

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

Reserved on: 31.03.2016
Pronounced on: 29.04.2016

+ **RFA (OS) 76/2013, C.M. APPL.10644/2013**

SHRI SATYA PAL GUPTAAppellant

Through: Sh. Jayant Bhushan, Sr. Advocate with
Sh. Atul Sharma and Sh. Nitin Jain, Advocates.

Versus

SHRI SUDHIR KUMAR GUPTARespondent

Through: Sh. Sanjeev Sindhvani, Sr. Advocate
with Sh. Anupam Srivastava, Sh. Anil Kumar
Chandel and Sh. Sharmistha Ghosh, Advocates.

+ **RFA (OS) 77/2013, C.M. APPL.10649/2013**

SHRI SATYA PAL GUPTAAppellant

Through: Sh. Jayant Bhushan, Sr. Advocate with
Sh. Atul Sharma and Sh. Nitin Jain, Advocates.

Versus

SHRI SUDHIR KUMAR GUPTARespondent

Through: Sh. Sanjeev Sindhvani, Sr. Advocate
with Sh. Anupam Srivastava, Sh. Anil Kumar
Chandel and Sh. Sharmistha Ghosh, Advocates.

+ **FAO(OS) 327/2013**

SUDHIR KUMAR GUPTA

.....Appellant

Through: Sh. Sanjeev Sindhwani, Sr. Advocate
with Sh. Anupam Srivastava, Sh. Anil Kumar
Chandel and Sh. Sharmistha Ghosh, Advocates.

Versus

SATYA PAL GUPTA

.....Respondent

Through: Sh. Jayant Bhushan, Sr. Advocate with
Sh. Atul Sharma and Sh. Nitin Jain, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. The appellant in RFA(OS) 76/2013 [hereafter referred to as "Satyapal"] is aggrieved by a decree for possession. He is also aggrieved by the dismissal of his suit [CS(OS) 1399/2011] by the same common judgment of the learned Single Judge dated 01.07.2013. Satyapal was plaintiff in that suit (for declaration and consequential relief- hereafter "declaration suit") and the defendant in CS (OS) 1480/2011. The respondent in the RFA(OS) 76/2013 who filed CS(OS) 1480/2011, ("the possession suit), and who is the brother of Satyapal shall hereafter be referred to as "Sudhir".

2. Satyapal had sought the relief of declaration and consequential injunction in respect of property being one-half share of the premises - a 2^{1/2}

storeyed property at K-155, Hauz Khas Enclave [hereafter referred to as "the suit property"]. Sudhir, in the possession suit, sought for a decree of possession and *mesne profits*, in respect of the suit property. The third proceeding, being FAO(OS) 327/2013 is preferred by Sudhir, who claims to be aggrieved by the said common order which decreed his possession suit and at the same time rejected the plaint in Satyapal's declaration suit to the extent that it holds that the declaration suit was not time-barred.

3. The brief facts are that Satyapal and Sudhir are brothers. Satyapal purchased one half share of the suit property from one Ms. Kamal Mathur by registered deed dated 29.12.1975. On the same day, i.e. on 29.12.1975, the co-owner of the other half share, Sh. Rajiv Mathur, son of Ms. Kamal Mathur conveyed his right, title and interest through a registered sale deed for a consideration of ₹2 lakhs. This sale deed, for the other half was executed in favour of Sudhir. CS(OS) 1399/2011, the declaration suit, contended that Sudhir, who was born on 02.12.1950 had gone abroad for completing his studies and returned to India in 1972 after which he got married in 1974. Satyapal stated that Sudhir used to stay with their eldest brother - Sh. K.C. Gupta and since he did not have enough funds, Satyapal thought it prudent to purchase a house in the joint name to enable Sudhir to live with him. At that time, Satyapal used to live in the ancestral house at Gali Bahuji, Pahari Dhiraj in old Delhi. Apparently, Sudhir never wished to live with Satyapal since he later acquired a 500 square yards plot of land being B-316, New Friends Colony [hereafter referred to as "the NFC property"] through a registered deed dated 04.12.1979. He built a house on

the NFC property. Satyapal alleges that even for the acquisition of NFC property, Sudhir borrowed money from Satyapal HUF.

4. In the declaration suit, Satyapal alleged that since he and Sudhir were brothers, they both agreed that the entire Suit property, including Sudhir's half share would vest in Satyapal HUF and ₹ 2 lakhs paid by Satyapal for acquiring the half share would be set-off by relinquishing his title in the said property. Satyapal avers that the suit property always belonged to him and that Sudhir never had any interest in the property, having never lived there nor having invested any money in it. In the declaration suit, it was contended by Satyapal that their parents always lived with him and not with Sudhir till their deaths.

5. The suit further avers that:

".....the defendant verbally released his half portion in the property in favor of plaintiff in 70s itself when he acquired his own house with a promise to execute the release/relinquishment deed in favor of the plaintiff soon...."

6. The declaration suit further states that the money to purchase the half share of the suit property - in issue before the Court was entirely paid by Satyapal through a cheque for ₹20,000/- on 19.12.1975 and the remaining amount of ₹1,67,500/- by a Banker's Pay Order No.739566/1775 dated 29.12.1975. It was further stated that Satyapal took possession of the Suit property and shifted there with his family and parents and that Sudhir never shifted there. It was also again alleged that:

"Later on it was agreed between the two brothers that the entire property would remain vested with and owned by the plaintiff to the entire exclusion of the defendant as he neither paid for nor

ever stayed therein any time. He also assured that a release deed in favor of the plaintiff would be executed by him later. It is important to appreciate that the original title deed of the share registered in the name of the defendant is with the plaintiff only as he is the de facto owner of the said property in entirety....."

7. The plaintiff Satyapal also stated that payments were shown in respect of balance sheets of the parties in terms of the registered documents but the pay orders were prepared from Satyapal's bank accounts. It was stated that Satyapal also extended a loan to Sudhir to the tune of ₹2,05,000/-, duly reflected in the balance sheet of the parties for a long time and that the amount was utilized for construction of his later acquired New Friends Colony property. Satyapal further stated that all amounts and liabilities such as electricity, water, property tax in respect of the suit property were paid by him.

8. Satyapal relied upon the circumstance that Sudhir removed a half of the amount of ₹2,00,000/- from the balance sheet as on 31.03.1992 and correspondingly reduced the loan shown as outstanding and payable to Satyapal, leaving a balance of ₹2,05,000/- as payable. This, it is contended, evidences the intention of the parties based upon their arrangement that the ownership of the Hauz Khan Enclave property was to vest in Satyapal. It is highlighted that in the balance sheet from 31.03.1992 onwards, Sudhir never showed the suit property as belonging to him. Satyapal further relies upon the later balance sheets for 2000-01 onwards. It is stated that the cost of payment for construction and improvement was shown only by Satyapal and never by Sudhir. The suit also alludes to the fact that in 1995, the parties had agreed that Sudhir would execute the release deed for which a draft was

prepared and handed over to Sh. Vinod Kumar Bindal, the consultant to both the parties. However, it could not be signed by Sudhir and thereafter in the course of a raid conducted on the premises of the said consultant, all materials, i.e. the documents were taken into custody.

9. On the basis of these averments and materials, it was asserted that Satyapal was the real owner of the suit property; that the parties intended this to be so through their arrangements, which is further evidenced by materials on record. The declaration that Satyapal was the absolute owner of the property and a consequential perpetual injunction restraining Sudhir from seeking to interfere with Satyapal's peaceful possession of the property was sought. In support of these claims, Satyapal relied upon several documents, including two sale deeds, copy of the unsigned release deed, copies of Sudhir's balance sheets as on 31.03.1991 to 31.03.1996, 31.03.2000 to 31.03.2001 and as on 31.03.2007 to 31.03.2009, copies of bills, receipts etc., disclosing the property tax so paid by Satyapal from the period 1980-84, 1995-2004 and 2006-10.

10. The suit was contested by Sudhir who *inter alia* besides filing the written statement, moved the Court through an application I.A. 12036/2011, contending that the plaint was liable to be rejected as Satyapal merely claimed that the property was purchased in Sudhir's name which in effect amounts to an assertion of its being *benami* (under the provisions of *Benami Transactions (Prohibition) Act, 1988* [hereafter "the Benami Act"]). It was also stated that the sale deed for the first floor along with terrace rights was executed by the original owner, Sh. Rajiv Mathur in favour of Sudhir on 29.12.1975, and no attempt was made by Satyapal to have the sale deed itself

set aside or claim any right, title or interest since then. Thus, the suit was liable to be rejected for lack of cause of action. The application was resisted by Satyapal, who argued that the cumulative effect of the contentions asserted to the contrary, and which postulated that triable issues be decided after considering all the materials on record. The applicability of the Benami Act was denied and it was asserted that Satyapal followed an enforceable course of approaching the Court.

11. After service of summons in CS(OS) 1399/2011, i.e. the declaration suit, Sudhir filed CS(OS) 1480/2011, claiming the relief of decree of possession. In that suit, it was asserted that Sudhir purchased the share in the suit property through registered sale deed. It was also asserted that Satyapal and other family members, i.e. Sh. K.C. Gupta and Sh. B.C. Gupta used to reside in the suit property as and when required and that Sudhir kept residence in the New Friends Colony property along with his family members. In the possession suit, Sudhir claimed that Satyapal was permitted to stay in the suit property on the premise that as and when required, he would vacate it. The suit further alleged that when the marriage of Sudhir's son was arranged in May 2007, Satyapal was requested to vacate the premises. He did not, however, comply which led to the filing of the suit leading to inconvenience and the postponement of the marriage. The possession suit stated that despite repeated requests, Satyapal did not vacate the premises and, therefore, Sudhir was compelled to issue legal notice and that he was entitled to decree for possession and *mesne profits*.

12. In the impugned judgment, before the learned Single Judge, it was contended by Satyapal that there was a family arrangement between Satyapal

and Sudhir whereby the former was to be owner of the suit property. The judgment of the Supreme Court in *Kale and Ors. v. Deputy Director of Consolidation* 1976 (3) SCC 199 was relied upon. This contention was denied by Sudhir who urged that no such arrangement was executed and that the only manner through which title could be conferred appropriately was a registered deed or release deed. Since none existed and that even according to the averments in the suit, only a draft release deed had been prepared which was not signed by Sudhir, he continued to be the owner. Sudhir relied upon the provisions of Benami Act, especially Sections 3 and 4 and submitted that the suit contained averments which asserted that the property was purchased by Satyapal in the name of Sudhir. Therefore, the claim was essentially for enforcement of a benami right which by virtue of the Act was unenforceable. Besides, Sudhir argued that Satyapal's suit was time-barred and that the relief too for a declaration is contrary to the Benami Act.

13. In the impugned judgment, learned Single Judge, on a reading of the plaint in the declaration suit, was of the opinion that Satyapal did not assert that Sudhir was the *benami* owner:

"If we carefully look at the pleadings of SPG it is found that the case pleaded by SPG is not of SKG being the benami and SPG being the real owner of the property. On the contrary, plea is, of the consideration paid by SPG for purchase by SKG standing as loan repayable by SKG to SPG in the balance sheet of the party. The same, in my view, would not constitute a plea of benami. Transactions of financing by Banks and other financial institutions of purchase of property abound in today's time and in which consideration is paid by such financier but title is conveyed in favor of another. Such transactions cannot be by any stretch of imagination be said to be benami or coming within the purview of Benami Act. The case of SPG really is to

release/relinquishment in the year 1991-92 by SKG of the share in the property in favor of SPG. Relief of declaration also to the said effect only has been claimed. However, SPG, in addition thereto, has also claimed the relief of declaration that the recitals in the sale deed with respect to the upper floor showing SKG to be the purchaser thereto is void. The said relief is inconsistent to the first relief of declaration of upper floors pursuant to the release. Though the relief of declaration of title pursuant to release cannot be said to be hit by the provisions of Benami Act, but the relief of declaration of recitals in the sale deed qua the upper floors is premised solely on the plea of the sale consideration having flown from SPG and the said relief will definitely be hit by the Benami Act. The application of SPG under Order VII Rule 11 CPC is thus allowed to the extent of the relief in prayer paragraph (b) and the plaint of SPG insofar as claiming said relief is rejected.

14. I am further of the view that SPG on the case pleaded is not entitled to the relief of declaration on the plea that SKG having released his share in the property in favor of SPG, also.

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16. In my opinion, no. The mode of transfer of immovable property is prescribed in the Transfer of Property Act, 1882 and the Registration Act, 1908 and there can be no transfer in any other manner. Admittedly no registered transfer deed has ever been executed. In the absence thereof, SPG cannot be said to have become owner and SKG cannot be said to have ceased to be the owner of the said upper floors of the property. It may be highlighted that SPG has not sued for specific performance of the agreement if any by SKG to transfer the said upper floors to SPG. CS(OS) No.1399/2011 of SPG is premised on SKG having ceased to be the owner and SPG having become the owner pursuant to the agreement between the parties of the year 1991-1992. Being fully aware that the said transfer is not in accordance with law, the doctrine of Family Settlement qua which it has been held that technicalities cannot be allowed to come in the way, is sought to be invoked.

17. However, for there to be a Family Settlement/arrangement, it has to be first established that there was a family and bona fide disputes in that family and the settlement was to resolve the said family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family. It is this essential ingredient, that the claim of SPG is lacking. SPG himself has pleaded that he and his family and SKG and SKG's family have never resided together. The doctrine of Family Settlement/arrangement is invoked only for the reason of SKG and SPG being brothers. There is no plea even to show that there was any family dispute which threatened to disturb harmony in the family or any rival claims which required settlement to be entered into to save lengthy costly litigation of the honour of the family. The settlement pleaded is also one way of conveyance by SKG of the upper floors of the property to SPG and not by fair and equitable division or allotment of properties between various members of the family. Though SPG and SKG are stated to be having other siblings also but none of them are stated to have been parties to the settlement alleged. I am therefore unable to hold that an opportunity has to be given to SPG to prove any such agreement by SKG to convey the upper floors of the property to SPG in as much as even if SPG were to succeed in proving so, the same would still not make SPG the owner of the upper floors admittedly owned by SKG."

14. The learned Single Judge went on to hold that the essential prerequisite for a valid and binding family settlement was existence of an antecedent claim or dispute. It was held by relying on *Hansa Industries Pvt. Ltd. v. Kidarsons Industries Pvt. Ltd.* 2006 (8) SCC 531 that an antecedent title of some sort, of the parties in the property should exist in which event the settlement would acknowledge and defend what that title is with each parties' relinquishment of claims in the property other than that falling to their respective shares.

15. On an appreciation of the materials, the Court, therefore, was of the opinion that the plaint in the declaration suit was liable to be rejected. The Court, however, held that the declaration suit could not be said to be time-barred. It was held that it was unclear as to when Sudhir denied title and the plaint could, therefore, not be rejected on the ground of limitation without giving Satyapal an opportunity to elucidate. In para 27 of the impugned judgment, the application for rejection of the plaint was partly allowed and the suit was rejected so far as the relief in para (b) was concerned.

16. The learned Single Judge dealt with and disposed the declaration suit and later on went to straight away decree the possession suit in the following terms:

"27. The application of SKG for rejection of the plaint in CS(OS) No.1399/2011 is accordingly partly allowed and the plaint of SPG qua relief para (b) is rejected. The plaint qua the other reliefs is also rejected for the reason of not disclosing a cause of action and SPG being not entitled to the relief of declaration as owner on the basis of release as per balance sheet.

28. That brings to the effect thereof on CS(OS) No.1480/2011. The defence of SPG to CS(OS) No.1480/2011 for possession is the same which has already been rejected. It has to thus necessarily follow that the claim of SKG in CS(OS) No.1480/2011 in so far as for the relief of possession, has to be decreed immediately."

17. Sh. Jayant Bhushan, learned senior counsel argues - in support of the two appeals by Satyapal that the learned Single Judge read the plaint in a very technical and narrow manner without considering the overall impact of the pleadings. It was urged that a bare reading of the plaint reveals that

Satyapal's basic case before the learned Single Judge was that the premises which comprised the first and second floors of the suit property purchased by him although the owner was shown to be Sudhir in the special circumstances. Learned senior counsel emphasized that the intention of the parties right through, and at all material times, was that Satyapal was to be the real and effective owner. The ownership, use, benefit and enjoyment of property was that of Satyapal. It was highlighted that the course of documents filed along with the suit had to be seen. Rather than doing so, the learned Single Judge over emphasized the titular ownership of the property and ignored the dicta in *Kale (supra)*. It was argued that the learned Single Judge also did not appropriately appreciate that *Hansa (supra)* did not propound any principle of law that varied with what was stated in *Kale (supra)*. Learned counsel emphasized that in both *Kale (supra)* and *Hansa (supra)*, the Supreme Court stated that as a rule, the courts would lean in favor of family settlement at promoting peace and harmony in society and not look too minutely into *inter se* arrangements between the members of the family. If this broad perspective were kept in mind, the fact that a settlement evidenced by a long course of conduct was pleaded and that uninterrupted and enjoyment of the suit property for over 35 years was attempted by the defendant/Sudhir no less underscored the need for a full trial and opportunity to Satyapal to establish his claim that he was the owner of the property pursuant to a settlement. It was urged that a meaningful rather than selective reading of the pleadings has been emphasized by the Supreme Court in various judgments.

18. It was submitted that the learned Single Judge fell into error in not appreciating that the oral arrangement under which the parties agreed that Satyapal had been the owner of the premises and that Sudhir was to execute a formal release were only elements to support the larger case that Satyapal was the true owner of the property pursuant to the settlement. This fact alone could not be juxtaposed with the name in the sale deed to oust the plaintiff's case. It was highlighted that rather than reading the reliefs cumulatively in the light of what was intended to be sought from the Court, the Court read each of them separately and without reference to each other. Therefore, the learned Single Judge fell into error in holding that prayer (b) was barred in law. This finding conflicted with the earlier finding that the Benami Act did not apply. It was highlighted here that Satyapal was entitled to a declaration not entirely based on the release deed but also on the plea of adverse possession since concededly his occupation and possession of the suit property from 1975 was uninterrupted, peaceful, continuous and unchallenged. It was highlighted that a family settlement need not be entered into by all members but by those who have anticipated disputes between each other. This is a crucial aspect which was ignored by the learned Single Judge.

19. It was urged that the learned Single Judge further fell into error in rejecting the plaint in part - a course of action which is impermissible in law. Learned counsel relied upon various rulings of the Supreme Court and submitted that once it is held that the suit is maintainable, it is not open to the Court to reject it in part and uphold in respect of others.

20. Learned counsel lastly urged that the Court facially erred in decreeing the suit for possession, having held that the relief in prayer (b) was not maintainable and allowing the application under Order VII Rule 11 CPC to that extent the decree for possession could not have followed as a matter of course. Learned senior counsel secondly urged that in the suit for possession, Satyapal could not be treated as a mere licensee of Sudhir - assuming that all his contentions *vis-a-vis* title were to be accepted. There was no discussion in the decree so far as it related to what was the defence of Satyapal and if so, how it was entirely unsound. Learned counsel highlighted that Satyapal had urged not only his continuous possession, but also as to further fact such as payment of property tax and crucially, improvements by way of construction, repair, renovation, costs of which were entirely borne by him. These were defences amongst others urged in the written statement. Without going into such defences or much less the tenability, the learned Single Judge could not have decreed the suit. The defendant Satyapal had in fact set-up the plea of adverse possession besides all other contentions and had in fact set-up the plea of *estoppel* and applicability of *doctrine of approbate reprobate*.

21. Sh. Sanjeev Sindhvani, learned senior counsel for Sudhir urged that this Court should not interfere with the impugned judgment, both in respect of rejection of Satyapal's suit as well as decree of possession drawn in Sudhir's suit. It was contended that besides the assertion made in the course of hearing, there was no clear averments in the plaint as to when and if in what circumstances, a family settlement was arrived at. Learned senior counsel disputed that a valid family settlement could be arrived between

some members of the HUF. In the absence of a clearly articulated case for family settlement, setting-out the discretion of all family members and as to why there was need for such settlement, the requisites for the applicability of the rule enunciated in *Kale (supra)* were not fulfilled. It was in these circumstances that the learned Single Judge correctly held that in the absence of a valid conveyance of title, the second relief under prayer (b) was not maintainable.

23. Learned senior counsel urged that the pleadings with respect to course of conduct were sketchy and vague and could not be the basis for leading any evidence to establish that the conduct of the parties could lead one to deduce that title and ownership of the suit property was of Satyapal's. Learned counsel highlighted that even the materials on record by way of balance sheets did not convey a uniform story; in fact the plaintiff's documents also did not show that he claimed ownership of the entire suit property which was the subject matter of the suit. Learned senior counsel relied upon the decision reported as *Kuppuswami v. Arumugam* AIR 1967 SC 1395; *Popat and Kotecha Property v. SBI Staff Association* 2005 (7) SCC 510; *Abdul Rahim & Ors v Sk. Abdul Zabbar & Ors* 2009 (6) SCC 160 and *Board of Trustees of Port of Kandla v. Hargovind Jasraj and Anr.* 2013 (1) SCR 589. He further submitted that the learned Single Judge fell into error by holding that the suit was filed within the time of limitation. It was argued that the declaration suit clearly stated that the cause of action occurred in 1992. However, it was filed in 2011. Learned counsel submitted that in terms of Article 58 of the Schedule to the Limitation Act, the three year limitation period is to be reckoned from the date from which the cause of action first

arose. Even on a plain reading of the suit, the cause of action arose in 1992. It was clearly barred when it was filed in 2011. It was urged that the interpretation placed on Article 58, i.e. that the pleadings were unclear and that the plaintiff/Sudhir had to be given a chance to establish that the real cause of action arose in 2011 or within three years of the filing, was not based on any material.

Analysis and conclusions:

24. The defendant in the declaration suit, i.e. Sudhir had contended- as can be gathered from the above discussion- that Satyapal's claim was based on a *benami* title, and therefore, not maintainable under Section 4 of the Benami Act. This basic argument – to persuade the court to reject the suit as barred was, however negated by the learned Single Judge so far as claim or relief (a) in the suit was concerned. The learned Single Judge held that “*the relief of declaration of title pursuant to release cannot be said to be hit by the provisions of Benami Act*”. Therefore, it is seen that the suit was held not to be barred under the Benami Act. Yet, the learned Single Judge curiously went on to reject relief (b) on the footing that “*the relief of declaration of recitals in the sale deed qua the upper floors is premised solely on the plea of the sale consideration having flown from SPG and the said relief will definitely be hit by the Benami Act. The application of SPG under Order VII Rule 11 CPC is thus allowed to the extent of the relief in prayer paragraph (b) and the plaint of SPG insofar as claiming said relief is rejected.*” Likewise, the learned

Single Judge was of opinion that the relief of declaration was not permissible.

25. It is well established that a plaint cannot be rejected in part by a civil court, whilst exercising its powers under Order VII, Rule 11. The rule was enunciated in *Roop Lal Sathi v. Nachhattar Singh Gill*, 1982 (3) SCC 487, where it was held that only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected. *Raptakos Brett & Co. Ltd. v. Ganesh Property*, 1998 (7) SCC 184, stated as follows:

“18. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

19. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of Courts irresponsible law suits. Therefore, the Order 7 of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the Court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.”

The above rule was overlooked by the learned Single Judge, who straightaway proceeded to reject a part of the plaint, on the basis that one of the reliefs was not maintainable. The law declared by the Supreme Court, clearly enjoins civil courts from rejecting part of the claim.

26. Quite apart from the procedural impropriety of the impugned judgment, this Court is also of the opinion that the learned Single Judge's reasoning is flawed, inasmuch as it holds that an antecedent claim or right is to exist, before a valid and enforceable family settlement can be the basis of a civil action. Even before *Kale (supra)*, the fallacy in so urging was underlined by the Supreme Court, in *Ramcharandas V/s. Girjanandinidevi* AIR 1966 SC 323 where it was held as follows:

“Such family settlement between the members of the family bonafide to put and end to the dispute amongst themselves is not a transfer. It is also not a creation of an interest. In a family settlement, each party takes a share in the property by virtue of independent title which is admitted to that extent by the other parties. Every party who takes benefit under it need not necessarily be shown to have under the law claim to share in property. All that is necessary to show is that the parties are related to each other in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection”.

In that decision, the Supreme Court spelt out the *raison d'être* for recognizing such family settlements as valid. It has observed:-

“Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding the property amongst members of the family. The word “family” in the context is not to be understood in a

narrow sense of being a claim to share in the property in dispute”.

In *Tek Bahadur V/s. Debi Singh* AIR 1966 SC 292 also indicates that:

“Such Family Arrangements can be arrived at orally. Its terms may be recorded in writing as memorandum of what had been agreed upon. The memorandum need not be prepared for the purpose of being used as a document on which future title of parties is to be founded. It is generally prepared as a record of what had been agreed upon in order that there are no hazy notions about it in future. It is only when the family arrangement is reduced to writing with the purpose of using that writing as proof of what they had arranged and where the arrangement is brought about by the document as such, that the document requires registration, because it is then that it would amount to document of title declaring for future what rights and in what properties the parties possess. But a document which is no more than a memorandum of what had been agreed to between the parties does not require compulsory registration under Section 17, Registration Act”

All these principles were elaborated in *Kale (supra)*, where the Court condensed them in the following terms:

“9.... A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour...

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.

10. In other words to put the binding effect and the essentials of a family settlement in a concretized form, the matter may be educed into the form of the following propositions:

(1) *The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;*

(2) *The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;*

(3) *The family arrangements may be even oral in which case no registration is necessary;*

(4) *It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in Immovable properties and therefore does not fall within the mischief of Section 17(2) (sic) (Section 17(1)(b)?) of the Registration Act and is, therefore, not compulsorily registrable;*

(5) *The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld, and the Courts will find no difficulty in giving assent to the same;*

(6) *Even if bona fide disputes, present or possible, which may not*

involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”

27. Thus, the possibility of a future dispute is enough precondition for members of one family to arrive at a settlement, with a view to avoid it. Existence of real or claimed title is not the basis of the settlement. Clearly, the learned Single Judge fell into error in not following *Kale (supra)*.

28. The question then is, whether, for a valid settlement, to avoid future disputes, it is a precondition that all members of a family have to enter into a settlement. This Court does not see any condition, or barrier in the form a necessity to involve all members of a family. If the disputes are *inter se* as between two members, there is no bar to the designation of their settlement as a family arrangement or settlement. It has the objective of orderliness in the title of each member of the family and crucially, ensures peace and harmony amongst all of them. In *S. Shanmugam Pillai v K. Shanmugam Pillai* AIR 1972 SC 2069, the Supreme court pertinently held as follows:

“To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in Ram Charan Das v Girijanandini Devi & Ors [1965] 3, S.C.R. 841, the word "family" in the context of a family arrangement is not to 'be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a-family arrangements' See Ramcharan Das's case (supra).”

29. Thus, even a wider body of persons, and not merely the coparcenary in a given family or a Hindu Undivided Family can be part of a family

settlement. Inasmuch as the object of such arrangements is to end potential or existing conflicts, the court finds it irrational that despite the absence of a conflict between the two disputing members (of a family) for a valid and binding settlement, all have to be necessarily made parties. If the law is that those not considered family members can enter into binding “family” arrangements, it cannot be that all members of a family have to be party to a settlement as a precondition for its binding nature. This argument is, accordingly rejected.

30. The last complaint against the dismissal of the declaration suit, by the impugned judgment is that the learned Single Judge, by refusing to see that when a valid family arrangement exists, could not have nevertheless insisted that without a formal conveyance through a registered document, Satyapal’s claim was barred. This court finds merit in the appellant/plaintiff’s submission. Having once held that the transaction was not covered by the Benami Act, the learned Single Judge ought to have permitted parties to urge all contentions in the course of the suit, during the trial. Instead, the impugned judgment rests on a narrow premise that valid title can pass only when a registered sale or release/relinquishment deed is relied on. There is no indication to that effect; the authority of several judgments after *Kale (supra)* reiterates the applicability of its principle. Nor can any compelling logic be discerned from any provision of the Benami Act, in support of the defendant’s contention to that effect. Moreover, it is not as if with the enactment of the Benami Act, the pre-existing law with respect to efficacy of family arrangements has been undermined in any manner. Rather, there is an indication to the contrary, under Section 4 (3) of that Act. Indeed Section 4

(3) (a) saves transactions, which would otherwise be deemed to be *benami* as between members of the family.

31. As far as the possession suit, filed by Sudhir goes, this court notes that the learned Single Judge straightaway decreed, perhaps under the erroneous premise that Satyapal could have no valid defence, because his declaration suit failed. As was noticed earlier, the declaration suit was not rejected in totality, but only in part. Therefore, it was conceivable for Satyapal to at least claim that he is entitled to certain ownership rights, because even according to the single judge, a part of the cause of action and claim in the suit, could be proceeded with. In the circumstances, the possession decree could not have been drawn, because the surviving cause of action in declaration suit also was part of the defense in the possession suit. The defendant, Satyapal's appeal has to therefore, succeed and the decree for possession needs to be set aside.

32. As to Sudhir's appeal, directed against the rejection, by the learned Single Judge of the submission that the declaration suit was time barred. Sudhir's argument is that by virtue of Article 58 of the Schedule to the Limitation Act, the three year period for institution of a declaratory suit commences from the date the cause of action first arises and that since Satyapal's plaint states that the cause of action first arose in 1992, the suit is facially barred.

33. *Khatri Hotels Private Limited And Another v Union Of India & Anr.* [2011] 9 SCC 126 explained the true position with respect to Article 58 and the object underlying it, in the following terms:

"While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word 'first' has been used between the words 'sue' and 'accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."

34. It is now settled by various decisions that the court has to give a plaint meaningful reading taking into consideration the overall averments and should not focus only on some parts of it. If the plaint averments in the declaration suit are seen as a whole, it is evident that the mention of 1992 was not in the context of a dispute; rather, it is more of an assertion as to when the plaintiff's right to the property arose. The cause for approaching the dispute is undoubtedly much later, when, according to the suit averments, the defendant started disputing the plaintiff's rights to and interest in the suit property. As observed by the learned Single Judge, the lack of clarity in the suit in this regard only meant that a conclusive view could not be taken at the preliminary stage of deciding if the plaint was to be rejected, under Order VII Rule 11 CPC. This court finds no infirmity with that reasoning. FAO(OS) 327/2013 therefore has to fail.

35. In view of the above reasoning, the impugned judgment, inasmuch as it dismisses Satyapal's suit, is set aside. RFA (OS) 76/2013 filed by Satyapal, succeeds and is allowed. Satyapal's suit [CS(OS) 1399/2011] is therefore restored to the file of this court. For the same reasons, RFA (OS) 77/2013 is also allowed; Sudhir's suit, CS (OS) 1480/2011 shall be tried on

merits, in accordance with law. FAO(OS) 327/2013, i.e Sudhir's appeal against the impugned judgment, as far as it holds Satyapal's suit not to be time barred, fails and is dismissed. The parties are directed to be present before the concerned Registrar on 8th May, 2016 for further directions. There shall be no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

APRIL 29, 2016

**DEEPA SHARMA
(JUDGE)**

