

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20.04.2015

+ **FAO(OS) 182/2015**

VIKRAM CHANDHOK

... Appellant

versus

RASHMI SKADEGAARD & ANR

... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Y. P. Narula, Sr Advocate with
Mr Abhey Narula and Mr Ujas Kumar

For the Respondents : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 6994/2015

Allowed subject to all just exceptions.

FAO(OS) 182/2015 & CM 6993/2015

1. This appeal is directed against the order dated 18.03.2015 passed by a learned Single Judge of this Court in IA 8573/2013 in CS(OS) 1386/2012. The said application was one under Order 7 Rule 11 of the Code of Civil Procedure, 1908, which was filed on behalf of the appellant/ defendant No. 1 seeking rejection of the plaint, *inter alia*, on the ground that the plaint does

not disclose a cause of action. The detailed facts are set out in the impugned order and we are refraining from reproducing the same.

2. The bone of contention appears to be the property No. 204, Jor Bagh, New Delhi. It is the case of the plaintiff that there is an oral family settlement and subsequently a memorandum was put in writing on 12.01.1990. That memorandum was signed not only by the respondent No.1/plaintiff, but also by the appellant and the respondent No. 2 and their father, late Mr Jaidev. The relevant portion of the memorandum of family settlement had been extracted in the impugned order and reads as under:-

“WHEREAS JAI DEV, HUF owns immovable properties known as 203 and 204, Jor Bagh, New Delhi, each of which comprised of two flats and is built on an area of 375 sq.yds. or thereabout and more particularly described in the Schedule: hereunder written.

AND WHEREAS property known as 203, Jor Bagh, New Delhi is held in the name of VIJAY KUMAR and property No.204, Jor Bagh, New Delhi is held in the name of VIKRAM KUMAR.

AND WHEREAS some differences had arisen between the parties hereto with regard to their respective rights in relation to the aforesaid properties.

AND WHEREAS in order to amicably resolve their disputes the parties hereto had agreed amongst themselves upon a Family Settlement in respect of their rights and interests in the said properties.

AND WHEREAS the parties are desirous of recording the Settlement.”

...

“c) Ground floor flat of property No. 204, Jor Bagh (Part C) New Delhi together with servant quarter was allocated to Shri Jai Dev absolutely and forever.

d) First floor flat along with Barsati and the garage of property No. 204, Jor Bagh, New Delhi as described in Schedule ‘O’ of the Schedule was allocated to Vikram Kumar absolutely and forever.”

3. On the basis of the above extract, it is alleged by the respondent No. 1/ plaintiff that the property No. 204 Jor Bagh, New Delhi was part of an HUF. It is also contended that the said property was only held in the name of Mr Vikram Kumar Chandhok (the appellant herein). It is also the case of the plaintiff / respondent No. 1 that the settlement was arrived at because there were differences which had arisen between the parties and in order to amicably resolve the disputes, the understanding was arrived at, which was recorded formally in the memorandum of family settlement subsequently on 12.01.1990. As per the said document, the ground floor of the property No. 204 Jor Bagh, New Delhi, together with the servant quarter, was to go to late Shri Jaidev “absolutely and forever”. The first floor flat, along with *barsati* and the garage of the said property, was allocated to the appellant

“absolutely and forever”. It is alleged in the plaint that the said Mr Jaidev died intestate on 04.09.2003, leaving behind the respondent No. 1/ plaintiff as one of the class I legal heirs along with the appellant and the respondent No. 2. It is through intestate succession that the respondent No. 1/ plaintiff claims a share in the ground floor along with the servant quarter of the property No. 204 Jor Bagh, New Delhi as also a 1/3rd share in the half undivided share in the land of the said property.

4. On the other hand, the case of the appellant is that late Mr Jaidev did not have any antecedent rights in the property No. 204 Jor Bagh, New Delhi and, therefore, the family settlement cannot confer any title on him. Reliance was also placed on a decision of a Division Bench of this Court in the case of **Harvinder Singh Chadha v. Saran Kaur Chadha and Others:** **FAO(OS) 416/2013** and other connected matters, decided on 01.07.2014. But, we may state straightaway that the said decision is distinguishable inasmuch as the agreement dated 04.08.2000 in that case was construed by the Division Bench to be a ‘gift’. It was in that context that the Division Bench held that an immovable property cannot be permitted to be transferred, even to family members in the garb of a family settlement without paying the stamp duty and without complying with the law of

registration. The Division Bench construed the agreement in that case to be a 'gift' based upon the expressions used in the document itself, where instead of the words 'settlement/ partition', the word "gifted" had been used. The intention was, therefore, discerned to be that of a clear 'gift' and not a family settlement. In the present case, the situation is entirely different. There is an acknowledgement of the fact situation, as indicated in the extract set out above. Based upon the recitals, a settlement has been arrived at demarking the exact extent of ownership of the property in question. Therefore, the decision of the Division Bench in the case of **Harvinder Singh Chadha** (*supra*) is clearly not applicable to the present case.

5. We must point out that the appellant sought to draw our attention to the averments contained in the written statement. However, we refrain from examining the same because in an application under Order 7 Rule 11 CPC, all that has to be seen is the plaint and the accompanying documents. The written statement or the defences of the defendants are not to be examined at all. That would be a subject matter of trial. The law is well settled that while examining an application under Order 7 Rule 11 CPC, only the plaint and the accompanying documents are to be looked at. If upon looking at the averments in the plaint and the accompanying documents no cause of action

is made out, only then that the plaint can be rejected. In the present case, assuming that all the averments contained in the plaint are true, as is the requirement of law while considering an application under Order 7 Rule 11 CPC, it is clear that the plaintiff has set up a case that the property in question was part of HUF property and that an oral family settlement had been arrived at which was subsequently reduced to writing by way of a memorandum dated 12.01.1990. By virtue of that settlement, the ground floor of the property No. 204, Jor Bagh, along with the servant quarter and the half share in the land, was allocated to late Shri Jaidev “absolutely and forever”. Upon his death, since he did not leave any will, inheritance to his estate, would be governed by intestate succession. The plaintiff has alleged that she is a class I legal heirs and it is on that basis that the plaint has been filed.

6. In these circumstances, we are in complete agreement with the learned Single Judge in holding that the plaint does disclose a cause of action. Consequently, the learned Single Judge was right in rejecting the appellant’s application under Order 7 Rule 11 CPC. The appeal is accordingly dismissed.

7. The dismissal of this appeal will not come in the way of the appellant in taking up all the defences and pleas, which are available to him in law and fact, including the question of admissibility of the abovementioned memorandum of family settlement. There shall be no order as to costs.

BADAR DURREZ AHMED, J

APRIL 20, 2015
SR

SANJEEV SACHDEVA, J

