

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

% *Judgment reserved on :04.02.2015*
Judgment delivered on :11.02.2015.

+ CS(OS) 653/2008

SH. VISHWANATH CHUGH Plaintiff

Through Mr. Anil Kumar Narang, Adv.

versus

SH. KRISHAN LAL CHUGH & ORS. Defendants

Through Ms. Anu Narula, Adv. for D-1 & D-2.

Mr. J.S. Bakshi, Mr. A.S. Bakshi
and Mr. Ankush Sharma, Advs.
for D-3, D-5 & D-6.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Present suit has been filed by Vishwanath Chugh s/o late Sh. Gobind Ram Chugh seeking partition of a property bearing No. C-111, Kalkaji, New Delhi. The five defendants who have been arrayed in the suit were four brothers and one sister. During the course of their strife, the plaintiff had died; defendants No. 1, 3 & 5 had also expired. They are all represented through their respective legal heirs.

2 Gobind Ram Chugh was allotted a property by the Rehabilitation Department which is the suit property i.e. Municipal No. C-111, Kalkaji, New Delhi. This property had been allotted to him in lieu of the alternate property which had been left by him in Pakistan. The property in Pakistan had devolved upon Gobind Ram Chugh in 1937 after the death of his father Ganga Ram Chugh.

3 Gobind Ram Chugh stayed in this property along with his family. He expired on 25.01.1972. His widow Jamuna Bai also expired on 22.11.1990. The property is presently in physical possession of defendants No. 1 & 2 who are staying there along with their family members. Since Gobind Ram Chugh had died intestate all the class I legal heirs i.e. the plaintiff and five defendants are entitled to an equal share in the property i.e. 1/6th undivided share. Present suit had accordingly been filed.

4 Written statement was filed by all the defendants. The contesting defendants are defendants No. 1 & 2. Defendants No. 3 to 5 are supporting the case of the plaintiff. Their contention in the written statement is that Gobind Ram Chugh was the owner of the said property.

He had died intestate. His wife has also expired. There are six class I legal heirs i.e. parties to the suit and each of them is entitled to 1/6th share in the suit property. Defendant no.1 and defendant no.2 are illegally enjoying the property to the detriment of the other legal heirs. A counter claim of mesne profit against defendants No. 1 & 2 has also been set up.

5 In the written statement filed by defendant Nos.1 and 2, the foremost contention was that an oral partition had already taken place between the family and the plaintiff as also defendants No. 3 to 5; they had all been given their respective shares; the suit is liable to be dismissed.

6 The written statement further discloses that defendant No.1 is the eldest son of Gobind Ram Chugh. He had come to India in August, 1947 and had taken employment with the Department of Civil Aviation, Government of India. At that time, he stayed at Minto Road. He thereafter occupied a Government quarter at 13, Press Lane, New Delhi. His parents were still in Pakistan. He returned to Sargoda in Pakistan to bring back his parents, brothers and sister. The plaintiff at that point of

time was working at Shimla and was living separately with his family. He has no connection with the family since that time i.e. prior to partition i.e. from the year 1944. Defendant No.1 was the only earning member of the family; all the other siblings were young in years; his father was also not an earning member. As against the assets left behind in Pakistan, a claim of Rs.5,100/- was passed in favour of defendant No.1 by the Government of India. Defendant No.1 applied for an allotment of a residential accommodation which was allotted to him by the Rehabilitation Department at Kalkaji. The house was allotted in the name of his father i.e. in the name of Gobind Ram Chugh.

7 Pushpa (defendant No.5), the sister of the parties was married in the year 1955. Defendant No.1 had made maximum contribution in the marriage. Her share in the property was given to her during the life time of Gobind Ram Chugh.

8 In 1970, Baldev Raj (defendant No.3) purchased a property in Gujranwala town from the funds which were given to him by all the brothers. Even at that point of time, the plaintiff had not made any contribution. Baldev Raj constructed a house in Gujranwala and shifted

there along with his family. This property was taken in the name of his wife Raj Kumari.

9 Kanwal Chugh (defendant No. 4) was also separated from the family when he purchased a property at Shalimar Bagh upon which a two storey construction had been built. This property was also purchased out of the funds contributed by all the family members including defendants No. 1 & 2 but excluding the plaintiff.

10 The plaintiff also acquired a property in Vikas Puri, New Delhi which he had purchased in 1980. He has since prior to partition otherwise been a resident of Shimla.

11 Defendant No.1 continued to stay in his portion of Kalkaji. Defendant No.2 was also living there with his family.

12 In 1981, with the consent of all the family members, the house at Kalkaji was divided by metes and bounds when a wall was constructed giving two municipal numbers to the house i.e. C-111-A and C-111-B of which C-111-B is presently in occupation of defendant No.1 and his family and C-111-A is in occupation of defendant No.2 and his family. Submission of the defendants being that the partition had originally

taken place in the year 1960 but again by metes and bounds in 1981 when this wall was constructed inter-se the house. The suit of the plaintiff is liable to be dismissed.

13 On the pleadings of the parties, the following issues were framed:-

1. *To what share is the plaintiff entitled in the property in the suit: OPP.*

2 *Relief.*

Additional Issues

2-A *Whether the suit is bad for mis-joinder of parties: OPD1*

3 *Whether the suit is not maintainable in view of oral partition took place in 1960 by metes and bounds? OPD1*

4 *Whether defendants No. 3 to 5 and other parties have already acquired respective shares of property in suit? OPD1*

5 *Whether the plaintiff has no cause of action? OPD1*

6 *Whether the suit is barred by time? OPD1*

7 *Whether the suit is collusive between defendants No.3 to 5 and plaintiff? OPD*

14 The plaintiff in support of his claim has produced one witness i.e. the plaintiff himself. Defendants No. 3 to 5 are supporting the case of the plaintiff and two witnesses have come on their behalf i.e. Raj

Kumari Chugh, the widow of Baldev Raj Chugh and Kanwal Chugh.
CS(OS) No.653/2008

Defendant No.1 Krishan Lal Chugh and defendant No.2 Ramesh Chugh had also entered the witness box. Thus in all, five witnesses have been examined. Besides the oral testimony, documentary evidence has also been adduced by the respective parties.

15 The suit was originally filed in the District Court and a large number of proceedings had continued there but thereafter the District Judge noted that the value of the suit is more than Rs.20 lacs and accordingly the suit had been transferred to this Court on 26.11.2007.

16 Arguments have been heard. Record has been perused.

17 Issue-wise findings read as under:-

Issue No. 2-A

18 The onus to discharge this issue was upon the defendants. No evidence has been led on this score. No argument has also been addressed. All the class I legal heirs are parties in this suit. It is a suit for partition. The father of the plaintiff Gobind Ram Chugh and his wife had both expired. All the deceased are represented by their respective legal heirs. There is to be no misjoinder of the parties. This issue is decided in favour of the plaintiff and against the defendants.

Issues No. 1, 3, 4 & 5

19 All these issues will be decided by a common discussion. The onus to discharge all these issues is upon the defendants. Krishan Lal Chugh is defendant No.1. He had entered into the witness box as DW-1. He had reiterated on oath the averments contained in his written statement. He reiterated that he is the eldest son of Gobind Ram Chugh and he had come to Delhi in August, 1947 after migration. His family was left in Sargodha. He stayed with relations at Minto Road till 1947. He went Pakistan to bring back his family which included his parents and siblings. At that point of time, Vishwanath Chugh (the plaintiff) was living separately in Shimla i.e. even prior to partition. DW-1 was looking after the day to day needs of the family including those of his parents and other siblings all of whom i.e. Ramesh Chander Chugh (defendant No.2), Baldev Raj (defendant No.3), Kanwal Chugh (defendant No. 4) and Pushpa (defendant No.5) were minors and were studying. Defendant No.1 was looking after their expenses. A claim of Rs.5,100/- was passed by the Government of India qua the assets which had been left by defendant No.1 in Pakistan. A residential house was

accordingly allotted to defendant No.1 at Kalkaji but it was taken in the name of Gobind Ram Chugh, his father. The accommodation comprised of 252 square yards of which C-111-A is about 152 square yards and C-111-B is around 100 square yards. After allotment of this quarter, the sum of Rs.2,942 and thereafter another sum of Rs.2,000/- was deposited by defendant No.1. The sum of Rs.2,000/- was deposited on 01.12.1969. These amounts were deposited by defendant No.1 in the name of his father as the property in question although allotted to defendant No.1 was taken in the name of their father. Further averments on oath being that during the life time of their father, property No. C-111-B was given to the share of defendant No.1 and he has been in exclusive possession in that portion since the year 1960. He has a separate mess. Property No. C-111-A being bigger in size was occupied by the parents, Ramesh Chugh (defendant No.2) and the other brothers and sister who continued to live together. Their sister Pushpa got married in 1955. Two gold sets were given to her at the time of marriage by defendant No.1 which belonged to his wife. DW-1 also contributed largely in the marriage. Submission being reiterated on oath that it was in 1960 itself that the

property was divided and an oral partition had taken place separating the share of defendant No.1 from the other family members. This family settlement was never challenged.

20 Baldev Raj (DW-1) purchased the property at Gujranwala town in 1970 for which the funds were contributed by all the brothers; this property was acquired in the name of his wife Raj Kumari. Raj Kumari was a house-wife and she had no source of income. The sum of Rs.7,000/- to Rs.8,000/- was paid by DW-1 as his share in the contribution. Baldev Raj was also given a shop in Model Town which was earlier in the name of Gobind Raj Chugh. Thus the share of Baldev Raj became determined in 1972 when he vacated this property and ever since he is living separately at Gujranwala town and carrying on their business independently. In 1981, defendant No. 4 acquired a property in Shalimar Bagh. This property was also purchased from the funds contributed by the entire family except the plaintiff and including defendants No. 1 & 2; DW-1 had paid a sum of Rs.5,000/- for his contribution. The plaintiff had not contributed any money in this property.

21 Vishwanath Chugh, the plaintiff was living prior to partition in Shimla. He also acquired a property in Vikas Puri in 1981. His share was given in the form of financial contribution for the marriage of his eldest daughter; DW-1 had given Rs.5,000/- at that point of time.

22 Defendant No.2 Ramesh Chugh became the owner of C-111-A with the knowledge and consent of the other family members. In 1981-82, a wall was constructed between C-111-A and C-111-B which was also with the consent and knowledge of other siblings in the family. Since all the family members had in fact received their shares and acquired the areas of their own which was with the help of other family members, the property at Kalkaji came to the exclusive share of defendants No. 1 & 2. In fact even after the death of the father of the parties, the mother was alive for 20 years but neither of the parties raised any dispute about this property. DW-1 was the star witness of the defendants and he was subjected to a lengthy cross-examination. He admitted that the portion which is in his occupation of C-111-B has a construction of three bed rooms, a kitchen and bathroom besides the construction on the first floor and second floor. There is no tenant in the

property. His son is in occupation of the first floor. He also admitted that he had a property in South Extension from where he is getting rent which has now been vacated. He admitted that the property at Gujranwala town was purchased by defendant No.1 Baldev Raj in the name of his wife Raj Kumari. This aspect of the cross-examination of DW-1 has been highlighted by the learned counsel for contesting defendants to make a submission that DW-1 has not denied that this property at Gujranwala was purchased from the personal funds of Ramesh Chugh which he had deposited in the post office.

23 This part of the cross-examination has been perused. It does not support the argument of the learned counsel for the defendants as the testimony of the witness has to be read in its entirety and what appears from this statement of DW-1 is that a question had been put to him about his personal funds at the post office to which he had answered that this was his personal matter and did not know about the same. It does not support the argument that there was an admission of DW-1 that this property at Gujranwala town had been purchased by Raj Kumari from her personal funds. Admittedly, Raj Kumari is a house-wife. This has

been admitted by Raj Kumari herself (examined as DW-3). She had no source of income and no such income has also been projected or brought to the notice of the Court. The statements on oath of both DW-1 and DW-2 are categorical to the effect that this property at Gujranwala had been purchased out of the funds which had been contributed by the family members at the time of separation of Baldev Raj from the family. No effective cross-examination has been conducted on this score. The fact that this property had been purchased by Baldev Raj in 1971 is an admitted fact. Since that time, he is living separately and independently in that house. Baldev Raj was also doing the business of electricity goods from a shop at Model Town. This shop was admittedly in the name of Gobind Raj Chugh. It had been passed on to Baldev Raj. Submission of Baldev Raj that this was only a tenanted shop and would have no value is negated by the admitted position that even tenancy rights are valuable and a commercial shop of electrical goods at Model Town, to say the least cannot be without any value. In fact it is out of the earnings of this shop that Baldev Raj and his family are sustaining themselves. Baldev Raj was married to Raj Kumari in 1954. He had

separated from the joint family mess 18-20 years after his marriage. His year of birth (per the testimony of DW-2) is 1934 and at the time when he separated from the mess, he would have been around 40 years of age. After his marriage, he had got a room constructed behind another room in the portion of C-111-B.

24 DW-2 had also fully supported this version of DW-1 and nothing has been elicited in his cross-examination which could discredit him.

25 D3W-1 Raj Kumari had also entered the witness box. Her contention was that the property at Gujranwala town was self-acquired and no help was taken from any other family member to acquire this property. In her cross-examination, she admitted that up to 1970, her husband was working as LDC in the Estate Office. He had started business of tent and lighting and was earning Rs.10,000/- to Rs.15,000/- per month even at that point of time. She admitted that since her husband was in Government job, an inquiry had been conducted against him for running a business which was subsequently dropped. She admitted that they have a shop under the name and style of M/s Standard Electrical Goods at Model Town from where electrical goods are sold;

specific query was put to this witness that her husband was exonerated from the inquiry because this shop was found to be in the name of her father-in-law; there was no denial. It was an evasive answer wherein D3W-1 stated that she does not know about this fact. She also admitted that she was a house-wife and has no independent source of income. She admitted that from her portion at Gujranwala town which she had constructed, she is earning rental income which at the time of deposition (in the year 2004) was Rs.11,000/- per month. She admitted that there is a partition wall between C-111-A and C-111-B; earlier there was only two rooms and two verandahs and there was no demarcation; she admitted that the room was constructed where she had shifted along with her husband after her marriage. She admitted that they resided in that property only up 1970-71. She admitted that she has no knowledge as to what had been constructed subsequently in C-111-A, C-111-B and Kalkaji. She admitted that at the time when she was living in the suit property (prior to 1970), Krishan Lal Chugh and Ramesh Chugh were having separate kitchens; she admitted that after shifting to Gujranwala town, she never stayed in the suit property and she has been dealing with

Gujranwala property of her own without any interference by her brothers-in-law i.e. Krishan Lal Chugh, Ramesh Chugh and Kanwal Chugh. She further admitted that after shifting to Model town, no legal action not even a notice was ever served either on defendant No.1 or defendant No. 2 to partition the suit property.

26 Kanwal Chugh (defendant No. 4) had also entered the witness box. He was examined as D4W1. He has on oath reiterated that being a class I legal heir, he is entitled to 1/6th share in the suit property which had illegally now been raised up to three storeys by defendant No.1; defendants No. 1 & 2 have no right to retain the suit property exclusive to the share of other siblings. This witness was subjected to a lengthy cross-examination. He admitted that in 1947 when defendant No.1 had come to India, he was about 8 years of age. He came to Delhi in 1948 and studied up to M.Sc. from the Pusa Institute. He took up a job in 1961. He admitted that the plaintiff had never stayed with the family and categorically stated that from the entire family, the plaintiff always stood excluded. He admitted that his elder brother defendant No.1 was in service in 1948; he admitted that from 1948 to 1954, the family was

maintained by defendant No.1 and their father. He admitted that Krishan Lal Chugh had a separate kitchen and separated from the rest of the family in 1953-54. He also admitted that after partition, his father was not working and was keeping indifferent health; earlier he was working with a brick kiln owner where he might have been drawing a salary of Rs.100/- of Rs.110/-; his father was not keeping good health and was not an earning member. He admitted that he had separated from Kalkaji property in 1982-1983 when he purchased a house in Shalimar Bagh. He also admitted that in 1970 itself even while living in the suit property, he had separated his kitchen. As on date, he admitted that he is enjoying a rental from this property and as on date, his children have studied in public school and he is enjoying a good status in life. He has also admitted that there was a partition wall between two houses i.e. C-111-A and C-111-B sometime in the year 1982-1983.

27 These admissions clearly show that apart from defendant No.1, there appears to be no earning member when the family came to India from Pakistan and all other siblings of defendant No.1 being younger in years, it was defendant No.1 who was maintaining them. In Court also, a

specific query has been put to the learned counsels for the parties who have given the ages of the respective parties. Had they been alive, the plaintiff Vishwanath Chugh would have been about 90 years of age. Defendant No.1 Krishal Lal Chugh was four years senior to the plaintiff and would have been about 94 years of age. The other brothers were much younger. Baldev Raj is about 10 years younger and this Court has been informed that had he been alive, he would have been 82 years of age. Their sister Pushpal would be about 80 years of age. Ramesh Chander Chugh would be about 79 years of age; Baldev Raj would be 82 years of age and Kanwal Chugh would be of 74 years. Keeping this age chart in front, what is clearly evident is that there was a difference of 3-4 years between the plaintiff and defendant No.1.

28 It is an admitted case of the parties that plaintiff Vishwanath Chugh was living in Shimla all along i.e. even prior to partition i.e. from 1944. This is evident from the plaint itself wherein also it has been averred that the plaintiff was also living in Shimla from 1944 and was working for gain there. In 1969 at the time of marriage of elder daughter of the plaintiff, the family had spent a large amount and contributed to

his share has not been the subject matter of any cross-examination. This part of the testimony of DW-1 is admitted; meaning thereby that the plaintiff from all angles stood partitioned from the rest of the family and so much so that he even admitted that at the time of marriage of his sister Pushpa (with whom he had had a spat); he had come to Delhi only for one day. Testimony of PW-1, DW-1, DW-2 as also DW-3 and D-4 in fact clearly evidenced that the plaintiff was not on good terms with any of the family members i.e. neither with the contesting defendants No. 1 & 2 and nor with the other siblings i.e. defendants No. 3 to 5 who are supporting the plaintiff and the reason for supporting the plaintiff appears to be greed.

29 Coming back to the age chart, Baldev Raj is more than 10 years younger than defendant No.1. DW-1 has reiterated that he was looking after all the needs of his other siblings including Baldev Raj which testimony has again not been credited; in fact his widow who has come into the witness box has admitted that at the time when they got married in 1954, a room had been constructed for their living in the back portion of C-111-B and even around that time, defendant No.1 had separated his

mess from the rest of the family and was living in C-111-A. C-111-B which was the bigger portion (152 square yards) was in occupation of the parents of the parties and all the other siblings excluding the plaintiff and defendant No.1. Their sister Pushpa got married in 1995. She is well settled in her matrimonial home. DW-1 categorically stated that he had given two gold sets and had contributed Rs.7,000/- to Rs.8,000/- in her marriage which again has not been discredited.

30 Kanwal Chugh was also younger by about 17-18 years to defendant No.1 and as rightly testified by D3W-1, he was only a minor child at the time of partition. This has also been admitted by Kanwal Chugh when he entered the witness box.

31 The testimony of PW-1 is also relevant. In fact his version and his lengthy cross-examination clearly establishes that he has all along been living in Shimla and had hardly any contact with the rest of the family. On a question put to him about the details of his other brothers and sister, he hardly had any answer. He appears to be unrelated to the family for almost all purposes. He did not know when Baldev Raj and Kanwal Chugh separated and whether financial assistance for the

purchase of the properties at Model Town and Shalimar Bagh were given by other family members; these evasive answers in fact reflected that the witness did not want to make any positive averment; positive averment of DW-1 and DW-2 on this score being that at the time Baldev Raj and Kanwal Chugh separated from the family and took up their separate accommodations at Gujranwala and Shalimar Bagh, the shop at Model Town had fallen to the share of Baldev Raj from where he was running his electrical business. He had no answer about the details of the educational background of Baldev Raj and Kanwal Chugh either. He did not know when the construction was carried out at Kalkaji. In fact even the supporting siblings i.e. defendants No. 3 & 4 who both had also entered into the witness box stated that the plaintiff was unrelated to the family affairs and was a rank outsider. He was admittedly living in Shimla since 1944 and had little relations with the rest of the family.

32 This oral and documentary evidence persuades this Court to hold that it was prior to 1960 itself that an oral partition had taken place between the parties. Defendant No.1 had come to India in 1947. After partition he has gone to Sargoda in Pakistan to bring back his family

who joined him in India. In lieu of property which they had left in Pakistan, an alternate accommodation was allotted to him by the Government of India. A claim of Rs.5,100/- was passed in favour of defendant No.1. Defendant No.1 applied an allotment of a residential accommodation which was allotted to him by the Rehabilitation Department at Kalkaji. The house was allotted in the name of his father i.e. in the name of Gobind Ram Chugh and even assuming that this property was purchased by Gobind Ram Chugh in his own right, the next question which has to be answered is whether keeping in mind the conduct and course of dealing of the parties inter-se in this long intervening period i.e. after they have been migrated from Pakistan to India and right up to the filing of the suit which was in the year 1995, an oral partition in this intervening period had taken place or not.

33 Defendant No.1 was the only earning member at that time. He was senior in years to all the family siblings by almost 10 years. The plaintiff was already living separately and had no connection with the family. The father of the parties was suffering from ill-health; however he had come to India with defendant No.1. He was not an earning

member. The only earning member was defendant No.1. He was looking after all the needs of the family members including defendants No. 2 to 5. The Rehabilitation Department had allotted this house measuring 252 square yards at Kalkaji in favour of Gobind Ram Chugh. At that time, the family of Gobind Ram Chugh comprised of his wife and six children of whom the plaintiff was living separately but all other children were living with him. Pushpa got married in 1955. The marriage, according to the status of parties, was performed and defendant No.1 even at that time had given two gold sets which belonged to his wife besides a sum of Rs.7,000/- to Rs.8,000/-. It has also been admitted by DW-4 that in 1953-54, the plaintiff himself had separated his kitchen and he was occupying the portion in C-111-B (measuring 100 square yards) whereas the rest of the family i.e. the parents of the parties and other siblings were staying. Baldev Raj separated his mess in 1972 when he shifted to Gujranwala town and set up his business at Model Town of electrical goods which was a shop earlier in the name of Gobind Ram Chuch, father of the parties. It is also on record that he was working as a LDC till that point of time. An inquiry had been initiated against him as

he was running a business while in Government service but it was subsequently dropped when it was learnt that this shop is in the name of his father.

34 Kanwal Chugh had separated himself from his family when a house was purchased by him at Shalimar Bagh and since then he has been living separately and hardly visited the suit property so much so when the construction came to be made on this property by defendants No. 1 & 2 who had admittedly constructed their house at their own costs. It is not the case of any of the defendants that the construction had been raised by any of the family member except defendants No. 1 & 2. Thus it has been established that oral partition had taken place between the parties in 1960. Defendants No. 3 to 5 had already been granted their respective shares.

35 Another argument advanced by the learned counsel for defendants No. 3 to 5 is on the provision of Section 14 of the Hindu Succession Act; submission being that admittedly after the death of Gobind Ram Chugh on 25.01.1972, the property stood mutated in the name of their mother Jamuna Bai which was in the year 1972-1973. At the time of her

death i.e. on 22.01.1990, this property continued to remain in the name of Jamuna Bai. Submission being that in terms of Section 14 of the Hindu Succession Act, a female hindu on transfer of an immoveable property in her name has full right in the property and she has every right to dispose it of in the manner in which she wishes. She had admittedly died intestate i.e., without leaving any Will and this by itself entitles the parties to get an equal share, all her children being class-I heirs. This argument has been refuted and rightly so. The mutation of the property in favour of Jamuna Bai had been effected in the year 1972-1973 but as rightly pointed out by the learned counsel for the defendants mutation by itself is not an evidence of the ownership of the property.

36 In 2007 (67) ALR 789 Suran Bhan and Others Vs. Financial Commissioner and Others, this question had come up for interpretation. The Supreme Court had reiterated the position that an entry in the revenue record does not confer title on a person whose name appears in record of rights; it is settled law that entries in the revenue records or jamabandi have only fiscal purpose i.e. payment of land revenue and no

ownership is conferred on the basis of such entries; title to the property can only be decided by a competent Civil Court.

37 The oral partition of the suit property had already been effected inter-se the family members i.e. even before 1960 during the life time of father of the parties. It was only given a final shape by metes and bounds in 1980-1981. Thus even if the property was mutated in the name of Jamuna Bai in 1972 would make no difference as oral partition had already stood effected.

38 The object of a family arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Such a family arrangement has to be implied from a long course of dealing but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied. Family arrangements are governed by principles which are not applicable to dealings between strangers. The Court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest

view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.

39 A family arrangement can admittedly be arrived at even orally. It need not always be in writing. This family arrangement has to be inferred from the conduct of the parties and the course of dealing inter-se between them. The long course of dealing in the factual matrix of the instant case clearly shows that all the members of the family i.e. the plaintiff and the defendants supporting the plaintiff i.e. defendants No. 3 to 5 had given up all claims and interest in the suit property way back; the plaintiff was in fact a stranger and after the marriage of his elder daughter in 1969 at which time, he had been compensated in this marriage, he moved out of the family fold. In 1972, defendant No. 3 moved to Gujranwala and thereafter he had hardly visited the suit property. So was the position of defendant no.4 who moved out of the

family fold in 1982-83. Defendant No. 5 had been married in the year 1955 and being happily settled in her own family life was hardly in touch with the family after her parents had passed away; she was just left with social visits. The property at Kalkaji had clearly fallen to the share of defendants No. 1 & 2. Defendant No.1 was in occupation of C-111-B since 1954-1955 according to the admissions of the plaintiff, DW-3 and DW-4 themselves. He was in fact the karta of the family and had looked after the interest of his minor siblings as his father was not an earning member. Defendant No. 2 along with rest of the family had moved out of C-111-B after defendant No.1 shifted to other portion and other siblings having left C-111-B in 1972 (defendant No.3) and in 1982 (defendant No. 4), in 1955 (defendant No. 5) and the parents also having died thereafter, defendant No. 2 came to be in exclusive possession of C-111-B since that time. Admittedly a wall dividing C-111 between A and B was also erected; this is admitted by all the siblings. The quarreling siblings had also not raised any demand of partition till the plaintiff woke up from slumber and decided to file the present suit which was in the year 1995. The oral partition had

already taken place inter-se the family members. Defendants No. 3 to 5 and all other parties had acquired their respective shares in the suit property. The plaintiff has no cause of action and he is not entitled to any share in the suit property.

40 Issues No. 1, 3, 4 and 5 are answered accordingly.

Issue No. 6

41 The onus to discharge this issue was upon the defendants. Learned counsel for the plaintiff has drawn attention of this Court to the cross-examination of DW-3 and DW-4 wherein they have admitted that after they had been separated from the suit property in the year 1972 & 1982 respectively, they have not made any demand for partition of the property either orally or in writing. The averments in the plaint disclose that Jamuna Bai, the mother of the parties had died on 22.01.1990. Learned counsel for the plaintiff has submitted that cause of action arose on the date of her death as admittedly after the death of the father, the property stood mutated in the name of the mother. Under Article 65 of the Limitation Act, a suit for possession of immoveable assets would be 12 years and this period would commence when the possession of the

defendant becomes adverse to the plaintiff; submission being that that has to be counted from the date of death of the mother.

42 This issue is decided in favour of the plaintiff and against the defendants.

Issue No. 7

43 The suit is a collusive suit between the plaintiff and defendants No. 3 to 5. They have woken from their slumber after several years. The pleadings also show collusion between the parties. This has been established by defendant No.1. Property already stood partitioned.

44 This issue is also decided against the plaintiff and in favour of the defendants.

Relief. (Issue No. 2)

45 The suit of plaintiff must fail. It is dismissed.

INDERMEET KAUR, J

FEBRUARY 11, 2015/A