

\$~14

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

%

Judgment delivered on: 10.01.2018

+

CM(M) 5/2018 & C.M.No. 76/2018

SHILENDRA GHAI

..... Petitioner

Through: Mr. Prag Chawla and Mr. Shaurabh
Shokeen, Advocates.

Versus

SHAKUNTALA GHAI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This petition impugns an order dated 23.12.2017 passed by the learned Additional District Judge, West, Tis Hazari Courts, Delhi, in CS No. 1345/17 dismissing the petitioner's application under Order XXXIX Rules 1 and 2 read with section 151 CPC regarding maintenance of status quo by the purchasers of his mother's property at Najibabad. It is the petitioner's case that by way of a Memorandum of Family Settlement (MoFS), the properties bequeathed by the petitioner's father were mutually divided. The relevant clause 16 thereof reads as under:-

"16. Smt, Shakuntla Ghai W/o Late. Shri K. C. Ghai (First Party) Desire so. That after her demise, all the moveable and immoveable assets of hers (First Party) will be shared & Distributed equally (1/3rd each) between her three sons Shri Anil Ghai, Shri Rajiv Ghai and Shri Shailendra Ghai families

(Second Party, Third Party, Fourth Party here to).”

2. Mr. Prag Chawla, the learned counsel for the petitioner, submits that the MoFS has to be read in totality, that this clause created an interest in favour of the petitioner, therefore, if the properties owned by his mother were encumbered or otherwise parted with, then his share would be prejudiced. He contends that the sale of the petitioner's mother's immovable properties at Najibabad, Uttar Pradesh, at a price lesser than the circle rate and the consideration thereof not being shared on him has prejudiced his interest. Furthermore, it is contended that the entire sale consideration was not paid at the time of the registration of the Sale Deed, instead it was to be paid subsequently, therefore, the sale transaction is a sham and illegitimate so as to deprive the petitioner of his rights therein. The court, however, does not find the said contentions tenable for the following reasons:-

- (i) Clause 16 of MoFS would become operational only after the demise of the petitioner's mother. It does not, in any way, limit his mother's right to use her estate during her life time; and
- (ii) that the petitioner would have only a promise of a right and such promise would become operational apropos the assets of the mother only after her demise.

3. In the circumstances, it cannot be said that the petitioner has any right apropos the said clause 16.

4. After the order was dictated, the learned counsel for the petitioner, sought and was granted time to research judgments which could assist him in this case. The case was taken up again in the post-lunch session.

5. The learned counsel for the petitioner, relies upon a Division Bench judgment of this Court in ***Ravi Singhal & Ors. vs. Smt. Manali Singhal & Anr., 87 (2000) DLT 658 (DB)***, which held that a family settlement should be given due importance since it purports to bring about a settlement in the family so as to quiten the lis amicably and also to save the relationship within the family members. He relies upon the following portions of the judgement:-

“33. *It was contended that there was no consideration for the agreement. Appellants No.2 and 3 were under no obligation to provide maintenance to the respondents but the questions is whether such a ground would be a valid ground at this stage to resist the respondent's claim for interim directions, which have been allowed by learned Single Judge on coming to a prima facie conclusion that the agreement is not without consideration and it was bona fide made and recognised by both the sides with a laudable object of putting an end to controversy. Where certain family differences are adjusted by means of a compromise, there is no reason to doubt the bona fides of the arrangement. Such an adjustment of the dispute with a view to maintain amity and peace in the family satisfies all the requirement of a family settlement. In case due to circumstances, which were in existence on the date when the agreement was arrived at, in order to maintain amity and peace in the family, a settlement was arrived at by which the appellants jointly agreed, as the terms of the agreement suggest, to provide financial security to the respondents, there is no reason why there should be any suspicion at this stage in the absence of any other material that there was any lack of bona fide.*

XXX

XXX

XXX

35. *In Sahu Madho Das and others Vs. Mukand Ram and Another AIR 1955 S.C. 451, it was held that Courts lean strongly in favor of family arrangements that bring about*

harmony in a family and do justice to its various members and avoid, in anticipation, future disputes, which might ruin them. Such an arrangement must be upheld.

36. In Ram Charan Das Vs. Girja Nandini Devi and Others [1965]3SCR841, it was held that Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes amongst members of a family. It was further held that family in the context 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.

37. In the Commissioner of Wealth Tax. Mysore Vs. Her Highness Vijayaba, Dowager Maharani Saheb of Bhavnagar Palace. Bhavnagar and others: [1979]117ITR784(SC), it was held that contractual obligations entered into or arising out of a family settlement are binding, the consideration being purchase of peace of the family, which is good consideration.

38. In Maturi Pullaiah and another Vs. Maturi Narasimham and others AIR 1966 S.C. 1886, it was held that family arrangement will not generally be disturbed by Courts. Summary and nature of family arrangements and conditions for their validity contained in 3rd Edn.Vol.17 at pages 215-216 in Halsbury's Laws of England was quoted with approval saying:-

"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.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term family arrangement is applied.

The principles the Courts should bear in mind in appreciating the scope of such family arrangement are stated thus:

"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."

This passage indicates that even in England Courts are averse to disturb family arrangements but would try to sustain them on broadest considerations of the family peace and security. This concept of a "family arrangement" has been accepted by Indian Courts but has been adapted to suit the family set up of this country which is different in many respects from that obtaining in England. As in England so in India, Courts have made every attempt to sustain a family arrangement rather than to avoid it, having regard to the broadest considerations of family peace and security."

39. In K.K. Modi Vs . K.N. Modi and others: [1998]1SCR601 also it was held that validity of family settlement, which settles disputes within the family should not be lightly interfered with. In S. Shanmugam Pillai and others Vs . K. Shanmugam Pillai and others: [1973]1SCR570 it was held that Courts lean strongly in favor of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all.

40. In Kale and others Vs . Deputy Director of Consolidation and others: [1976]3SCR202, it was held that by virtue of a

family settlement or arrangement of a family or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, which family arrangements are governed by a special equity peculiar to themselves and will be enforced if honestly made. The object of the arrangement is to protect the family from long drawn litigation or perpetual strife's which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. It promotes social justice through wider distribution of wealth. Family Therefore has to be construed widely. It is not confined only to the people having legal title to the property. This position was further upheld in Taraknath and another Vs. Sushil Chandra Dev by Lrs. and others: (1996)4SCC697."

5. The Court is unable to see how the said judgment comes to the appellant's assistance. The aforesaid paragraphs relied upon by him are primarily with respect to the sanctity of the family settlement arrived at. In the present case, the sanctity of the family settlement has been upheld by the Court inasmuch as the petitioner seeks to restrain his mother from creating third party rights in moveable assets. The Court is unable to see from a perusal of the MoFS as to how the petitioner's mother could be restrained in terms of clause 16 of the settlement from selling her property or how the settlement was inextricably linked to the disposal of her share of the settlement property or her other financial assets, if any, during her life time. It does not usurp or hinder or waive her right to dispose off the same at her will. It is an expression of her desire about the manner in which her properties/ estate is to be disposed off after her demise. Clause 16 is at best a Will and would become operational only after her passing away.

6. Since the disputes having arisen from the Will of Mr. K.S. Ghai, the husband of Smt. Shakuntala Ghai and the father of the three sons including the present petitioner, the learned counsel for the petitioner submits that the settlement included not only the bequeathed properties mentioned in the Will but also the other properties of the mother. Therefore, it was a comprehensive family settlement. In this regard, he refers to a residential house bearing Khasara No. 319, Village Taida, Vijain Bazpur Road Kashipur Tehsil, Udham Singh Nagar, in the name of Smt. Shakuntala Ghai. He also refers to another plot No.4, recorded as agricultural land in the name of Smt. Shakuntala Ghai vide Khatoni No. 761, Khasra No. 301, admeasuring 0.136 hect and also the agricultural land at the out skirts of Najibabad, District Bijnor (U.P.) in the name of Smt. Shakuntala Ghai. These three properties have been held in the family settlement of MoFS.

7. The relevant clauses 8 to 10 of MoFS read as under:-

“8. That the house belonging to Smt. Shakuntia Ghai at Tanda Ujain Kasra 319 Bazpur Road Kashipur has since become the exclusive property of the party of third part.

9. That the agriculture land at Jaspur Road in the name of Shri K. C, Ghai and Smt. Shakuntia Ghai, Kashipur district U.S. Nagar have since become the exclusive property of the party of third part.

10. That the agriculture land at the out skirts of the Najibabad district have since become the exclusive property of the party of first part, which already exists in her name.”

Subsequently, it is followed by clause 16.

8. It is in this context that an amicable family settlement was done and the mother's desire recorded in clause 16 was included therein. The Court

is, therefore, unable to see how the said clause would come into effect during the life time of the mother. Accordingly, the Court is not persuaded by the contentions raised by the learned counsel for the petitioner for grant of stay of the impugned order and for an injunction as sought in the petition.

9. The appeal is without any merit. Therefore, it is dismissed alongwith pending application.

JANUARY 10, 2018

sb

NAJMI WAZIRI, J.

