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

Reserved on : 4th July, 2018

Date of decision : 19th July, 2018

+ **CS (OS) 2582/2014, I.As. 16302/2014 & 4014/2015**

SUBODH JAIN

..... Plaintiff

Through: Mr. Suman Kapoor, Advocate with
Plaintiff in person. (M:9891226617)

versus

SUBHASH CHAND JAIN & ORS.

..... Defendants

Through: Ms. Sangeeta Jain, Advocate for D-1.
Mr. Shiv Charan Garg and Mr. Imran
Khan, Advocates for D-2 to 4.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

I.As.24358/2015 (u/O VII Rule 11 CPC) & 4767/2017 (u/O VI Rule 17 CPC)

1. The Plaintiff filed the present suit for partition, declaration and permanent injunction against his family members in respect of two properties namely,

- A residential house bearing no.19B, Veer Nagar, Jain Colony, Near Rana Pratap Bagh Delhi, admeasuring 200.7 sq. yds. (*hereinafter 'Veer Nagar property'*);
- Commercial property bearing No.2771, Main Qutub Road, Sadar Bazar, Delhi – admeasuring 170.76 sq. meters comprising of Ground Floor, Mezzanine Floor, First Floor, Second Floor and Open Terrace. (*hereinafter 'Qutub Road property'*)

2. Late Shri Jagmender Dass Jain had two sons namely Shri Sukhbir

Singh Jain and Shri Prem Chand Jain. The Plaintiff – Sh. Subodh Jain is the son of Late Shri Sukhbir Singh Jain and the Defendant No.1- Sh. Subhash Chand Jain is the son of Late Shri Prem Chand Jain. The Defendant Nos.2 to 4 are the subsequent purchasers of one shop situated on the ground floor of the Qutub Road property. The claim of the Plaintiff is that his grandfather had executed a Will dated 26th March, 1991 in respect of both the properties. As per the said will, the life interest was bequeathed in favour of his two sons, i.e., the fathers of the Plaintiff and the Defendant No.1 and thereafter the properties were to devolve upon the two grandsons. On the basis of the said Will, the Plaintiff claimed that he is co-owner of the two properties. The following reliefs were prayed in the plaint.

“i) Decree of partition in favour of the plaintiff and against defendant no.1, thereby passing preliminary decree holding that plaintiff and defendant no.1 are co-owners in respect of the suit property bearing house no. 19-B, Veer Nagar, Jain Colony, Near Rana Pratap Bagh, Delhi and property bearing no.2771, Main Qutub Road, Sadar Bazar, Delhi in the manner and proportions as mentioned and described in the Will dated 26.03.1991 executed and left by Late Mr Jagmender Dass Jain. Thereafter, the final decree for partition of the aforementioned suit property by metes and bound may kindly be passed between the plaintiff and defendant no.1;

ii) Decree of declaration in favour of the plaintiff and against the defendants no.2 to 4, thereby declaring that the sale deed dated 05.08.2011 bearing registration no. 7029 in book no. 1, vol. no.3956 on pages 72 to 80 registered on 06.08.2011 with sub registrar 1, New Delhi, executed and registered in favour of defendants no.2 to 4 in respect of property being one shop premises

situated on the Ground Floor of property no.2771. Main Qutub Road, Sadar Bazar, Delhi is illegal, null and void;

iii) Decree of permanent injunction in favour of the plaintiff and against defendant no.1, thereby restraining the defendant no.1 from selling, transferring, alienating and creating any third party rights and interest in respect of property bearing No.19-B, Veer Nagar, Jain Colony, Near Rana Pratap Bagh, Delhi and property bearing no.2771. Main Qutub Road, Sadar Bazar, Delhi;

iv) Decree of permanent injunction in favour of the plaintiff and against the defendants no.2 to 4, thereby restraining the said defendants no.2 to 4 their agents, servants, employees, assigns from selling, transferring, alienating and creating any third party rights and interest in suit property being one shop premises situated on the Ground Floor of property no.2771. Main Qutub Road, Sadar Bazar, Delhi as described in sale deed dated 05.08.2011.”

3. Initially, summons were issued in the suit after recording the Plaintiff's statement on oath under Order X CPC wherein he stated as under:

“STATEMENT OF MR. SUBODH JAIN S/O. LATE SH. SUKHBIR SINGH JAIN R/O.19-B, VEER NAGAR, JAIN COLONY, NEAR RANA PRATAP BAGH, DELHI.

ON S.A.

I say that I am today 36 years of age. I have 5 siblings. Myself and all my siblings are borne from wedlock of Sh. Sukhbir Singh Jain and Ms. Nirmala Devi. My father, Sh. Sukhbir Singh Jain passed away on 06.05.2013. My mother Nirmala Devi is alive.

I say that document dated 29.07.1992 appended at page 55 of the documents file, which is marked as

Ex.'X' is not the document executed by my grandfather i.e., Sh. Jagmender Dass Jain.

I say that the document appended at pages 38-39 of the documents file, which is dated 26.03.1991 is the last will and testament of my grandfather, Sh. Jagmender Dass Jain.

I say that the document dated 03.06.1991, which is appended at page 43-44 is not a document executed by my grandfather, Sh. Jagmender Das Jain. I say that my grandfather passed away on 28.10.1992.

I say that my uncle Sh. Prem Chand Jain and my father Sh. Sukhbir Singh Jain had initiated separate probate proceedings which were compromised and an order was passed in those proceedings on 12.05.2008.

I say that my father had also instituted eviction proceedings which were numbered as Suit No.237/2009, titled as: Sukhbir Singh Vs. Prem Sagar Gupta and Ors. I say that in those proceedings along with other witnesses, I had tendered my evidence.

I say that I became aware of the sale deed dated 05.08.2011 only on 03.10.2011 during the course of the said proceedings.”

4. On 16th August, 2016, the Defendants raised an objection in respect of maintainability of the present suit. The primary objection of the Defendants was that the fathers of the Plaintiff and the Defendant No.1 had entered into a compromise in earlier litigations, which is sought to be reopened by the Plaintiff. The Plaintiff having accepted the compromise entered into between his father and uncle ought not to be permitted to reopen the same through the present suit. The Defendants also filed an application under Order VII Rule 11 CPC being I.A. No.24358/2015. On the said date, the learned counsel for the Plaintiff sought permission to amend the plaint, and

thereafter an application under Order VI Rule 17 CPC was filed. The said application was dismissed as withdrawn on 22nd March, 2017. A second application under Order VI Rule 17 CPC came to be filed being IA No.4767/2017. The said application along with the application under Order VII Rule 11 CPC was taken up for hearing on 4th July, 2018.

5. In the application under Order VI Rule 17 CPC, the Plaintiff seeks to amend the nature of the suit from a suit for partition to a suit for possession. The Plaintiff seeks relief of possession in respect of one shop which has been purchased by the subsequent purchaser and also seeks a declaration that the settlement dated 1st February, 2008 and settlement order dated 12th May, 2008 are void and inoperative.

6. While the application was heard, learned counsel for the Plaintiff agreed to restrict the amendment only qua the relief of possession. It was also put to the learned counsel for the Plaintiff that she would not be allowed to change the nature of the suit. Accordingly, counsel agreed that only prayer for relief of possession be permitted to be added. Thus, the second prayer i.e. decree for declaration was not pressed. The two reliefs sought to be added are :

“i) a Decree of possession of one shop on the Ground Floor in possession of defendants No.2 to 4 as shown in Red Colour and entire First Floor in possession of defendant No.1 of property No.2771, Main Qutub Road, Sadar bazaar Delhi as shown in Green Colour in the site plan be passed in favour of the plaintiff against the defendants.

ii) a Decree of declaration in favour of the plaintiff and against the defendants No.2 to 4 thereby declaring that the sale deed dated 05.08.2011 bearing registration No.7029 in book No.1 Vol.

No.3956 on pages 72 to 80 registered on 06.08.2011 with sub Registrar 1, New Delhi; executed and registered in favour of defendant No.2 to 4 in respect of the property being one shop premises situated on the Ground floor of property No.2771, Main Qutub Road, Sadar Bazar, Delhi is illegal, null and void; and also declare that the settlement dated 01.02.2008 and consent order dated 12.05.2008 is void, inoperative, non-est, illegal against law and does not affect the rights of the plaintiff in any manner, created against the terms of the Will dated 26.03.1991 and subsequent agreement dated 05.01.1993 and the plaintiff continues to be the owner of the properties in terms of the Will and Agreement and his right are not affected in any manner what so ever.”

7. The application was opposed by the Defendants on the ground that the nature of the plaint cannot be permitted to be changed, inasmuch as, at the time of filing of the suit itself, the Plaintiff was well aware that the shop had already been sold to the subsequent purchasers i.e., the Defendant Nos.2 to 4. Though the law relating to the amendment of pleadings is very liberal, for the reasons given hereinafter, this Court is not inclined to permit the amendment. Briefly stated the Plaintiff is guilty of suppression of material facts and the conduct of the Plaintiff is completely *malafide*. The amendment is not a matter of right, and merely because the Plaintiff seeks an amendment, the Court is not bound to grant the same. The application for amendment is, accordingly, dismissed.

8. The Defendants have pointed out that the suit of the Plaintiff is not maintainable as the Will dated 26th March, 1991 has already been the subject matter of various litigations within the family, details of which have been

cleverly concealed. The plaint does not give all the material particulars of the proceedings which are admitted in the plaint. A perusal of the documents filed would reveal that there were at least three proceedings which had been instituted amongst the family members, by which the various portions of the properties clearly stood partitioned due to a settlement. The sale to the Defendant Nos.2 to 4 was made by the father of the Defendant No.1, subsequent to the settlement and all these facts have been withheld in the plaint.

9. A perusal of the documents filed on record shows that the following litigations had been instituted amongst the family members:

- a) Probate Case no 232/06, titled ***Prem Chand Jain v. State;***
- b) Probate Petition No.234/2006 titled as ***Sukhbir Singh Jain v. State & Ors.-***

The said probate petitions were based upon Wills dated 3rd June, 1991 and 29th July 1992 allegedly executed by Shri Jagminder Dass Jain. - In Petition 234/2006, the Plaintiff herein filed his objections and relied upon the family settlement agreement of 26th March, 1991. On the basis of the said family settlement, the Plaintiff herein opposed the grant of probate. The issues framed in the said petition were as under:

“28.5.2002.

Present : Counsel for the Petitioner. Petitioner in person.

Objector Prem Chand Jain in person with counsel.

None is present on behalf of objector Subodh Kumar Jain.

Objector Subodh Kumar Jain shall be at liberty to file rejoinder, if any.

On the basis of the pleadings of the parties,

following issues are framed:

1. Whether the testator has executed any will dated 29.7.92 in sound disposing mind, validly and properly? If so, its effect ?

2. Whether Shri Jagvinder Dass Jain had executed any family settlement agreement dated 26.3.91, as alleged by Objector Subodh Kumar Jain? If so, its effect ?

3. Relief.

Now to come up for PE on 11.12.2002. ”

The above mentioned probate petitions were consolidated by the Probate Court vide order dated 29th May, 2003. In both the cases, a settlement was arrived at and recorded on 1st February, 2008. The terms of the said settlement are as under:

“6. That during the course of pendency of the present petitions, the party of the present petition have settled their disputes/grievances amicably and entered into a compromise on the following terms and conditions:-

a) That it has been settled/agreed between the parties that Shri Prem Chand Jain shall be the exclusive owner of the ground floor and mezzanine floor forming part of property bearing No.19, Veer Nagar, Jain Colony, Delhi, as shown in red colour in the site plan attached herewith and Shri Sukhbir Singh Jain shall be exclusive owner of the first floor with complete roof rights and above portion forming part of property bearing No.19, Veer Nagar, Jain Colony, Delhi, as shown in blue colour in the site plan attached herewith.

b) That Shri Sukhbir Singh Jain and his family members shall use the staircase leading towards first floor and shall also separate the said staircase from ground floor at the same

proportionate/level at his own cost, as marked at point 'A' and 'B', Shri Sukhbir Singh Jain further shift the electricity and water meters from the existing place i.e. at ground floor to anywhere in his portion within one month from the date of execution of this compromise.

c) That Shri Prem Chand Jain shall also construct staircase leading towards mezzanine floor at his own cost within one month from the date of execution of this compromise and open his own portion and shall close the entrance to mezzanine floor for exiting staircase and Shri Sukhbir Singh Jain and his family members shall not have any objection for the same. After construction of his staircase, Shri Prem Chand Jain and his family members will not use the staircase leading towards first floor.

d) That it has been further settled/agreed between the parties that Shri Prem Chand Jain shall be exclusive owner of one shop at ground floor, which is under his possession and entire first floor, forming part of property bearing No.2771, Main Qutub Road, Sadar Bazar, Delhi, as shown in red colour in the site plan attached herewith and Shri Sukhbir Singh Jain shall be exclusive owner of one shop situated at ground floor, which is presently under the possession of legal heirs of late Shri Arjun Dass (original tenant), entire mezzanine floor and entire second floor and above that, forming part of property bearing No.2771, Main Qutab Road, Sadar Bazar, Delhi, as shown in blue colour in the site plan attached herewith. The stair case leading from the ground floor upto second floor shall be common and none of the parties shall have any exclusive right over the same. The common staircase are shown in yellow colour in the site plan attached

herewith.

e) That the commercial property bearing No.2771, Main Qutab Road, Sadar Bazar, Delhi is occupied by the tenants except one shop which is under the possession of Shri Prem Chand Jain and mezzanine floor and second floor. Both the parties shall cooperate with each other for evicting the tenants from the said property as well as defending the cases against the tenants pending in different courts of law, irrespective of the shares in which they have fallen.

f) The tenants fall in the share of respective parties shall be liable to pay the rent to the respective parties and other party shall have no objection/interference or claim, right or share in the same. The arrears of rent from respective tenants shall be recovered by the parties, in whose share the said tenant has fallen, for which, both the parties shall cooperate with each other. Both the parties undertake to inform/intimate the tenants about the present, compromise/ settlement as well as their respective shares in the commercial property. The respective parties shall be entitled for the arrears of rent, from the tenants from the date of demise of late Shri Jugminder Dass Jain, who have fallen in their share and in case any party has taken rent from the tenant, the same shall be refunded to the respective party in whose share the tenant fall.

g) That it has also been agreed that both the parties and their respective sons shall withdraw all the cases pending against each other in any court of law in respect of aforesaid properties as well as movable assets of late Shri Jugminder Dass Jain and his wife Smt. Choti Devi, if any. It has been further agreed that

both the parties and their family members shall not file any complaint case against each other in respect of the aforesaid properties as well as movable assets left behind by late Shri Jugminder Dass Jain and his wife Smt. Choti Devi.

h) That it has been also agreed between the parties that house tax and lease money in respect of aforesaid properties, if any, paid by Shri Prem Chand Jain after the death of late Shri Jugminder Dass Jain, the same shall be shared in equal ratio by both the parties upto the period payment made by Shri Prem Chand Jain and Shri Sukhbir Singh Jain shall pay the amount of his share to Shri Prem Chand Jain. Thereafter the parties shall pay the same in respect of their respective share directly to the concerned authorities.

i) That Shri Prem Chand Jain has got mutated the aforesaid properties in his name in the records of DDA and got mutated the residential property in the records of Housing Society. By virtue of present settlement, it has been agreed that Shri Prem Chand Jain shall inform and/or apply for cancellation of the mutation of entire property in his name and will restrict mutation in respect of his share in his name as per this settlement. Shri Prem Chand Jain shall have no objection in case Shri Sukhbir Singh Jain got mutated the said properties in his name as per his share as mentioned above. Both the parties shall issue NOC in favour of each other for the said purpose, if required, Shri Prem Chand Jain and Shri Sukhbir Singh shall also inform the concerned Society about the present compromise/settlement and may apply with them for transfer of the membership in their

names as per their shares; and the requisite charges shall be borne by them as per their shares.

j) That after this compromise, Shri PremChand Jain shall be the exclusive owner of the portions under his share in respect of both the properties as shown in red colour in the site plans, and he shall have each and every right to deal with the said properties in any manner which he likes. He shall be entitled to recover the rent from tenants or get evicted the tenants from his portions. Shri Sukhbir Singh Jain and his family members shall have no right, title or interest whatsoever in the share of Shri Prem Chand Jain.

k) That after this compromise Shri Sukhbir Singh Jain shall be the exclusive owner of the portions under his share in respect, of both the properties as shown in blue colour in the site plans, and he shall have each and every right to deal with the said properties in any manner which he likes. He shall be entitled to recover the rent from the tenants or get evicted the tenants from his portions. Shri Prem Chand Jain and his family members shall have no right, title or interest whatsoever in the share of Shri Sukhbir Singh Jain.

l) That it has also been agreed/settled between the parties that in case any party wants to sell/transfer/dispose off his share, he will first offer the same at the prevailing market rate to the other party in writing and in case he does not receive any intimation from other party within 45 days in writing, then he shall be at liberty to sell/transfer/dispose off his share to any person(s) without any objection of other party. Such offer/intimation should be sent, by the parties through registered post or through

by hand against proper receipt.

m) That both the parties shall cooperate with each other in carrying out terms, and conditions of the present compromise/settlement and both the parties and their respective legal heirs shall be bound by the terms and conditions of this compromise/settlement. It has been also agreed that both the parties shall help/cooperate each other in getting the properties free hold or any other concerned authorities as per their convenience.

n) That Shri Sukhbir Singh Jain will have right to raise construction on the terrace floors of both the properties as per law/ sanctioned plan/permission from competent authority and Shri Prem Chand Jain shall have no objection for the same.

o) The above settlement/compromise shall be binding fully and conclusively on all the parties and shall be adhere to the letter and spirit.

p) That the parties have entered into the said settlement out of their free will and consent and the above settlement is free from any pressure fraud, influence, coercion, duress and misrepresentation.

q) That the parties have given their respective affidavits in support of the present compromise/settlement, which are being annexed herewith.”

This settlement was recorded by learned ADJ on 1st February, 2008. As per the above settlement, the respective portions of the properties which were to fall in the share of the father of the Plaintiff and father of the Defendant no.1 were decided and settled. Prior to the settlement being entered into, the Plaintiff had clearly raised the issue of Will/Settlement dated 26th March,

1991.

- c) Suit No.767/2002 – ***Subodh Kumar Jain v. Prem Chand Jain*** – This suit was filed by the Plaintiff herein seeking rendition of accounts and permanent injunction. This suit was withdrawn by the Plaintiff vide application filed on 24th April, 2008. The statement recorded by the Court on 26th April, 2008, reads as under:

*“Suit No.767/02
26.4.2008*

*Statement of Sh. Subodh Kumar Jain S/o Sh.
Sukhbir Singh Jain R/o 19, Veer Nagar, Jain
Colony, Deihi-7,*

On S.A.

*I am the plaintiff in the present suit, in
pursuance of settlement between my father and
defendant no.1 in the court of Smt. Bimla
Markin, Ld. ADJ bearing no PC 232/06 &
234/06. I wish to withdraw the present suit.”*

- d) Suit for partition bearing CS No. 88/2007 titled as ***Sukhbir Singh Jain v. DDA and Ors.*** - This was a suit for partition filed by the father of the Plaintiff wherein he sought partition of the Veer Nagar property and the Qutub Road property as per the terms and conditions of the settlement deeds dated 26th March, 1991 and 5th January, 1993. In this suit, the Plaintiff herein filed his written statement and supported his father. On 2nd May, 2008, the Plaintiff appeared in the said matter and stated as under:

*“CS No. 88/07
Sukhbir Singh Jain vs. DDA &Ors.
Statement of Sh. Subodh Kumar Jain, s/o Sh.*

Sukhbir Singh Jain, Age 30 years, R/o 19, first floor. Veer Nagar, Jain Colony, Delhi.

On SA.

I am son of the plaintiff in this case. I have heard the statement made by the plaintiff. Pursuant to the out of Court settlement between my father and my Tauji. I have already withdrawn the Civil case pending in the Court of Ms. Charu Aggarwal, Civil Judge, Delhi. I am satisfied with the settlement and I have no objection to the disposal of the present suit.”

Apart from the Plaintiff, his father and his uncle also gave statements confirming the out of Court settlement entered into and recorded in the two probate petitions. The statement recorded above, clearly shows that the Plaintiff was satisfied with the settlement entered into between his father and his uncle as extracted hereinabove.

10. On the strength of the Plaintiff's statement made in CS No.88/2007 and the withdrawal of his suit for rendition of accounts, the Defendants have argued that the Plaintiff has completely accepted and acquiesced to the settlement and he cannot be allowed to seek partition of the same very properties on the basis of the Will/Family Settlement dated 26th March, 1991. An amicable settlement having being entered into, subsequent to 26th March, 1991 and the Plaintiff having accepted the same, the present suit is barred by law.

11. Learned counsel for the Plaintiff has opposed the application on the ground that the Plaintiff had no right which had accrued in his favour in 2008 and it was only when his father died in 2011, that the right accrued in his favour. During the lifetime of his father, he could not have asserted a

right for partition and hence any settlement entered into, prior to his father's death, is not binding upon him.

12. Learned counsel for the Plaintiff also submits that the suit cannot be dismissed on the basis of the averments in the application under Order VII Rule 11 CPC. In the application under Order VII Rule 11 CPC, the fact that the Plaintiff may not succeed later, would not be a ground to dismiss the suit, and the Court has to go only by the averments made in the plaint and the documents thereunder.

13. A perusal of the plaint in the present case shows that paragraph 11 of the plaint admits the probate petition which was filed by the father of the Plaintiff and the father of the Defendant No.1 as also the final order dated 12th May, 2008 which was passed. These proceedings having been admitted in the plaint, the order sheet relating to the said proceedings can be taken into consideration. Paragraphs 10, 11 & 12 of the plaint are cleverly drafted and it is clear from a perusal thereof that the Plaintiff was well aware of all the earlier litigations. In paragraph 16 again the Plaintiff has briefly mentioned the suit filed by him for rendition of accounts. The said paragraphs are extracted herein below:

“.....

10. That it was later revealed to the plaintiff that his real uncle Mr. Prem Chand Jain and his father Mr Sukhbir Singh Jain had fraudulently filed probate case bearing No.232/2006 (old No.222/94) titled "Mr Prem Chand Jain Vs. State" in respect of alleged Will dated 03.06.1991 of Mr Jagmender Dass Jain and probate case bearing No.234/2006 titled "Mr Sukhbir Singh Jain Vs. State" in respect of alleged Will dated 29.07.1992 of Mr Jagmender Dass Jain in the Court of District Judge, Tis Hazari, Delhi. The plaintiff very respectfully submits that both the said Wills dated

03.06.1991 and 29.07.1992 were forged and fabricated and they had been executed after the death of Late Mr Jagmender Dass Jain. It is revealed from the records that both the aforementioned probate proceedings were consolidated and put to trial together in terms of order dated 29.05.2003 passed by the court of District Judge, Tis Hazari, Delhi.

11. That it is stated by the plaintiff that both his father Mr Sukhbir Singh Jain and his real uncle Mr Prem Chand Jain had entered into some dishonest and illegal compromise filed in the probate proceedings by way of application under Order XXIII Rule 3 CPC dated 01.02.2008 and on that basis obtained the court order dated 01.02.2008 followed by compromise judgment dated 12.05.2008. The said compromise arrived between the said parties was not only dishonest and illegal but a fraud played upon the court on the basis of forged and fabricated Wills of Late Mr Jagmender Dass Jain.

12. That the plaintiff very respectfully submits that since after the passing of the order and judgment dated 12.05.2008 in the aforementioned probate proceedings, there has not been any decree sheet made and prepared by the court till date since neither of the two parties i.e. Mr Prem Chand Jain and Mr Sukhbir Singh Jain had taken any steps for the preparation of the decree sheet on payment of necessary stamp duty etc. since the said compromise involved division and partition of immovable properties. Further, in the aforementioned probate proceedings, it was concealed from the Hon'ble Court about the true and genuine Will dated 26.03.1991 of Mr Jagmender Dass Jain as was further accepted and confirmed in the family agreement (Samjhauta Agreement) dated 05.01.1993 signed and executed between Mr Prem Chand Jain and Mr Sukhbir Singh Jain along with their respective sons Mr Subhash Chand Jain (defendant no.1) and Mr Subodh Jain (plaintiff). It is respectfully submitted by the plaintiff that the alleged compromise order and judgment dated 12.05.2008 is per se illegal, null and void and an

outcome of fraud played upon the court by the parties.

13.....15.....”

“16. That the plaintiff very respectfully submits that he had filed suit for rendition of accounts and permanent injunction against his father and real uncle and others being suit no. 68/1998 titled "Subodh Jain vs Prem Chand Jain & Ors.". However the plaintiff had later withdrawn the said suit in terms of the order dated 26.04.2008. The plaintiff had also filed a suit bearing No.139/2004 titled "Subodh Kumar Jain vs Prem Chand & Anr." for relief of declaration and permanent injunction against his real uncle Mr Prem Chand Jain in respect of the forged and fabricated Wills being dated 03.06.1991 and 29.07.1992. However, the said suit got dismissed in default on 29.07.2004. The plaintiff very respectfully submits that the dismissal of the above said suits shall not have any consequence on filing of the present suit since the alleged Wills being dated 03.06.1991 and dated 29.07.1992 being forged and fabricated and never established in any court of law.”

14. Perusal of the above paragraphs reveals that the settlement entered into and his acceptance of the same has not been candidly revealed. The fact that he was satisfied with the settlement entered into between his father and uncle is also not revealed. In the documents filed by the Plaintiff, the application under Order XXIII Rules 1 & 3 CPC has also been placed on record. The said application clearly referred to a settlement between the Plaintiff's father and uncle. Relevant portions of the application have already been extracted herein above. When the litigations are accepted by the Plaintiff, the order sheets and the statement made by him in the said earlier litigations are not alien to this proceeding. The Plaintiff ought to have disclosed all these order sheets in the plaint. The factum of the litigation being admitted and the factum of the settlement between his father and uncle

being admitted, it is not open to the Plaintiff to seek reopening of the entire settlement entered into amongst the family members by means of the present suit. The Plaintiff clearly made a statement in the suit filed by his father wherein he had relied upon the settlement/Will dated 26th March, 1991, that he was “*satisfied with the settlement*”. Having been satisfied with the settlement, he cannot now seek partition.

15. As per the settlement, which has been filed by the Plaintiff at pages 69 to 112 along with the plaint, it was agreed between the parties and amongst the family in clause 6(d) that Shri Sukhbir Singh Jain shall be exclusive owner of the one shop on the ground floor in the Qutub Road property. The term ‘exclusive owner’ meant that Shri Sukhbir Singh Jain could sell the shop during his lifetime. The settlement did not prohibit the sale of the respective portions which fell in the share of the various parties to the settlement.

16. The partition of the Veer Nagar and Qutub Road properties has already been taken place vide the compromise recorded on 1st February, 2008 pursuant to which the probate petitions were disposed of on 12th May, 2008. On 2nd May, 2008, the Plaintiff made a categorical statement that he satisfied with the settlement. The sale to Defendant Nos.2 to 4 of the shop on the ground floor of the Qutub Road property took place on 5th August, 2011 i.e. subsequent to the settlement. The sale deed has been filed by the Plaintiff at page 113 of the Plaintiff’s documents. The sale deed is a registered document executed by his own father Shri Sukhbir Singh Jain in favour of the Defendant Nos.2, 3 & 4. The Plaintiff’s father being exclusive owner of one of the shops in Qutub Road property, as per the settlement, he had the right to sell it. The Plaintiff having repeatedly accepted the

settlement cannot be permitted to resile from the same, just because of the death of his father. No cause of action, in fact, arises in favour of the Plaintiff to file the present suit. The Plaintiff is also guilty of concealment of material facts and particulars about the proceedings. He also did not disclose the fact that he had made a statement before the learned ADJ in CS No.88/2007 that he was satisfied with the settlement.

17. There is no dispute as to the proposition of law in the judgments stated by the Plaintiff. In ***Kasani Narasimhulu v. Sathagowni Srinivas Goud & Ors., 2014 (3) Civil Court Cases 499 (A.P.)***, the Andhra Pradesh High Court held that the plaint cannot be rejected on the basis of allegations made in the written statement or in the application for rejection of plaint. In the present case, the plaint is liable to be rejected merely on the perusal of the settlement which the Plaintiff has placed on record, entered into between his father and uncle. Thus, the said judgment has no applicability.

18. The Plaintiff has also relied upon ***P. Jothi Bai v. B. Dorairaj & Ors. AIR 2002 Madras 191*** to argue that unless all the heirs join in the compromise of a dispute, the settlement or decree would not be binding on the heirs who do not join the compromise. In the present case, the Plaintiff had complete knowledge of the settlement entered into between his father and uncle. In two litigations, the Plaintiff gave reference to the said settlement and recorded his satisfaction before a Court of law. Thus, the said judgment has no application.

19. The judgment relied upon by the Plaintiff i.e., ***Rama Devi v. Mahender Pal 2016 (2) CCC 585 (Uttara.)***, to submit that a family arrangement is binding on the parties and operates as an estoppel. This proposition, in fact, is against the Plaintiff, because the initial family

arrangement dated 26th March, 1991 and the subsequent family settlement is binding on all the parties including the Plaintiff, who accepted it unconditionally.

20. In *Shri Prahladsingh Ramkhilaansingh (since deceased) v. Sudhir J. Bhalekar 2014 (1) CCC 435 (Bom)*, the Bombay High Court has held that the plaint cannot be rejected if there is no possibility of the Plaintiff succeeding.

21. In the present case, the plaint is liable to be rejected as it does not disclose a cause of action. The partition having already taken place between the parties and the respective family members, relief of partition, possession and declaration cannot be granted qua the same properties. A property which has already been partitioned cannot be partitioned again. Shares of the properties were agreed upon by the parties i.e. fathers of the Plaintiff and the Defendant No.1 to which the Plaintiff had clearly acceded. The plaint is, thus, liable to be rejected under sub-rules (a) & (d) of Rule 11 of Order VII CPC. No useful purpose would be served in sending the suit for trial or permitting the plaint to be amended. Thus, the application under Order VII Rule 11 CPC is allowed and the plaint is rejected. Application under Order VI Rule 17 CPC for amendment is dismissed. All pending applications also stand dismissed.

PRATHIBA M. SINGH
JUDGE

JULY 19, 2018/dk