

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.382/2014 & C.M. No.20240/2014**

Decided on : 3rd March, 2015

SMT. ALKA BHATIA Appellant
Through: Mr. Niraj Chaudhury & Mr. A.S. Sharma,
Advocates.

Versus

SHRI KANHIYA LAL BHATIA Respondent

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant under Section 100 of the CPC against the judgment dated 12.11.2014 passed by the learned first appellate court in R.C.A. No.8/13 affirming the ex parte judgment and the decree dated 22.11.2011 dismissing the suit bearing No.6/2010 of the appellant/plaintiff.
2. I have heard the learned counsel for the appellant and have also gone through the record. The main contention of the learned counsel for the appellant is that the present regular second appeal involves substantial question of law inasmuch as the family settlement which was arrived at

between the parties on the basis of which the suit for declaration, mandatory and permanent injunction was filed by the appellant was not required to be compulsorily registered. It has been stated by him that the family settlement was as a matter of family arrangement and though he had performed his part of the obligation in terms of the family settlement, the respondent is now stopped from retracing his steps. The appellant has also sought to place reliance in this regard on judgments of this court in case titled *Amarjeet Lal Suri vs. Moti Sagar Suri & Ors.*; 119 (2005) DLT 295 and *Vikram Singh & Anr. Vs. Ajit Inder Singh*; 210 (2014) DLT 145 (DB).

3. I have considered the submissions made by the learned counsel for the appellant and have also gone through the record. Before dealing with the submissions made by the learned counsel for the appellant, it may be pertinent here to give brief background of the case.

4. The present appellant filed a suit for declaration, mandatory and permanent injunction. The appellant/plaintiff had claimed that the Release Deed dated 13.1.2009 and Disclaimer Deed dated 16.1.2009 be declared as null and void and that the defendant/respondent has not become the owner of 1/3rd undivided share in Property No.737, Gali

No.1, Sadar Bazar, Delhi-06 and owner of the share of the predecessor-in-interest of the appellant in M/s Vikram Footwear being run at 6, Kaushalaya Bhawan, Shoe Market, Sadar Bazar, Delhi. The permanent and mandatory injunction was sought with regard to handing over possession and ownership of Property No.656, Sector-6, Bahadurgarh, Haryana and possession of property No.737, Gali No.1, Sadar Bazar, Delhi as well as M/s Vikram Footwear being run at 6, Kaushalaya Bhawan, Shoe Market, Sadar Bazar, Delhi.

5. The case which was setup by the appellant was that one Udho Dass Bhatia had three sons, namely, Kanhaiya Lal, who was the defendant in the suit, Bhawan Dass and Laxman Dass. The present appellant is the legal heir of Laxman Dass Bhatia. It was alleged that on 10.7.2002, a deed of family settlement was entered into between Udho Dass Bhatia and his three sons by virtue of which the family assets were divided. In terms of that division, the appellant is purported to have executed a Release Deed and the Disclaimer Deed in the family business. But as she or her predecessor-in-interest was not reciprocated with the corresponding obligation by the respondent especially with regard to plot No. 656, Sector-6, Bahadurgarh, Haryana, the suit was filed whereby the

appellant wanted to retrace her steps with regard to the Release Deed and the Disclaimer of family business and also seek mandatory injunction with regard to possession of the said plot as well as the possession of the family business in footwear.

6. The written statement was filed; however, after filing of the written statement, the respondent was proceeded ex parte. In the written statement, the defendant/respondent admitted the factum of family settlement but submitted that the terms and conditions could not be performed due to certain differences between the parties. The trial court dismissed the suit purely on the ground that as the family settlement was not a registered document; therefore, the same could not be relied upon by the appellant. Feeling aggrieved, an appeal was filed in which also the appellant was unsuccessful.

7. The learned counsel for the appellant has sought to place reliance on the two judgments of this court and raise a contention that the family settlement does not require compulsory registration and, therefore, the document which has been a document of family arrangement ought to be looked into for the purpose of granting relief to the appellant.

8. A perusal of the judgments which have been relied upon by the learned counsel for the appellant overlooks the fact that the law with regard to the family settlement or family arrangement or document by whatever name it is called, makes a clear distinction where the family arrangement or the family settlement is only recorded by way of a memorandum of oral settlement, which is pre-existing between the parties and is reduced into writing. In such an event, the document does not require a compulsory registration and the memorandum of settlement evincing reducing in writing of the oral settlement can be relied upon. As against this, a document which in itself is a family settlement between the parties or amongst the parties and *per se* and creates a right, titled or interest in respect of any property has to be compulsory registered in terms of Section 17 (1) (c) of the Registration Act, 1908. It may be pertinent here to mention that Section 17 (1) (c) clearly lays down that any document which creates any right, title or interest in any immovable property, the value of which is more than Rs.100/- requires, compulsory registration.

9. In the instant case, the document of settlement or the family arrangement, what the appellant calls, is not reduced into a memorandum

or a settlement of oral arrangement which has been arrived at between Udho Dass Bhatia and his three sons and therefore, the said document requires compulsory registration. The document which has been referred to by the appellant is in itself creating right, title or interest in respect of properties of which the appellant is claiming the mandatory injunction; for example plot No.656, Sector-6, Bahadurgarh, Haryana, which is owned by Udho Dass Bhatia and possession is being claimed by the appellant. Therefore, this document requires compulsory registration.

10. Since this aspect of the matter has already been dealt with by the two courts below concurrently against the appellant and no substantial question of law is shown to be arising, I feel the present appeal is totally misconceived. The judgments which have been cited by the learned counsel for the appellant are not applicable to the facts of the present case because the law which is laid down in the said judgments is in the facts of those two cases where there was an oral arrangement between the parties and the same was reduced into writing. Therefore, this appeal is not having any merit and the same is dismissed.

V.K. SHALI, J.

MARCH 03, 2015/‘AA’