

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

% *Judgment Reserved On : September 07,2016*
Judgment Delivered On : September 21, 2016

+ **RFA(OS) 105/2015**

ADITI UPADHYAYAppellant
Represented by: Mr.V.K.Garg, Sr.Advocate
instructed by Mr.Ankur Chibber,
Mr.Neeraj Kr.Sharma, Advocates

versus

LALIT KUMAR & ORSRespondents
Represented by: Mr.Raman Kapur, Sr.Advocate
instructed by Mr.Aviral Tiwari,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Suit seeking declaration, permanent injunction and partition filed by the appellant has been dismissed by the learned Single Judge vide impugned judgment and decree dated August 27, 2015.

2. Defendants No.1 and 2 are the brothers of the appellant. Defendant No.3 is the sister of the appellant. Defendant No.4 is her mother. The common link would be late Sh.Om Prakash Kumar, the father of the appellant and defendants No.1 to 3 and husband of defendant No.4. It is the case of the appellant that her grandfather Hira Lal was the owner of property bearing municipal No.R-298, Greater Kailash, Part-I, New Delhi on which he had constructed a three storied building. He had four sons, one of whom was late Om Prakash Kumar. During his life time late

Sh.Hira Lal desired to partition the property owned by him and desired to give to late Sh.Om Prakash the second floor with roof rights above, but Om Prakash expressed a desire to his father to bequeath said floor in favour of his i.e. Om Prakash's sons : defendants No.1 and 2 and therefore Hiral Lal bequeathed the second floor and the roof rights above to defendants No.1 and 2. That late Om Prakash was the owner of property bearing Municipal No.U-11, Green Park (Main), New Delhi. The suit property was treated as a family asset. On April 22, 1999, with the consent of all family members, under an oral settlement Om Prakash gave the second floor of house bearing No. No.R-298, Greater Kailash, Part-I, New Delhi to the appellant and divided his house at Green Park between the defendants, which oral settlement was accepted and recognized by all defendants evidenced by a relinquishment deed dated April 22, 1999 executed by defendants No.1 and 2 concerning the second floor of property No.R-298, Greater Kailash, Part-I, New Delhi in appellant's favour. She pleaded that upon Om Prakash's death on August 09, 2005 the defendants started questioning the settlement.

3. In a joint written statement filed the defendants admitted that under a will dated September 24, 1986 executed by late Sh.Hira Lal, defendants No.1 and 2 inherited the suit property, but denied any understanding between Hira Lal and his son Om Prakash as pleaded in the plaint. They pleaded that under a will dated November 12, 2002, Om Prakash gave a life interest to his wife in the property in Green Park while making a bequest thereof in favour of his sons. Concerning the relinquishment deed it was pleaded that because their sister wanted to reside in the suit property they executed the relinquishment deed without an intention to create any right in favour of the appellant and for this reason the same was not got registered. Its execution was explained on the plea that the family of other

sons of Hira Lal were residing in the ground and the first floor of R-298, Greater Kailash, Part-I, New Delhi and therefore the document was created lest they raise any issue with the appellant to reside on the second floor.

4. On July 24, 2009 following six issues were settled on the pleadings of the parties:-

(1) Whether the plaintiff has any right, title or interest in properties bearing No.R-298, Greater Kailash, Part-I, New Delhi and U-11, Green Park (Main), New Delhi? OPP

(2) Whether there was any oral settlement dated 22.4.1999 as alleged by the plaintiff? OPP

(3) Whether the plaintiff has no cause of action to file the present suit? OPD

(4) Whether the plaintiff is entitled to decree for partition as prayed for? OPD

(5) Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP

(6) Relief.

5. Dismissing the suit, the learned Single Judge has held that the relinquishment deed dated April 22, 1999, Ex.P-1, made no reference to any oral family settlement. It being not registered as per the requirements of Section 17(1)(b) of the Registration Act, 1908, no title could flow thereunder. There was no evidence that the parties had acted upon pursuant to the oral family settlement, in that, for purposes of house tax the appellant did not apply for mutation of the second floor in her name. Before no authority the appellant represented having become owner of the second floor. The deed nowhere refers to the second floor of the property at Greater Kailash and only speaks of conferring 1/4th undivided share of

defendants No.1 and 2 in favour of the appellant. The will dated September 24, 1986 Ex.D-1 executed by Hira Lal evinced that he bequeathed 1/4th undivided share jointly to his grand-sons : defendants No.1 and 2 and 1/4th each to his three sons : Moti Lal, Mohan Lal and Hari Ram. There was no proof that inter-se Moti Lal, Mohan Lal and Hari Ram and defendants No.1 and 2 there was a partition whereunder the second floor became the property of defendants No.1 and 2 and thus under no circumstances they could relinquish their share in the second floor of the property. Proof by the appellant through her testimony and that of her witness Vrushali Desai PW-2 that she performed *grah parvesh*, has been held to be worthless and not proof of her having acquired ownership because even a tenant performs *grah parvesh*. The will Ex-DW-2/1 dated November 12, 2002 has been referred to by the learned Single Judge to highlight that there was no recital in the will to the effect that Om Prakash had ensured that under a family settlement the appellant had been given a share in the family wealth thus this was proof that no oral settlement took place.

6. Needless to state aforesaid discussion is to be founded while discussing issues No.1 to 3, which centre on the same facts.

7. Arguing the appeal, Sh.Vinay Garg, learned Senior Counsel did not dispute the will Ex.DW-2/1 executed by late Sh. Om Prakash as also the will Ex.D-1, dated September 24, 1986 executed by late Sh.Hira Lal. Learned counsel for the defendants did not deny signatures of defendants No.1 and 2 on the relinquishment deed Ex.P-1.

8. The argument of learned Senior Counsel for the appellant was that the testimony of Sh.H.P.Singh PW-3 to the effect that on April 22, 1999, Om Prakash told him in a very joyous mood that he, his wife and children had orally divided the family properties was not controverted during cross-examination. Further testimony that on the same day Om Prakash showed

him the relinquishment deed Ex.P-1 containing Om Prakash's signatures at the point marked 'X' and he thereafter signed at the point marked 'Y' also not being controverted, it would be proof of the family settlement. Relying upon the decision reported as AIR 1976 SC 807 Kale vs Deputy Director of Consolidation & Ors. learned counsel urged that a memorandum of a family settlement did not require any registration and would be good evidence of a partition.

9. The will Ex.D-1 dated September 24, 1986 has been executed by Hira Lal and we find that concerning property R-298, Greater Kailash Part-I New Delhi he has bequeathed 1/4th undivided share each to his three sons and 1/4th share to his grandsons : sons of his fourth's son Om Prakash. There is no proof, and it is not even the case of the appellant, that her uncles and her brothers with the blessings of her father or in his presence partitioned property R-298, Greater Kailash, Part-I, New Delhi and under the partition the second floor with the terrace rights became the exclusive property of her brothers, to be held by them on behalf of the family. Thus, the question of defendants No.1 and 2 orally agreeing at a family settlement that the second floor and the terrace above of property No.R-298, Greater Kailash, Part-I, New Delhi, would be exclusively that of the appellant does not arise. It is trite that a co-owner of a property cannot agree to confer title upon a third party of a specific part of the joint property unless there is a partition amongst the co-owners.

10. The will Ex.DW-2/1 executed by Om Prakash makes a reference to the children of Om Prakash as also his wife and makes no recital of Om Prakash having any interest through his father in the house at Greater Kailash Part-I, nor a reference therein is made to any alleged oral family settlement having taken place on April 22, 1999.

11. 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.”

12. 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. But where the parties reduced the family arrangements

in 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, the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess. Ex.P-1 contains the recital that it is a deed of relinquishment made on April 22, 1999 by defendants No.1 and 2 in favour of the appellant. It does not record any oral family settlement. It records that defendants No.1 and 2, out of natural love and affection, wish to relinquish their share in property R-298, Greater Kailash, Part-I, New Delhi which they have inherited from their grandfather under a will dated September 24, 1986 in favour of their sister. The operative part records that the releasers hereby relinquish their share in the immovable property in favour of their sister. Obviously, the document would serve the purpose of proof of title being conveyed and thus we hold that Ex.P-1, in the absence of registration, would be inadmissible in evidence and contents thereof cannot be read in evidence.

13. The appellant has a second string in her bow. Learned Senior Counsel for the appellant argued that Ex.P-1 would be admissible for a collateral purpose and the collateral purpose would be title conveyed in favour of the appellant.

14. Now, as noted above, Ex.P-1 does not make any reference to the second floor of property bearing municipal No. R-298, Greater Kailash, Part-I, New Delhi. It only refers to 1/4th undivided share of the releasers. That apart, it being well settled in a series of decisions, and we note the latest decision reported as AIR 2015 SC 6184 Yellapu Uma Maheswari & Ors. vs. Buddha Jagadheeswararao & Ors. That a compulsorily registrable but unregistered document is admissible in evidence for a collateral purpose which does not require registration.

15. The expression collateral purpose is no doubt a very vague one and a court has to decide in each case whether the purpose for which it is sought to use the unregistered document is really a collateral one or is it to establish directly title to the immovable property sought to be conveyed by the document. The device of calling it a collateral purpose would not entitle a party to use the unregistered document in any legal proceedings to bring about indirectly the effect which it would have had if registered. To be collateral, the fact must be independent of, or divisible from, the purpose to effect which the law requires registration. To put it pithily, a collateral purpose has to be a purpose other than what the document expressly records. For example, an unregistered lease-deed conveying lease-hold interest for three years in immovable property would have the collateral purpose of showing the possession to be permissive and no further. It cannot be used to establish the duration of the lease, the rent payable etc.

16. In our opinion Ex.P-1 cannot be used in evidence for the collateral purpose to establish title in favour of the appellant.

17. Whilst it may be true that the cross-examination of PW-3 by counsel for the defendants is weak, in that the witness has not been challenged with respect to his testimony that on April 22, 1999 late Sh. Om Prakash met the witness in a joyous mood and told him that he had settled a partition within his family and his sons had executed the relinquishment deed and therefore he signed as a witness to the deed along with Sh.Om Prakash, but that does not mean that the unregistered document creating title would be proved.

18. As held by the learned Single Judge merely because the appellant proved through her testimony and through the testimony of Vrushali Desai PW-2 to have performed *grah parvesh* on the second floor of

property No.R-298, Greater Kailash, Part-I, New Delhi would mean nothing inasmuch as it is not uncommon for even a tenant or an occupant to perform a *grah parvesh* ceremony.

19. Concurring with the view taken by the learned Single Judge the appeal is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

SEPTEMBER 21, 2016

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