*IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of decision: 9th January, 2017**

\+ **<u>CS(OS) 1178/2008</u>**

VIJAY KUMAR TANEJA ..... **Plaintiff**

Through: Mr. S. Rajpal, Adv.

Versus

RAJ KUMAR TANEJA AND ORS. ..... **Defendants**

Through: Mr. R.K. Jain & Mr. Himanshu Sethi, Advs. for D-1&2.
Mr. D.S. Vohra, Adv. for D-3.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff instituted this suit for partition of property No.C-1/6, West Enclave, Pitampura, Delhi and for ancillary reliefs pleading:

   (i) That the plaintiff and six defendants are the daughters and sons of Late Sh. Jugal Kishore Taneja.

   (ii) That Sh. Jugal Kishore Taneja died intestate on 27th February, 1997 leaving the plaintiff and the six defendants as his only legal heirs.

   (iii) That during his lifetime, Sh. Jugal Kishore Taneja acquired property No.C-1/6, West Enclave, Pitampura, Delhi-110034 and on demise of Sh. Jugal Kishore Taneja, the plaintiff being one of his seven legal heirs became 1/7th owner of the property.

   (iv) That the plaintiff is in occupation of and residing on the second floor of the property.

   (v) That partition though claimed has been denied.

2. The suit was entertained and vide *ex parte* order dated 20th June, 2008, *status quo* was required to be maintained with respect to the property.

3. The defendants no.1&2 filed a joint written statement (amended) pleading:

(i) That the plaintiff has not included all the assets left by the deceased and the suit for partition in regard to part of the estate cannot be entertained.

(ii) That the deceased father has also left behind land measuring 1.0 and 4.14 situated in the Revenue Estate of village Molarband, New Delhi purchased by him vide Sale Deed dated 25th April, 1986 and the said property was mutated in the revenue records in the name of the father of the parties.

(iii) That the plaintiff has also not mentioned the 600 shares purchased by the father of Dena Bank as well as 560 shares including bonus shares of Satnam Overseas Ltd.

(iv) That the defendant no.3 Sh. Vinod Kumar Taneja surrendered his share of the property in favour of defendants no.1&2 and admitted defendants no.1&2 to be the owner of his share; the defendants no.1&2 therefore have right over the share of the defendant no.3.

(v) That the defendants no.1&2 have deposited Rs.2,88,015/- with the House Tax Department and the plaintiff is liable to pay proportionately the said amount if found to have a share in the property.

(vi) That the defendants no.1&2 have also incurred an amount of Rs.73,210/- and Rs.10,000/- in obtaining Letters of Administration.

(vii) That the defendants no.1&2 have been granted Letters of

Administration of the estate of the father with the consent of other heirs and have thus become the owner of the property.

(viii) That the defendants no.1&2 had also incurred medical expenses of Rs.3,04,000/- for medical treatment of the father and the plaintiff and the other defendants if claim any right in the property have to bear their share of the said expense also.

(ix) That the plaintiff has left his right in the property in favour of defendants no.1&2 for a sum of Rs.20,00,000/- out of which the plaintiff has received sum of Rs.4,25,000/- in cash between the years 1997 to 2003 and has executed an agreement dated 20th February, 2003 in this regard acknowledging the rights of the defendants no.1&2 in the property.

(x) That the plaintiff has thus not been left with any rights in the property to be able to seek partition.

(xi) That the defendants no.1&2 also in the year 2003 spent Rs.1,00,000/- and in the year 2007 Rs.60,000/- on the medical treatment of the plaintiff and his wife.

(xii) That the defendants no.1&2 permitted the plaintiff to live on the second floor as licensee and the remaining portion of the second floor is with the defendants no.1&2.

4. No replication is found to have been filed to the written statement aforesaid.

5. The defendant no.3 also filed a written statement supporting the claim of the plaintiff for partition and asserting his 1/7th rights in the property.

6. No written statement is found to have been filed on behalf of defendants no.4 to 6.

7. The counsel for the plaintiff as well as the counsel for the defendant no.3 however state that they had received advance copy of the written statement for defendants no.4 to 6 and in which written statement, the defendants no.4 to 6 sisters, on the ground of the Letters of Administration having been obtained by defendants no.1&2, supported the claim of the defendants no.1&2 of having become the owners thereby.

8. The order dated 25th March, 2011 proceeds *ex parte* against the defendants no.4 to 6.

9. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 20th November, 2013:

> "(i) Whether the Plaintiff is entitled to declaration of his 1/7th share in the suit property and a preliminary and final decree of partition thereof? OPP
> (ii) Whether Defendant Nos.1 and 2 are entitled to the share of Defendant No.3? OPD 1&2.
> (iii) Whether the Plaintiff is entitled to an injunction as prayed for? OPP
> (iv) Relief."

10. The plaintiff alone appeared in support of his evidence and closed his evidence. Similarly, defendants no.1&2 and defendant no.3 only examined defendant no.1 and defendant no.3 in their respective evidence.

11. The suit is ripe for final hearing.

12. In the aforesaid state of affairs, rather than posting the matter in the category of finals, with the consent of the counsels, arguments have been finally heard in the suit.

13. The plaintiff, during admission / denial of documents admitted his signatures on the document titled "Mutual Settlement-cum-Agreement" dated 20th February, 2003 by which the defendants no.1&2 claim to have acquired the 1/7th share of the plaintiff in the property and Ex.D1 was put

thereon. Thereafter, during evidence, Ex.DW1/D1/4 is also found to have been put on the said document. The said "Mutual Settlement-cum-Agreement" dated 20th February, 2003 is as under:

"MUTUAL SETTLEMENT CUM AGREEMENT

This Mutual settlement cum Agreement is made at Delhi on this 20th day of February, 2003, between Sh. Vijay Kumar Taneja S/o Late Sh. Jugal Kishore R/o C-1/6, IInd Floor West Enclave, Pitampura, Delhi-110034 (hereinafter called the First Party)

:: AND::

Sh. Raj Kumar Taneja & Sh. Ashok Kumar Taneja both S/o late Sh. Jugal Kishore both R/o W 122, Ground Floor, Greater Kailash Part-II, New Delhi-110 048 (hereinafter called the Second Party)

WHEREAS Late Sh. Jugal Kishore was originally the owner of his self acquired property bearing No.C-1/6 West Enclave, Pitampura, Delhi-110 034. The said late Sh. Jugal Kishore left for his heavenly abode on 27-02-1997 leaving behind seven legal heirs-Four Brothers & three Sisters (including the First & the Second party) for sharing 1/7th portion each. The portions of the legal heirs are undivided. Mother of the Legal Heirs already expired.

Whereas the First Party is in possession of IInd Floor premises of the property bearing No.C-1/6, West Enclave, Pitampura, Delhi-110 034 comprising of three bed rooms with attached bath, one Drawing cum Dining, One Kitchen and two Miyanis between Stairs. Out of total premises possessed by the First Party, One Bed Room alongwith attached bath (adjoining kitchen) & two Miyanis are in possession of the Second Party. The Second Party has kept the valuable & household goods in the said portion in possession of the Second Party.

And whereas the first party has agreed to sell and transfer all rights w.r.t. 1/7th undivided share of the above-said property to the Second Party & the Second Party who has agreed to purchase the same for full & final consideration amount of Rs.20.00 lakhs (Twenty Lakhs). Out of the total consideration amount, the First Party has received the amount of Rs.4,25,000/- in cash from the said Party. The First Party has been receiving payment from the Second party as & when required since 1997 till date. The Second Party has agreed to pay the balance amount on the following terms & conditions of this Agreement / Settlement:-

NOW THIS SETTLEMENT CUM AGREEMENT WITNESSETH AS UNDER:

1. That the First Party can reside in the premises under sale till he receives the full payment. The Second Party will be handed over all the documents / Papers relating to the said property on receiving the full payment.
2. That the First party has handed over the physical vacant possession of the said portion in the said property to the Second Party on the spot.
3. That after receiving the possession, the 2nd party shall be fully entitled to make any additions, alterations internally like fitting etc. under the applicable rules.
4. That the Second Party shall realize all the profits of the said property from the date of execution of the Documents in their favour.
5. That the First Party shall get no claim, title or interest in the said property and the Second Party will become sole & absolute owner and will be at liberty to utilize the same in any manner.
6. That the First Party hereby assures the Second Party that the said property is free from all sorts of encumbrances such as sale, mortgage, gift, lien, decree etc. and there is no legal defect in the title of the First party or power to sell the same, if proved otherwise the First Party shall be liable for all costs & damages if incurred by the Second Party in all respects.
7. That whenever and wherever presentation of the First Party will be required for the completion of any acts, deeds and things regarding the said property, the First Party will execute and present the same on his convenience at the expenses of the Second Party.
8. That the First Party shall pay all the dues etc. as regards the property under sale prior to the execution of the Sale Deed and thereafter by the Second Party.
9. That all dues, demands, lease money, unearned increments, transfer fees and any other charges to be levied thereafter regarding the said property shall be paid and borne by the Second Party.
10. That the First Party will cooperate in all formalities for the transfer of the said property in favour of the second party as and when permissible.
11. That if either party to this agreement violates any terms & conditions of this agreement, the aggrieved party shall be entitled to get the said transaction completed through the Court of law under the suit for Specific Performance at the cost & expenses of the defaulting Party.
12. That this Settlement by the First Party w.r.t. his 1/7th share is final & binding in all respects & if any legal heir of the First Party raises any objection with regard to the same that will be treated as null and void.

- IN WITNESS WHEREOF, I have signed this Agreement cum Settlement at Delhi on the day, month and year first above mentioned in presence of the following witnesses:

	Sd/-	Sd/-
1.	Priya Aggarwal F-87, Vasant Vihar Paschimi Marg, New Delhi	a. FIRST PARTY (Vijay Kumar Tanjea)
2.	Sd/- Madhu Arora 236-Kohinoor Farm Saidulajab Near Saket New Delhi-110 030.	Sd/- b. SECOND PARTY (Raj Kumar Taneja & Ashok Kumar Taneja)

14. Needless to state that the aforesaid document is unregistered.

15. The document titled "Mutual Settlement Cum Agreement" is found to be an Agreement to Sell whereunder the plaintiff is found to have agreed to sell his $1/7^{th}$ undivided share in the property to defendants no.1&2 for total sale consideration of Rs.20 lacs out of which the plaintiff has received Rs.4.25 lacs. It is not the plea of either party that any sale / transfer deed in pursuance thereto was executed.

16. I have enquired from the counsel for the defendants no.1&2 whether the defendants no.1&2 have instituted any proceedings for specific performance of the Agreement to Sell aforesaid by the plaintiff in favour of defendants no.1&2 of his $1/7^{th}$ undivided share in the property.

17. The counsel for the defendants no.1&2 replies in the negative.

18. I have then enquired from the counsel for the defendants no.1&2 that if that be so, how can the defendants no.1&2 on the basis of some agreement to purchase claim to have become the owners of the plaintiff's $1/7^{th}$ undivided share in the property. This Court has as far back as in ***Jiwan Dass Rawal Vs. Narain Dass*** 1981 SCC OnLine Del 156 and thereafter

consistently followed in ***Cement Corporation of India Ltd. Vs. Life Insurance Corporation of India Ltd.*** 2014 SCC OnLine Del 4536 and ***Jagdambey Builders Pvt. Ltd. Vs. J.S. Vohra*** 228 (2016) DLT 49 held that mere agreement to sell does not create any rights in favour of an agreement purchaser and only vests in the agreement purchaser a right to sue for specific performance and not even till a decree for specific performance is passed but till conveyance deed in pursuance thereto is executed.

19. Faced therewith, the counsel for the defendants no.1&2 draws attention to Clause 5 of the "Mutual Settlement-cum-Agreement" supra and contends that the plaintiff thereby has divested all his rights in the said property.

20. Rights in immovable property cannot be divested without a registered document. With effect from the amendment of the Transfer of Property Act, 1882 and the Registration Act, 1908 in September, 2001, no rights by way of part performance also in immovable property can be created without a registered document.

21. If it were to be held that such documents create rights in immovable property, the same would defeat the purpose of the Indian Stamp Act, 1899 and the Registration Act, 1908.

22. Thus, merely on the basis of Ex.D1/Ex.DW1/D1/4, it cannot be said that the plaintiff has stood divested of his $1/7^{th}$ share in the property so as to be not able to seek partition or that the same has stood transferred to defendants no.1&2. Reference if any required can be made to ***State of U.P. Vs. District Judge*** (1997) 1 SCC 496 and ***Satyabrata Ghose Vs. Mugneeram Bangur & Co.*** AIR 1954 SC 44.

23. Though the plaintiff undoubtedly agreed to sell his said share but the defendants no.1&2 were only entitled to seek specific performance of the Agreement to Sell by the plaintiff of his 1/7th share and having not done so, cannot claim that the plaintiff has been divested therefor. This suit has been pending for the last nearly eight years and the defendants no.1&2 inspite of institution of the suit having not asserted the right of specific performance, it appears that the said right if any of the defendants no.1&2 would also now be barred by time.

24. I have further enquired from the counsel for the defendants no.1&2 whether the defendants no.1&2 have paid the entire purchase price of Rs.20,00,000/- as per "Mutual Settlement-cum-Agreement".

25. The counsel for the defendants no.1&2 fairly states that the entire purchase consideration of Rs.20,00,000/- has not been paid. He states that only payment of Rs.4,25,000/- has been made and besides that the plaintiff in his cross-examination has admitted the defendants no.1&2 having spent Rs.60,000/- on the medical treatment of the plaintiff and his wife.

26. The counsel for defendants no.1&2 on enquiry as to the evidence on the plea in the written statement of the defendants no.1&2 of the share of the defendant no.3 has drawn attention to i) Ex.D3 being "Settlement-cum-Possession Letter" executed by the defendant no.3; and, ii) Ex.DW2 being the affidavit dated 16th June, 2008 executed by the defendant no.2 whereunder the defendant no.3 is stated to have surrendered his share in property No.C-1/6, West Enclave, Pitampura, Delhi in favour of defendants no.1&2 "as per Hon'ble Court's order dated 1st November, 2002 of Sh. G.P. Mittal, Additional District & Sessions Judge, Tis Hazari Courts, Delhi in probate case No.PC-40/2002 as case titled Raj Kumar Taneja and Sh. Ashok

Kumar Taneja Vs. The State and the probate order for succession certificate dated 26th April, 2003."

27. It is the contention of the counsel for the defendant no.3 that the said two documents have been created by the defendants no.1&2 on blank papers got signed from the defendant no.3 for the purpose of probate case.

28. I am of the view that there is no need to render any finding on the aforesaid contention and on which in any case no specific issue was proposed and has been framed. Suffice, it is to state that both the documents are unregistered and by unregistered document there can be no surrender of rights in immovable property.

29. I have also considered whether the aforesaid documents admittedly executed by the plaintiff and purportedly executed by the defendant no.3 would fall within the meaning of 'family settlement', but do not find the same to be by way of family settlement. Rather, the defendant no.3, if at all executed the said documents is found to have surrendered his share in the property in favour of defendants no.1&2 in pursuance to the order in the probate case aforesaid and not by way of any settlement. There appears to be a misconception that Letters of Administration of estate granted constitutes the grantee as the sole owner of the estate. A Letters of Administration of estate only entitles the grantee to distribute the estate, in the absence of a Will of the deceased in accordance with the law of succession applicable to the deceased amongst all the heirs as per their entitlement and when there is a Will and of which probate is issued, in accordance therewith. Admittedly there is no Will in the present case. So the defendants no.1&2 as grantees of Letters of Administration were required to distribute the estate amongst all the heirs of the deceased. The document

even if any executed by defendant no.3 surrendering rights in the property in favour of defendants no.1&2 believing that defendants no.1&2 under the Letters of Administration were exclusively entitled to the estate and not by way of settlement cannot be labelled as Family Settlement. Similarly, the Agreement to Sell by plaintiff of his share to defendants no.1&2 cannot be a Family Settlement the genesis of which is settlement of disputes to avoid litigation. Commercial transaction of sale and purchase, if between family members, do not acquire the hue of Family Settlement. Supreme Court recently in ***Yellapu Uma Maheswari Vs. Buddha Jagadheeswararao*** MANU/SC/1141/2015 held that Relinquishment Deeds executed by family members, being unregistered though compulsorily registrable could not divest the executants thereof of share in the property for the purposes of a suit for partition.

30. Thus no case of any family settlement also is made out.

31. The counsel for the defendants no.1&2, faced therewith states that the suit is bad for partial partition.

32. However no issue is found to have been pressed on the said aspect.

33. The counsel for the defendants no.1&2, without citing any specific judgment, states that there are judgments to the effect that once a plea exists in the written statement, even in the absence of an issue, a suit can be dismissed if found to be of partial partition.

34. The counsel for the defendant no.3 rightly contends that no evidence also has been led on the said aspect and it has not been proved that the father of the parties left any other estate.

35. The counsel for the defendants no.1&2 states that PW1 in his cross-examination admitted that some dispute with respect to the land aforesaid

was pending before the Sub-Divisional Magistrate (SDM) long back.

36. The counsel for the defendants no.1&2 on enquiry states that dispute before the SDM is under Section 145 of the Cr.P.C. as the person from whom the father of the parties purchased the property has re-occupied the property.

37. The rule, that a suit for partial partition is not maintainable, is not an absolute rule as recently held by the Division Bench of this Court in ***Radhey Shyam Bagla Vs. Ratni Devi Kahnani*** MANU/DE/3331/2014 and followed by me in judgment dated 20th July, 2016 in CS(OS) No.1689/2015 titled ***Sardar Jarnail Singh Vs. Sardar Amarjit Singh***. In the present case, considering that the only other land forming the estate of the father is under Section 145 Cr.P.C. proceeding, it is not deemed appropriate to defeat this suit for partition of the residential house owned by the father.

38. In view of the aforesaid, the issues are decided as under:

(i) Issue no.(i) in favour of the plaintiff.

(ii) Issue no.(ii) against the defendants no.1&2.

(iii) Issue no.(iii) in favour of the plaintiff.

39. A preliminary decree for partition is accordingly passed, declaring the plaintiff and the six defendants to be owners of 1/7th undivided share each in property No.C-1/6, West Enclave, Pitampura, Delhi-110034.

Decree sheet be prepared.

40. The counsel for the plaintiff, the counsel for the defendants no.1&2 and the counsel for the defendant no.3 all are *ad-idem* that considering the size, nature of the property and the number of shareholders thereof, the same is incapable of division by metes and bounds.

41. On enquiry, it is informed that no outsider is in possession of any part of the property.

42. All the counsels state that a final decree for partition of sale of the property and distribution of sale proceeds be also passed.

43. I have satisfied myself that the property is incapable of division by metes and bounds.

44. Accordingly, a final decree for partition is also passed, of sale of property no. C-1/6, West Enclave, Pitampura, Delhi-110034 and distribution of sale proceeds thereof in accordance with the shares declared in the preliminary decree.

45. It is further clarified i) that all the parties shall be entitled to participate and bid in the auction / sale and the highest bidder would be entitled to acquire the share of the others; ii) that the parties shall handover vacant peaceful physical possession of the portion of the property in their respective possession to the buyer and if any of the parties is the buyer, to such party and if fail to do so will be liable to be dispossessed in execution hereof as a decree for recovery of possession; iii) till the property is so sold, the parties shall maintain *status quo* qua title and possession; iv) out of the sale proceeds of the property, the amount paid by the defendants no.1&2 towards house tax of the property since the demise of the father shall be first paid to the defendants no.1&2 and thereafter the sale proceeds shall be distributed as aforesaid; and, (v) out of the share of sale proceeds of the plaintiff, the amount of Rs.4.25 lacs admittedly received by plaintiff and Rs.60,000/- admittedly spent on plaintiff, from / by the defendants no.1&2 shall be paid to the defendants no.1&2 and if the plaintiff delays sale,

alongwith interest @6% per annum from today till sale.

46. The parties to bear their own costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

JANUARY 09, 2017
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