

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

% *Judgment Reserved On : September 28, 2016*
Judgment Delivered On : October 03, 2016

+ **RFA (OS) 60/2016**

SHARDA RANI CHAWLA & ORSAppellants

Represented by: Mr.Pallav Saxena, Advocate

versus

DR P K CHAWLA & ORSRespondents

Represented by: Ms.Bhavana, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Late Bhim Sain Chawla was the owner of property bearing municipal No.C-4/171, Dayanand Colony, Lajpat Nagar, New Delhi and on his demise on October 02, 1969 his wife Manorama Rani Chawla and four sons : Pramod Kumar Chawla, Satish Chawla, Naresh Chawla and Vinod Kumar Chawla inherited the property as his legal heirs. Succession was by intestacy. Manorama Rani Chawla died on July 07, 1999 and willed her undivided share in the property to her four sons as per will dated April 03, 1979, in respect of which the learned Single Judge has correctly opined that he need not decide on the validity of the will for the reason whether succession to the estate of Manorama Rani

Chawla was testamentary or by intestacy it made no difference because under either mode of succession the four sons would equally acquire her 1/5th share in the property. Thus, the four brothers became joint owners of the property each having 1/4th undivided share thereon.

2. The appellants are the successors-in-interest, being the wife and children of Vinod Kumar Chawla.

3. The respondents : Pramod Kumar Chawla, Satish Kumar Chawla and Naresh Chawla filed a suit seeking partition of the property pleading aforesaid facts, informing in the pleadings that though Pramod Kumar Chawla and Satish Chawla (as one party) and representing the estate of Vinod Kumar, his wife Sharda Rani and son Rishi Chawla (appellants No.1 and 2 as the other party) had signed an agreement on March 20, 2007 but in the absence of Naresh Chawla signing the same, nothing turned on the agreement which purported to record the terms for an amicable separation of interest of the four brothers in the property.

4. The appellants as heirs of late Vinod Kumar predicated a claim on the said agreement, two copies whereof : Ex.PW-1/D1 and Ex.PW-1/D2 were prepared and are admitted documents between the parties.

5. The two exhibits are computer print outs and thus have identical language. The two record that Pramod Kumar Chawla, Satish Chawla and Naresh Chawla constituted the first party and Sharda Rani and her son Rishi Chawla the second party. Recording that the four sons of late Bhim Sain Chawla and Manorama Rani Chawla had equal share in the property, the agreement records that Pramod Kumar Chawla, Satish Chawla and Naresh Chawla shall, upon receiving ₹25,00,000/- each,

payment to be made on or before July 31, 2007, relinquish their 1/4th share each in the property. The five clauses containing the agreement in the two exhibits read :-

(1) *That the first party will relinquish their rights, title and interest qua the above said property bearing no.4-C/171, Dayanand Colony, Lajpat Nagar, New Delhi for which second party will pay ₹75,00,000/- to first party (Dr.P.K.Chawla, Sh.Satish Chawla and Sh.Naresh Chawla ₹25,00,000/- each respectively)*

(2) *That the second party shall make the payment on or before 31st July 2007 to the first party.*

(3) *That after receiving the payment the first party will not claim, file any suit towards the above said property.*

(4) *That if the second party will not make the payment within the stipulated time period i.e. 31st July 2007 the first party will reserve their right to take legal necessary action.*

(5) *That the parties hereto and their respective legal heirs shall abide by the terms and conditions of this agreement.*

6. Whereas clause No.4 in Ex.PW-1/D1 has been scored off and initialed only by Satish Chawla, the entire agreement Ex.PW-1/D2 has been scored off. We simultaneously note that nothing turns on said aspect i.e. Ex.PW-1/D2 being scored off fully. The agreement do not bear the signature of Naresh Chawla.

7. Defense of the appellants in the written statement was that in view of the agreement Ex.PW-1/D1 the suit was not maintainable inasmuch as the parties had agreed that the appellants would be the owners of the

entire property. It was pleaded that in spite of offering ₹25,00,000/- each to the three plaintiffs they did not take the money.

8. It is apparent that the issue which confronted the learned Single Judge was : the effect of Ex.PW-1/D1 not being signed by Naresh Chawla and the effect of the appellants not paying ₹25,00,000/- each to Pramod Kumar Chawla, Satish Chawla and Naresh Chawla. The later part subsuming the issue whether the appellants proved their readiness and willingness evinced by their stand that they offered ₹25,00,000/- to the three plaintiffs and the three plaintiffs did not receive the money. This subsumed issue in turn subsumed whether the appellants proved having with them ₹75,00,000/- to pay to Pramod Kumar, Satish Chawla and Naresh Chawla.

9. Various correspondence between the parties were exhibited during the trial and at the hearing of the appeal were conceded to be irrelevant and therefore we do not burden ourselves to note the documents exhibited and their contents, save and except making a reference to Ex.PW-1/D3 at the appropriate stage of this decision.

10. In the absence of any proof that the appellants had ₹75,00,000/- with them and except for the self-serving statement that the appellants tendered ₹75,00,000/- to Pramod Kumar, Satish Chawla and Naresh Chawla, the learned Single Judge has held that the appellants had failed to prove tendering ₹25,00,000/- each to Pramod Kumar, Satish Chawla and Naresh Chawla. The learned Single Judge has held that on account of Naresh Chawla not having signed the agreement there was merit in the stand taken by the respondents that the agreement between the parties

was that Ex.PW-1/D1 would be given effect to only upon Naresh Chawla also executing the same and since he did not execute the same, the parties abandoned the same.

11. The result is a preliminary decree being passed declaring the appellants to be having 1/4th undivided share in the property and Pramod Kumar, Satish Chawla and Naresh Chawla each having 1/4th undivided share.

12. Relying upon the decision reported as AIR 1976 SC 807 Kale vs Deputy Director of Consolidation & Ors. learned counsel for the appellant urged that a family agreement orally arrived at would bind the parties and thus urged that the learned Single Judge erred in not accepting the defence.

13. In Kale's decision (supra), the Supreme Court noted that family arrangements are governed by special equity peculiar to themselves and have to be enforced if honestly made. By virtue of family settlement or arrangements members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes. Settle and resolve conflicting claims or disputed titles ones and for all. Therefore, courts have leaned in favour of upholding family arrangements and upon finding an arrangement suffering from a legal lacuna or a formal defect, the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to the family settlement seeks to unsettle a settled dispute, and in this context registration would not be necessary if the written document becomes a memorandum of a settlement which had orally taken place. But, if the terms of the family arrangement are reduced into writing containing the terms of the settlement, such documents would

require registration. The decision notes a chain of authorities holding as aforesaid in paragraphs 12 to 15 of the opinion as also paras 19 to 22. Six principles have been culled out in paragraph 10 of the decision as under:-

“10. In other words to put the binding effect and the essential of a family settlement in a concretised form, the matter may be reduced 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 arrangement 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) 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.”

14. Undisputedly, family arrangements as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties and acted upon. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon and acted upon so that there be no hazy notion about it in future.

15. The argument overlooks that in the instant case there is neither an oral agreement giving effect to the settlement of a dispute concerning a family matter nor a memorandum recording an oral settlement made. Ex.PW-1/D1 is an agreement between the parties which is executory in nature, for it records that upon the appellants paying the respondents ₹25,00,000/- each the respondents would relinquish their rights in the suit property. Thus, law declared in Kale decision is not applicable in the instant case. The agreement if signed by all the parties required

appellants to pay ₹25,00,000/- each to Naresh Chawla, Pramod Kumar Chawla and Satish Chawla simultaneously requiring the three to execute relinquishment deeds.

16. The second contention by learned counsel for the appellants was that if not Naresh Chawla, at least Pramod Kumar Chawla and Satish Chawla were bound by the agreement Ex.PW-1/D1 and thus the two were not entitled to any share in the suit property. Even qua Naresh Chawla, the contention urged was that having knowledge of execution of Ex.PW-1/D1, he having not resiled therefrom, notwithstanding he not being a signatory thereto, would be bound by the same.

17. The contention of the appellants is without any merit for the reason notwithstanding clause 4 of the agreement Ex.PW-1/D1 being scored off, the effect of clause 2 remained. Clause 2, as noted above, mandates the appellants to pay ₹25,00,000/- to Pramod Kumar Chawla, Satish Chawla and Naresh Chawla by July 31, 2007. Meaning thereby, if by said date i.e. July 31, 2007, and assuming time was not of the essence of the contract, within reasonable time thereafter the money was not paid, no right could be enforced under the agreement.

18. Not only have the appellants failed to prove having tendered ₹25,00,000/- to Pramod Kumar Chawla, Satish Chawla and Naresh Chawla, assuming the amount was tendered and refused, the appellants were obliged to seek a specific performance of the agreement and for which period of limitation would be three years when cause of action accrued to sue. The cause of action would obviously accrue when the money was offered and acceptance was refused. There is no date

disclosed in the pleadings nor in the evidence as to the date when the payment was tendered and refused. There is no counter claim along with the written statement seeking specific performance of the agreement Ex.PW-1/D1. Thus, the appellants cannot predicate a defense on Ex.PW-1/D1.

19. That apart, there is merit in the stand taken by the respondents that since Naresh Chawla did not sign Ex.PW-1/D1 the parties gave the same a go by.

20. Ex.PW-1/D3 drawn up on June 01, 2001 and signed only by Satish Chawla and Naresh Chawla records that upon Vinod Chawla paying to Pramod Chawla ₹16.5 lacs and to Satish Chawla and Naresh Chawla ₹15 lacs latest by December 20, 2001, the three would sell their share in the property to Vinod Chawla. The document establishes that as of the year 2001, the parties valued the property at around ₹60,00,000/- and Pramod, Satish and Naresh agreed to transfer their 1/4th share to Vinod upon him paying the money value of their shares. Obviously, Vinod did not pay. The evidentiary value of the document is that whereas Pramod, Satish and Vinod were ready to sell their share in the property to their brother Vinod because he was residing in the suit property, not having the means to pay, Vinod was unable to buy the shares of his brothers in the suit property and this is a pointer towards the appellants not having the means to pay. When Ex.PW-1/D1 was executed, it was the year 2007 and there was rise in the price of the properties. Evidenced by Ex.PW-1/D3 is the fact that in the year 2001 the four brothers agreed the fair market value of the suit property to be

around ₹60,00,000/- and evidenced by Ex.PW-1/D1 is the fact that in the year 2007 the price was ₹1 crore.

21. Concurring with the view taken by the learned Single Judge that :
(i) not being signed by Naresh Chawla Ex.PW-1/D1 could not be given effect to; and (ii) assuming the agreement was to be given effect to, the appellants not establishing having the means and having tendered ₹25,00,000/- each to Pramod, Naresh and Satish they could not enforce any right therein, we dismiss the appeal and affirm the preliminary decree but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

OCTOBER 03, 2016

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