

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

+ **RFA No. 957/2018**

% **4th December, 2018**

VIDYA SAGAR

..... Appellant

Through: Mr. Nazia Hasan and Md.
Monish, Advocates (Mobile
No. 9717155440).

versus

SUBHASH GUPTA

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the trial court dated 28.07.2018 by which the trial court has dismissed the suit for possession and injunction filed by the appellant/plaintiff with respect to property no. 534, A Block, Raja Vihar, Samaypur Badli, New Delhi-110042. Though it is not on record, the suit plot obviously is a very very small piece of plot possibly between 25 to 50 sq. yards. The Counsel for the

appellant/plaintiff though ought to have answered this query, but he had no answer to the same, although, as noted below, the appellant/plaintiff claims to be the owner of the suit property in terms of Documentation dated 18.05.1994. Even the photocopies of the Documents dated 18.05.1994 have not been filed.

2. The facts of the case are that the subject suit was filed by the appellant/plaintiff pleading that one Sh. Chandi Ram Rangi was the owner of the suit property which was sold by Sh. Chandi Ram Rangi to the appellant/plaintiff in terms of the Documentation dated 18.05.1994 being the Agreement to Sell, Power of Attorney, Will etc. The possession of the suit property was also said to be handed over to the appellant/plaintiff. The appellant/plaintiff pleads that he constructed the ground floor in 1998 and thereafter permitted his father and the respondent/defendant/brother to reside in the suit property. It was also pleaded that the original title documents were handed over by the appellant/plaintiff to his father and the respondent/defendant. Since the respondent/defendant failed to vacate the suit property, the subject suit for possession and injunction was filed.

3. The respondent/defendant contested the suit and denied that the suit property was owned by the appellant/plaintiff inasmuch as the suit property was in fact purchased by the father of the parties from his personal funds. It was pleaded that the father of the parties also owned one 'Jhuggi'/ Hutment and a 'Lathe Machine'. The respondent/defendant pleaded that between the parties there was a Family Settlement on 07.11.1998/Ex.PW-1/D-1, in the presence of various persons, and which family settlement is also signed by the parties to the present litigation, whereby the suit property fell to the share of the respondent/defendant and the appellant/plaintiff received the 'Jhuggi'/Hutment along with the 'Lathe Machine' belonging to the father.

4. The following issues were framed in the suit:-

“1. Whether plaintiff is entitled for relief of Possession, Permanent and Mandatory Injunction, as prayed for in the plaint? OPP.

2. Whether plaintiff has no right, title or interest in suit property so as to claim the relief, as prayed for in the plaint, against the defendant? OPD”

5. Parties led evidence, and these aspects are recorded in paras 5 and 6 of the impugned judgment and these paras read as under:-

“A) PLAINTIFF’S EVIDENCE

5) The plaintiff examined himself as PW1 *vide* affidavit P1 wherein his plaint was reiterated. His title documents PW1/A of the suit property, death certificate PW1/D of Subey Singh and NCR No. 935/11 PW1/E dated 11.07.11 were de-exhibited *vide* order dated 13.03.2018 on dismissal of his application u/s 65, Evidence Act.

After his cross examination, the PE was closed on 12.04.2018.

B) DEFENDANT’S EVIDENCE

6) The defendant produced three witnesses. He examined himself as DW1 *vide* affidavit D1 wherein his WS was reiterated.

DW2 Ram Badhai Singh & DW3 Shiv Bachan Singh were the attesting witnesses to the family settlement PW1/D1 who in their respective affidavits DW2/A & DW3/A deposed that his family settlement was reduced into writing by DW3 Shiv Bachan Singh ; that it was executed in their presence ; that it was duly attested by both of them ; that it was also signed by Ram Avadh Gupta, Sri Ram Gupta, the parties & the father of the parties and that it was prepared both in original (*retained by the plaintiff*) & carbon copy (*retained by the defendant*).

After the cross examination of all the three witnesses, the DE was closed on 02.06.2018.”

6. The trial court in my opinion has rightly dismissed the suit inasmuch as the Family Settlement/Ex.PW1/D1 is a hand written document, whereby the suit property has fallen to the share of the

respondent/defendant. This document is witnessed by as many as eight persons from the locality and this document bears the signatures of both the appellant/plaintiff and the respondent/defendant. Once therefore the family settlement is entered into, and obviously which would have a basis because although the title documents of the suit property were in the name of the appellant/plaintiff, funds would have been provided by the father, and thus the appellant/plaintiff received his share of the property belonging to the father being one 'Jhuggi'/Hutment and a 'Lathe Machine', and the respondent/defendant received the suit property and accordingly the suit has been rightly dismissed by the trial court.

7. The Ld. counsel for the appellant/plaintiff firstly argued that trial court has committed an error in declining the appellant/plaintiff to produce the original Title Documents dated 18.05.1994 by dismissing the application filed by the appellant/plaintiff vide order dated 13.03.2018, and this application was for leading secondary evidence. However in my opinion, even if the original title documents of the suit property were filed, and which as per the appellant/plaintiff were in his name being dated 18.05.1994,

yet in view of the subsequent Family Settlement dated 01.11.1998/Ex.PW1/D1, the rights of the parties in the suit property as also other properties of the father were settled whereby the respondent/defendant got the suit property and the appellant/plaintiff got one 'Jhuggi'/Hutment with a 'Lathe Machine' by which work was being carried on by the father. It is the subsequent family settlement which crystallizes the rights of the parties which will prevail and the trial court has therefore rightly held that the appellant/plaintiff was not the owner of the suit property by relying upon the Family Settlement Deed dated 07.11.1998.

8. The Ld. counsel for the appellant/plaintiff then argued that the Family Settlement Ex.PW1/D1 is not registered, and therefore, cannot be looked into, however the law is well settled that Courts will uphold family settlements because they bring a quietus to the disputes in the family, and there is no requirement of registering and stamping of a family settlement. A similar family settlement was also a subject matter of the judgment of the Hon'ble Supreme Court in the case of ***Roshan Singh and Ors. v. Zile Singh and Ors., AIR 1988 SC 881*** and the Hon'ble Supreme Court has held that such a family settlement does

not of its own create right, title and interest and therefore need not be stamped and registered.

9. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

DECEMBER 04, 2018
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VALMIKI J. MEHTA, J

