceedings initiated against the tenant of ground floor and was threatening to torpedo the eviction proceedings by withdrawing as a co-petitioner.

28. We agree with the reasoning of the learned Single Judge that the pleadings of Ms.Anant Verinder Singh would not constitute an act of coercion for the reason coercion would be : (i) committing or threatening to commit any act forbidden by Indian Penal Code; and (ii) the unlawful detaining or threatening to detain any property to the prejudice to any person whatsoever with the intention of causing the person concerned to enter into

an agreement.

29. Besides, we have more fundamental reasons to hold that Ms. Anant Verinder Singh would be estopped from pleading coercion. Not only does the Deed of Family Settlement unequivocally record that in order to maintain peace, harmony between the family, preserve the family property and to settle the matter amicably, the parties have voluntarily and mutually decided to settle their disputes, but the fact that at the first available opportunity to put forth her stand vis-a-vis the Deed of Family Settlement after she was served summons in the suit and notice in IA No.4137/2002, on July 11, 2002 Ms. Anant Verinder Singh in her written response filed to IA No.4137/2002, admitted having voluntarily signed the Memorandum of Family Settlement but sought to explain its meaning by pleading in para 11 of the reply which we have extracted hereinabove in para 2 of our decision.

30. Having unequivocally admitted having executed the Deed of Family Settlement followed by giving her version to the manner in which the same had to be interpreted, Ms. Anant Verinder Singh would be estopped from pleading to the contrary.

31. On the third plea that proper court fee was not affixed on the plaint, it is settled law that unless ouster is pleaded, co-owners would be deemed to be in joint possession of a joint property and in a suit seeking partition court fee of ₹19.50 has to be affixed and not with reference to the value of the property with reference to the share of the parties to be separated.

32. In the plaint Col. Inderjeet Singh never pleaded that he was ousted. In the response ouster has not been pleaded. Thus, the view taken by the learned Single Judge that proper court fee was affixed on the plaint is affirmed.

33. The next plea urged that since a defence have been predicated on the will dated June 15, 1990 executed by Ms.Kartar Gurcharan Kaur, we only have to note that under the Deed of Family Settlement, the parties to the settlement i.e. the two siblings have expressly recorded that Ms.Anant Verinder Singh gives up claim under the will. Inter-linked with the plea that if an owner of a property makes a bequest, the legal heir by consent cannot alter the bequest.

34. The later argument overlooks that there exists in law a doctrine of election. It means that if two or more rights are available to a party on the same subject, it would be open to a party to elect which one right it would like to avail of. Upon the death of a person if there is a bequest by way of a will, the legal heirs can elect whether to proceed to inherit the estate of the deceased as per the will or inherit the estate as legal heirs and successor-in-interest of the deceased. Thus, it is no argument that if a person makes a bequest, the legal heirs cannot enter into a mutual agreement to alter the bequest.

35. The fifth recital to the Deed of Family Settlement refers to the fact that Ms.Anant Verinder Singh was predicating a claim under a will dated June 15, 1990; the execution whereof was denied by her brother Col.Inderjeet Singh. The sixth recital records that this dispute may lead to litigation. It records the desire of the siblings to maintain peace and harmony and preserve the family property. It records their desire to settle the matter amicably. It records that the parties have voluntarily and mutually decided that the share of the two siblings in the house would be equal. It records thereafter in the ninth recital that in future if any party desirous to sell his/her share, first preference would be given to the other.

The said recital reiterates that preservation of the family property would be the endeavour of both the parties.

36. Thus, the document clearly evidences an election by Ms.Anant Verinder Singh not to litigate with respect to her assertion that the mother of the siblings had executed a will and to inherit the estate by intestate succession.

37. Before bringing the curtains down we cannot overlook the fact that Ms.Anant Verinder Singh has litigated vexatiously and her son i.e. the appellant has continued with the vexatious litigation. After entering into the Memorandum of Family Settlement when Col.Inderjeet Singh sued for partition the first written response was in July 11, 2002 admitting the due execution of the Memorandum of Family Settlement but claiming it to be having a meaning that Col.Inderjeet Singh would occupy the ground floor after the tenant was evicted. Once Col.Inderjeet Singh obtained possession from the tenant on June 30, 2004 Ms.Anant Verinder Singh filed IA No.4004/2004 praying to the Court that her brother should deposit the key of the ground floor, a prayer which was totally contrary to her stand taken earlier. The plea in the IA No.4004/2004 was rightly negated when the application was dismissed by the learned Single Judge on January 12, 2006. We find the record of the learned Single Judge is replete with applications filed by Ms.Anant Verinder Singh and her son to prolong the litigation.

38. What are the right of the parties under the Deed of Family Settlement which we have found to be voluntarily executed by the parties and anything contrary thereto pleaded by either party would not be permitted by law inasmuch as estoppel would apply?

39. The settlement between the parties in recital No.7 clearly records that

the share of Ms.Anant Verinder Singh and Col.Inderjeet Singh in the house would be equal. And we emphasis the word '*equal*'. If there are two persons, equal would obviously mean half and half. The further recital of giving option to either party to purchase the share of the other if other contemplate a sale is further indicative of that the parties agreed that the share would be half and half.

40. We dismiss the appeal imposing costs of ₹50,000/- (Rupees Fifty Thousand only) upon the appellant to be paid to the respondent.

(PRADEEP NANDRAJOG)
JUDGE

(R.V.EASWAR)
JUDGE

FEBRUARY 24, 2014
Mamta/skb