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

+ RFA 1032/2016 & CMs 48205-06/2016 and 6434/2017

JAGAN NATH SHARMA Appellant
Through: Mr. T.C. Sharma, Advocate

versus

KISHAN CHAND SHARMA & ORS Respondents
Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

% **17.02.2017**

1. The appellant/plaintiff has assailed the judgment dated 24.9.2016, dismissing his suit for partition and permanent injunction instituted against his siblings, in respect of a residential premises bearing No.MS-29/III, MS Block, Hari Nagar, Ghanta Ghar, New Delhi.

2. The facts germane for deciding the present appeal are that Smt.Shanti Devi, mother of the parties, was the absolute owner in possession of the suit premises purchased by her by virtue of a Sale Deed dated 17.8.1971. Smt. Shanti Devi expired intestate on 12.5.1981, leaving behind her husband, Shri S.R. Sharma, five sons and two daughters. After the demise of Smt. Shanti Devi, her husband also expired, leaving behind seven legal heirs. Alleging that the suit premises was not being partitioned by the respondents/defendants despite repeated requests made by him the appellant/plaintiff instituted the

present suit in the year 2003, claiming 1/7th share therein and seeking partition by metes and bounds.

3. The respondents/defendants entered appearance and filed a joint written statement, wherein they raised a preliminary objection that the suit was liable to be dismissed on the ground that the appellant/plaintiff had already got his share in respect of the subject premises upon the demise of his parents. They pleaded that on 9.8.1998, a settlement in writing was effected between all the parties in the presence of two witnesses, namely, Shri I.D. Sharma and Shri K.D. Sharma, wherein it was recorded that the appellant/plaintiff had received a total sum of Rs.2.70 lacs from the respondents/defendants, including gold ornaments in token of acceptance. Upon receiving his entire share in respect of the estate of his deceased parents, the appellant/plaintiff and the respondents/defendants had affixed their signatures on the settlement deed, described as a '*Samjhotanama*', duly signed by the above named witnesses.

4. On completion of pleadings in the suit, issues were framed on 18.12.2001. As the primary issue framed was with regard to the plea taken by the respondents/defendants that the appellant/plaintiff had already been paid his share in the suit premises in cash, onus was placed on them to lead the evidence first. In support of their case, the respondents/defendants had examined four witnesses, namely, DW-1, an official from Syndicate Bank who had produced the statement of the saving account maintained by the appellant/plaintiff and his specimen signatures, DW-2 Shri K.D. Sharma and DW-3 Shri I.D. Sharma, both witnesses of the '*Samjhotanama*' (Ex.DW2/1) and DW-4, namely, Shri N.K. Vats, impleaded in the suit as respondent/defendant No.6. On his part, the appellant/plaintiff had entered into the witness box as PW-1 and later on filed an application to lead additional

evidence, which was allowed whereafter, he had examined PW-2, Shri Balwant Singh, a handwriting expert.

5. After perusing the evidence produced by the parties and the documents placed on record, the trial court dismissed the suit filed by the appellant/plaintiff holding *inter alia* that the respondents/defendants were able to prove that a family settlement was entered into between the legal heirs of Smt. Shanti Devi, who had died intestate, and the appellant/plaintiff had already been compensated for his share in her estate on receiving a sum of Rs.2.70 lacs. Aggrieved by the aforesaid decision, the appellant/plaintiff has filed the present appeal.

6. Learned counsel for the appellant/plaintiff assails the impugned judgment on the ground that the trial court has failed to appreciate that the evidence produced by the respondents/defendants to prove the '*Samjhotanama*' was full of contradictions and they had failed to prove the same satisfactorily during the examination of their witnesses; that DW-2 and DW-3, witnesses to the '*Samjhotanama*', were interested witnesses and their testimony ought to have been discarded; that the testimony of PW-2, the handwriting expert, was wrongly discarded and that nothing had been brought on record by the respondents/defendants with regard to the details of the immovable property and the jewellery articles which ought to have been mentioned in the '*Samjhotanama*' for arriving at any tentative value of the appellant/plaintiff's share in the estate of their deceased mother.

7. This court has examined the pleadings in the suit, perused the deposition of the witnesses(DW-2 & DW-3) produced by the respondents/defendants to prove the document described as a '*Samjhotanama*' (Ex.DW2/1) for discharging the onus placed on them in respect of issue No.1. It may be noted

that DW-2 had deposed that he was known to the parties since the year 1969 and that he had family relations with the parents of the parties as they were residing in the same compound. DW-3 happens to be the brother-in-law of the appellant/plaintiff and the respondents No.1 & 2 and he is the husband of the respondent No.5.

8. In the cross-examination of DW-2 & DW-3, the appellant/plaintiff could not shake either of the two witnesses who stood firm in their deposition that on 9.8.1998, a settlement was effected between the appellant/plaintiff and the respondents/defendants and a '*Samjhotanama*' was executed between the parties. The said witnesses were able to identify the signatures of the appellant/plaintiff who they stated had signed the said document in their presence and so had the respondents; both the witnesses confirmed that they were present when the said document was executed between the family members and they had affixed their signatures on the said documents as witnesses. DW-2 and DW-3 were cross-examined at length by the appellant/plaintiff, but nothing material could be elicited from them.

9. The contention of counsel for the appellant/plaintiff that both, DW-2 & DW-3 were interested witnesses and therefore, their testimony ought not to have been given credence by the trial court, is found to be devoid of merits. Even if it is assumed for a moment that DW-3 being the husband of one of the legal heirs of late Smt. Shanti Devi, was an interested party, the same is not true for DW-2 who, admittedly had no interest in the dispute between the parties. Merely because DW-2 did not know the exact residential address of the appellant/plaintiff, though he had specified the locality where he was residing, cannot be a ground to disregard his evidence. There is no material

contradiction that has emerged in the testimony of DW-2 which the trial court has allegedly overlooked.

10. Similarly, the fact that DW-3 did not know the details of the movable and immovable properties left by the parents of the parties, apart from the suit premises and a landholding in the native village of the father of the parties, cannot be called a material contradiction in his evidence. Nor does this court find any inconsistency in the evidence of DW-2 and DW-3 which could cast a cloud of doubt over the execution of the '*Samjhotanama*'.

11. Coming to PW-2, the handwriting expert, much emphasis has been laid by learned counsel for the appellant/plaintiff on the fact that the trial court erred in discarding the evidence of the said witness. The reason for discarding the evidence of PW-2 has been spelt out in the impugned judgment, wherein it has been recorded that the said witness had admitted during his cross-examination that he had only seen the photocopies of the signatures of the appellant/plaintiff for purposes of comparison. PW-2 had admitted that he had not taken any specimen signatures of the appellant/plaintiff, nor did he lift his signatures on the plaint or the *vakalatnama* for purposes of comparison with the disputed signatures.

12. In view of the failure on the part of the handwriting expert to compare the original signatures of the appellant/plaintiff with the signatures appended on the '*Samjhotanama*', the testimony of PW-2 had to be discarded. The other reason for discarding the evidence of the said witness was the fact that his report was not corroborated with any other evidence. The opinion of an expert under Section 45 of the Indian Evidence Act is merely an opinion and not a conclusive proof of the validity of the handwriting in question. Courts are therefore not bound to follow the opinion of a handwriting expert, which is

generally held to be of a frail character [Ref.: Karnail Singh Vs. Kalra Brothers, **2009 (4) SCC 110**, Sandeep Dixit vs. State, **190 (2012) DLT 600** Ramo Devi & Ors. vs. Vidya Rani & Ors., **(2012) III AIC 450**].

13. This Court does not find any reason to disagree with the view taken by the learned trial court that has discarded the opinion of the handwriting expert on the ground that he had only seen the photocopies of the signatures of the appellant and sought to compare the same with the questioned documents. In the present case, both the witnesses to the '*Samjhotanama*' have been produced by the respondents/defendants and they have confirmed the execution of the '*Samjhotanama*'. There is no justification offered by the appellant for overlooking their deposition and giving weightage to the testimony of the handwriting expert when he did not have the benefit of comparing the original signatures of the appellant/plaintiff with those found affixed on the *Samjhotanama*(Ex.DW-2/1).

14. Furthermore, having regard to the evidence that has come on record, the Court would prefer to lean in favour of the '*Samjhotanama*' which is a family arrangement that was arrived at between the parties wherein, it has been recorded that the appellant/plaintiff was paid a sum of Rs.2.70 lacs and jewellery as per his share from the estate of his deceased parents. In fact, a perusal of the said settlement deed reveals that a sum of Rs.45,000/- was added to the sum of Rs.2.25 lacs, thus totaling to Rs.2.70 lacs, apart from the jewellery. Except for the appellant/plaintiff, all other siblings have stood together and in unison endorsed the fact that a settlement deed was executed between them.

15. In the given facts and circumstances, it has to be held that the respondents/defendants had satisfactorily discharged the onus placed on them

for proving issue No.1 and the said onus stood shifted to the appellant/plaintiff who could not throw any suspicion on the execution of Ex.DW2/1. This court therefore declines to interfere in the impugned judgment wherein valid and cogent reasons have been given for dismissing the suit for partition instituted by the appellant/plaintiff.

16. Accordingly, the present appeal is dismissed *in limine*, along with the pending applications, being devoid of merits.

HIMA KOHLI, J

FEBRUARY 17, 2017

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