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

*Reserved on: 3<sup>rd</sup> August, 2018*

*Date of Decision: 16<sup>th</sup> August, 2018*

+ **CS (OS) 1537/2014**

**KRISHAN GOPAL** ..... Plaintiff

Through: Mr. Anil Gera, Advocate.  
(M:9810195475)

versus

**PRAHLAD KUMAR** ..... Defendant

Through: Mr. S. C. Singhal, Advocate.  
(M:9810061558)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

### **JUDGMENT**

#### **Prathiba M. Singh, J.**

1. The Plaintiff, Shri Krishan Gopal (*hereinafter 'Plaintiff'*) and Defendant, Shri Prahlad Kumar (*hereinafter 'Defendant'*) are the sons of late Shri Raghu Nath Sahai who was the owner of B-198, Maharana Pratap Enclave, Pitam Pura, Delhi-110034 admeasuring 308.33 square yards. The lease deed signed by the DDA in favour of Shri Raghu Nath Sahai, in respect of the said plot is duly registered. Shri Sahai passed away, intestate, on 16<sup>th</sup> October, 1985. He was survived by two sons, three daughters and his widow at the time of his death.

2. The widow of Shri Sahai, Smt. Naraini Devi and the three daughters, Smt. Bimla Devi, Smt. Geeta Devi and Smt. Sunita @ Sudha executed a relinquishment deed dated 3<sup>rd</sup> June, 1992 relinquishing their share in the suit property in favour of the Plaintiff and the Defendant. The said deed is a registered relinquishment deed. Thus, the Plaintiff and the Defendant

became co-owners of the property. The property stands mutated in favour of the Plaintiff and the Defendant vide mutation letter dated 9<sup>th</sup> July, 1993.

3. The property has already been converted from leasehold to freehold by the Delhi Development Authority (DDA) and consequently, conveyance deed has been executed by the DDA on 15<sup>th</sup> November, 1999 duly registered with the Sub-Registrar on 18<sup>th</sup> November, 1999. The mother of the parties expired on 5<sup>th</sup> August, 2009.

4. According to the Plaintiff, he owns 50% of the share of the suit property. It is the Plaintiff's case that after the demise of the mother, he repeatedly sought partition of the suit property. However, despite repeated requests, the Defendant did not accede to the partition and hence the present suit seeking partition of the suit property into equal shares in favour of the Plaintiff and the Defendant.

5. Along with the plaint, the site plan has been annexed as Annexure-A. According to the site plan, the suit property has been divided into the front portion and the back portion. The Plaintiff submits that the front portion has been constructed into three floors and the rear portion has only the ground floor. According to the Plaintiff, there is a side gallery which permits access to the rear portion of the property. The front portion is in the possession of the Defendant and the rear portion is in possession of the Plaintiff. Since the portions are not equal and the Defendant has a larger share of the suit property, hence the Plaintiff seeks partition, in equal shares.

6. In the written statement, the case of the Defendant is that the front portion falls in the share of the Defendant as per the partition deed dated 31<sup>st</sup> December, 1994 and family settlement dated 1<sup>st</sup> October, 1997. It is further pleaded that the entire construction for the front portion was raised by the

Defendant on his own. The plea of limitation is also raised by the Defendant on the ground that the Plaintiff had issued a legal notice dated 15<sup>th</sup> February, 2011 which was replied on 28<sup>th</sup> February, 2011 but the suit has come to be filed only on 19<sup>th</sup> May, 2014, after a gap of more than three years. The following documents are admitted and were exhibited in the Court record: -

- (a) Partition deed dated 31<sup>st</sup> December, 1994 (Ex.D-1);
- (b) Family settlement dated 1<sup>st</sup> October, 1997 (Ex.D-3);
- (c) Sanctioned plan (Ex PW1/D1);
- (d) Copy of the bank statement of the Defendant (Ex. DW-1/1)
- (e) Death certificate of Shri Sahai and his wife (Ex.P-1) and (Ex.P-2);
- (f) Relinquishment Deed dated 3<sup>rd</sup> June 1992 (Ex. DW-1/P-1);
- (g) Legal notice dated 15<sup>th</sup> February, 2011 (Ex.P-3);
- (h) Reply dated 28<sup>th</sup> February, 2011 (Ex.P-4).

7. The following issues were framed on 16<sup>th</sup> November, 2015:

- “1. Whether the suit is barred by limitation? OPD*
- 2. Whether any oral partition took place between the parties? OPD*
- 3. Whether a valid Partition Deed dated 31<sup>st</sup> December, 1994 was executed between the parties, if so its effect? OPD*
- 4. Whether a valid Family Settlement dated 1<sup>st</sup> October, 1997 was executed between the parties, if so its effect? OPP*
- 5. Whether the Plaintiff is entitled to 50% share in the suit property? OPP*
- 6. Whether the Plaintiff is entitled to a decree of partition? OPP*
- 7. Relief”*

8. The Plaintiff deposed as PW-1, one of his sisters deposed as PW-2.

One Mr. Raj Kumar Gupta, a close relative deposed as PW-3. The Plaintiff primarily reiterated the averments in the plaint, in his evidence. In his cross-examination, PW-1, the Plaintiff admitted that there are three floors in the front portion and the back portion has only the ground floor where he is living. As per him, there were two big doors which separated the front and the back portion which are permanently bolted and now there is a brick wall which was constructed. He admitted that he did not contribute any money for the construction of first and second floor, in the front portion and that he had never raised any objection at the time of construction of the said two floors. He also confirms that there is some portion in the first floor which is not constructed. He further testified that the ground floor was constructed by his father who was running a grocery shop. He stated that the deed of partition and the family settlement were signed by him in good faith. According to him, the said documents were executed during the time when he was undergoing divorce proceedings with his wife and the documents were needed in those proceedings. He also admitted that he knew about the documents when the reply to the legal notice was sent.

9. PW-2, Smt. Geeta Khandelwal, stated that she was giving evidence in favour of the Plaintiff and she is not in good terms with the Defendant. In her affidavit, she stated that she tried to negotiate a settlement between the two brothers. She also stated that both brothers are owners of 50% of the property.

10. The Defendant appeared as DW-1. He stated that he had contributed to the construction of the property and that he had also contributed to the payment made to his father towards the plot. According to him, the Plaintiff was very young when the plot was purchased i.e. just 7 years old. He

exhibited the relinquishment deed (Exhibit DW-1/P-1) executed by the mother and three sisters as DW1/P-1, DW1/P-2 and DW1/P-3 . He deposed that the partition deed was executed in Tis Hazari courts with the intervention of Mr. Goverdhan Dass, a relative, who appeared as DW-2. He further stated that he was in possession of the mutation letter issued by the DDA dated 9<sup>th</sup> July, 1993 but the same was not produced by him. He further stated that the site plan was prepared between the two brothers after they mutually agreed to demarcate their shares in the suit property. The deed of partition was witnessed by Shri Anil Gupta, his brother-in-law.

11. DW-1 confirmed that the mutation letter had the names of the both, the Plaintiff and the Defendant but the share of each of the parties was not mentioned therein. He also stated that while applying for mutation, the respective shares of the parties were not mentioned in the application. He produced the conveyance deed signed by DDA in favour of both the parties which is exhibited as Ex. DW-1/P-5. The suggestion was put, that there was another set of documents which was executed in respect of 50% of the property in favour of Smt. Naraini Devi but he denied the existence of such documents. These set of documents were the Agreement to Sell, GPA and SPA dated 29<sup>th</sup> July, 1994, the existence of which was denied by the Defendant. He denied the suggestion that the Plaintiff and Defendant are 50% shareholders in the suit property.

12. DW-2 Shri Goverdhan Dass was a relative of the family who retired from Government service. He was registered as an Advocate. He stated that the partition deed was drafted by him at the instance of the Plaintiff and the Defendant and that he had taken both the parties to Tis Hazari courts to get the document attested. He could not confirm whether the mutation deed

mentioned the shares of the parties. He stated that the partition deed had a site plan annexed to it and that he had explained each and every line to the Plaintiff after drafting the partition deed. He stated that he was not aware of the fact that the partition deed has to be compulsorily registered.

13. DW-3, Shri Sushil Kumar Sharma, Senior Manager, Oriental Bank of Commerce, exhibited the bank statement placed on record as Exhibit DW-3/1.

**Issue no.1**

14. The issues framed are, therefore, answered as under: -

1. *As to whether the suit is barred by limitation?*

As per the cause of action paragraph, the notice and the reply were exchanged in 2011. One of the witnesses, Smt. Geeta Khandelwal, admits that amicable negotiations were going on between the parties but in January, 2014, the settlement negotiations came to an end. The suit was filed in May, 2014. The suit is thus within limitation.

**Issue Nos. 2, 3, 4**

2. *Whether any oral partition took place between the parties? OPD*
3. *Whether a valid Partition Deed dated 31<sup>st</sup> December, 1994 was executed between the parties, if so its effect? OPD*
4. *Whether a valid Family Settlement dated 1<sup>st</sup> October, 1997 was executed between the parties, if so its effect? OPP*

15. Most of the documents, in the present case, are either admitted and/or exhibited. The affidavits are not disputed. The Plaintiff admits the execution

of the partition deed dated 31<sup>st</sup> December, 1994. The said partition deed records as under: -

*“The order to avoid dispute between 1<sup>st</sup> and 2<sup>nd</sup> parties and keeping in view the facts that this property was constructed out of the income obtained from the shop No.5, Block IB, Ashok Vihar, Phase-I, Delhi, jointly run by Shri Raghu Nath Sahai, Sh. Prahlad Kumar and that the 1<sup>st</sup> party and Prahlad Kumar has a family consisting of wife and three sons whereas the 2<sup>nd</sup> party has his wife only, the 1<sup>st</sup> and 2<sup>nd</sup> parties have mutually decided to partition the ground floor of the said house No. B-198, M.P. Enclave, Pitampura, Delhi as under:-*

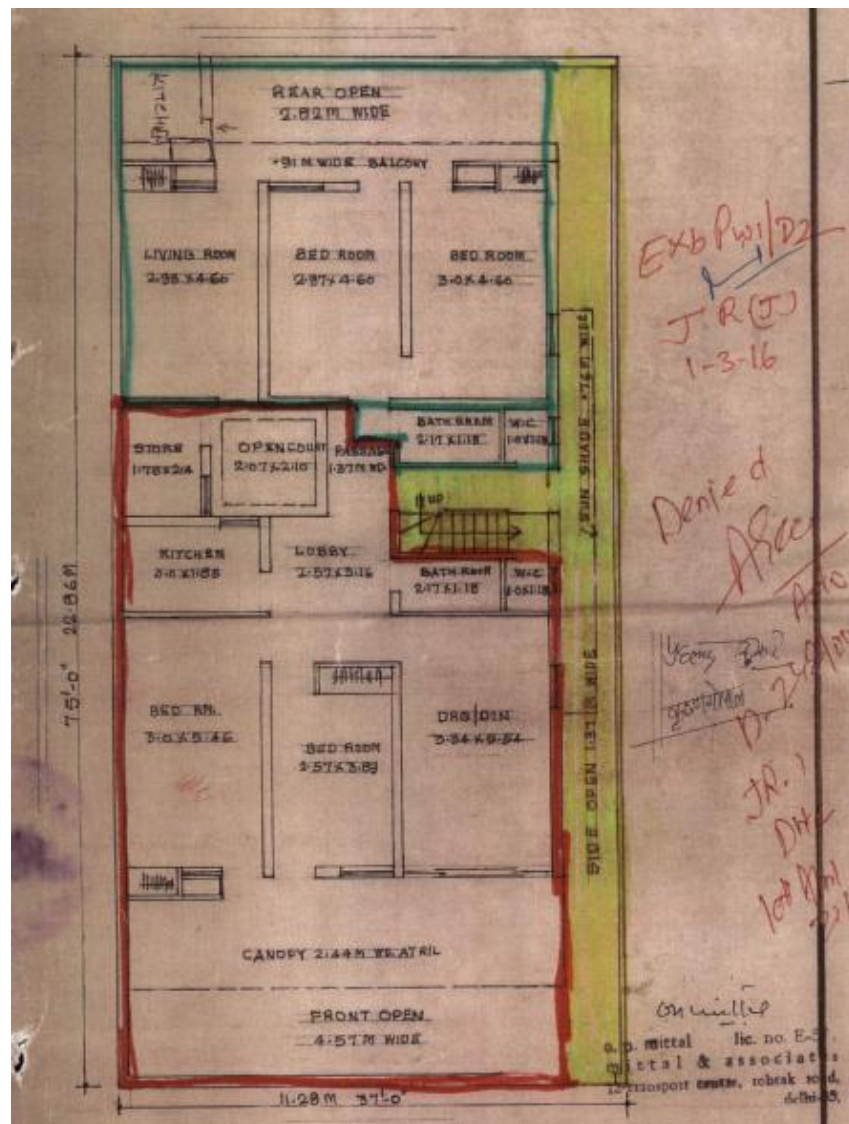
- i) Portion shown in colour red shall belong to 1<sup>st</sup> party.*
- ii) Portion shown in colour green shall belongs to 2<sup>nd</sup> party.*
- iii) Portion shown in colour yellow shall be for common use of both the parties.*

*The terrace shall belong to each party accordingly and each part shall be entitled to construct 1<sup>st</sup> and 2<sup>nd</sup> floor on their respective terrace to which the other party shall have no objection. The 1<sup>st</sup> and 2<sup>nd</sup> parties have also decided not to let out or sell his portion to an outsider without obtaining consent in writing of the other party. Both the parties shall always have a right to occupy or purchase the portion of the other party as mutually decided between the two parties.*

*That each party shall pay electricity, water and house tax for his own portion if separate metters are get fixed otherwise proportionately in accordance with the covered area of the each party.”*

16. In this document, the Plaintiff has admitted his signatures but denied the contents. It is an exhibited document (Exhibit D-1). A site plan is

attached to the said document. The said plan is set out herein below: -



17. From the above partition deed, it is clear that the property has two clearly demarcated front and back portions, and the yellow passage is the access to the rear portion marked in green. As per the evidence, during the lifetime of the father prior to 1994, both the brothers had come into occupation of separate portions of the property - While the Defendant came into operation of the front portion in red, the Plaintiff occupied the rear portion in green. The common passage is also clearly demarcated in the

plan. The staircase and the access to the rear portion are also clearly demarcated. Thus, more than 24 years ago, the parties had already demarcated their respective portions and have started living therein. The brick wall was admittedly constructed between 1993 to 1995. The Plaintiff states in his cross-examination, that the brick wall was constructed around 1993-1995. This was during the lifetime of their mother. Subsequently, the Defendant has constructed the first and the second floor of the front portion in 2001 and 2002 which has not been objected to by the Plaintiff. As per his cross examination *“The brick wall was constructed around 1993 to 1995.”*

18. Thus, the partition had clearly taken place much before the deed of partition was executed. The deed of partition merely recorded that the partition had taken place. The Plaintiff never objected to the Defendant being in continued occupation of a larger share of the property. The partition deed was signed by the parties as also witnessed by the lawyer and one of the relatives, Shri Anil Gupta. Thereafter, a deed of family settlement had been executed between the parties which was also exhibited as Exhibit D-3. This deed of settlement dated 1<sup>st</sup> October, 1997 clearly records as under: -

*“That a house plot was allotted by Dehati Cooperative House Building Society in the name of father of parties namely late Shri Raghunath Sahai. Now the said society is renamed as Maharana Partap Enclave and a single storeyed house was constructed by late Shri Raghunath Sahai (father of parties to this family settlement). The said house is numbered as B-198, Maharana Partap Enclave, Pitampura, Delhi. The said property now stands mutated in the D.D.A. records in joint names of parties to this deed, after submitting relinquishment deed duly executed and*

*registered before Sub Registrar Delhi by mother and sisters of the parties.*

*Both the parties have agreed to live separately in their respective portions in as much as in the front portion (shown in RED colour in the plan attached) shall be under exclusive ownership, occupation and possession of the First party: and the second party shall have no right, title or interest over the said portion.*

*Similarly, the rear portion of the House No.B-198 Maharana Partap Enclave, Pitampura, Delhi shall be under exclusive ownership, and possession of the second party (Rear portion is clearly shown in GREEN colour in the plan attached). The first party shall have no right, title or interest over the rear portion of property in any manner.*

*Apart from aforesaid portions, there are common passage and staircase leading to roof, which are shown in YELLOW colour in the plan attached herewith, will be in common use and possession of both the parties. The right to common side passage and common staircase shall be enjoyed by both the parties and neither party will claim exclusive right, use and possession over the same.*

*The right of roof (over the respective portions of parties) shall be exclusively with that of respective parties. Neither Party shall have any objection to the use of respective portions of the roof over the respective portions of the parties including right to raise construction over roof. The parties will have no right to transfer the right of roof (of their respective portions) to any third person/party, other than parties to this deed.”*

19. The remaining documents namely; the conveyance deed, the

relinquishment deeds are all exhibited duly and are not in dispute. The only question that arises is as to whether the partition deed and family settlement having demarcated the respective portions of the parties, is the Plaintiff still entitled to a 50% share in the suit property?

20. As per the site plan, there is no doubt that the Defendant is in occupation of a larger share of the suit property. From the evidence on record, it is clear that the oral partition between the parties took place even prior to the execution of the partition deed in 1994. The partition, which initially must have taken place by locking of the two doors which were connecting the front to the rear portion, was made permanent around 1993 to 1995 by construction of a brick wall. This shows that the front and the rear portion have remained in the exclusive portion of the Defendant and the Plaintiff respectively for more than two decades. The Defendant has also invested on his part of the property by constructing the first and second floor. The deed of partition and the family settlement are both admitted documents and are duly exhibited.

21. The Plaintiff's case that the same were executed only in view of the divorce proceedings which were pending between him and his wife is not sufficient to dislodge the partition and the family settlement which had taken place two decades ago. There is not sufficient evidence and neither is there any prayer for declaring the partition deed and family settlement as void or illegal. It is not sufficient for the Plaintiff to simply argue that the said documents need to be ignored. In fact, being fully aware of these two documents which were mentioned in the reply to the legal notice, the Plaintiff did not even care to place them on record at the time of filing of the suit. The Plaintiff simply filed the death certificate of his parents, the notice

and the reply. In the reply, the Defendant had clearly taken a stand that a partition deed had been entered into on 31<sup>st</sup> December, 1994. But the Plaintiff still chose not to file the same or even to mention the same in his plaint. All these circumstances point to the fact that the Plaintiff has not been candid with the Court and also that he has not given any justification for this suppression of material facts. Further, the mutation deed which is relied upon by the Plaintiff to claim that the property is equally owned in the share of 50-50 between the Plaintiff and the Defendant has not been placed on record.

22. Learned counsel for the Plaintiff has submitted that the partition deed and family settlement being unregistered documents, the same cannot be recognised as valid and legal. This submission is not correct inasmuch as it is the settled position in law that when parties agree on a particular course of action for partitioning the property and the same is thereafter recorded in a deed of partition and in a family settlement such a deed can be recognised even without registration.

23. In ***Kale and Ors. v. Deputy Director of Consolidation & Ors. (1976) 3 SCC 119*** it has been held as under: -

*"10. In other words to put the binding effect and the essentials 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 even be 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.*

*.....*

*44. .... The High Court further erred in law in not giving effect to the doctrine of estoppel which is always applied whenever any party to the valid family settlement tries to assail it. The High Court further erred in not considering the fact that even if the family arrangement was not registered it could be used for a*

*collateral purpose, namely, for the purpose of showing the nature and character of possession of the parties in pursuance of the family settlement and also for the purpose of applying the rule of estoppel which flowed from the conduct of the parties who have taken benefit under the settlement keep their mouths shut for full seven years and later try to resile from the settlement .....* "

In ***Sanjay Kumar v. Rajesh Kumar RFA 249/2017 decided on 1<sup>st</sup> June, 2018*** a similar view has been taken.

**Issue Nos. 5, 6 & 7**

5. *Whether the Plaintiff is entitled to 50% share in the suit property? OPP*
6. *Whether the Plaintiff is entitled to a decree of partition? OPP*
7. *Relief*

24. On an oral appreciation of the facts and evidence on record, it is clear that the Plaintiff has admitted to the partition, as entered into between him and his brother and has also acquiesced to the possession of his brother in the front portion of the property and has also not raised any objection to the first and second floor being constructed in the front portion. It is clear from the conduct of the parties that both the parties had admitted that the front portion of the property would be in the exclusive possession of the Defendant and the rear portion would be in the exclusive possession of the Plaintiff. Family settlements are entered into in order to maintain peace and harmony in the family and it should not be permissible for any family member to repeatedly raise objections in respect of arrangements which have been solidified. If such issues are allowed to be repeatedly challenged in Court, it would create disquiet and disharmony in society. The

deed of partition which is duly signed by the parties accompanied with the site plan and the family settlement are held as final and binding between the parties.

25. A decree of partition is accordingly passed holding that the Plaintiff is the exclusive and absolute owner of the green portion of the property and the Defendant is the exclusive owner of the red portion of the property. The yellow/light green portion is the common area which shall be available for use of all the family members. As per the partition deed, the parties have agreed not to let out or sell their respective portions to outsiders without the written consent of the other party. The parties shall be bound by this obligation. The terrace of the front and the back-rear portions shall be for the exclusive use of the respective owners of the said portions. The Plaintiff, being the owner of the rear portion, would have no impediment in raising construction in the rear portion and neither party will cause any impediment in the use and occupation of the other party.

26. The parties shall be bound by the terms of the partition deed and the family settlement dated 31<sup>st</sup> December, 1994 and 1<sup>st</sup> October, 1997.

27. Decree sheet be drawn as per paragraphs 23 and 24 above. No order as to costs.

**PRATHIBA M. SINGH**  
**JUDGE**

**AUGUST 16 2018**  
*Rekha*