

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

% **Date of decision: 3rd December, 2021**

+ **CM(M) 373/2020 & CM No.14385/2020 (for stay)**

DEEPAK ARORA Petitioner
Through: Mr. Kanwal Choudhary, Advocate.

versus

RASHMI @ HIMASHI GOEL Respondent
Through: Mr. Ashish Kapur, Advocate.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present petition under Article 227 of the Constitution of India impugns the order dated 12th February, 2020 passed by the Additional District Judge-03 (West) Tis Hazari Courts, Delhi (Trial Court) in CIV. DJ NO. 610178/2016, whereby the application filed on behalf of the petitioner (hereinafter 'defendant') under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), has been dismissed.
2. The counsels for both sides have been heard on 23rd November, 2021 and 3rd December, 2021 and both the counsels have filed brief written submissions along with judgments in support.
3. Brief facts relevant for deciding the present petition are set out hereinafter:

3.1 The defendant and respondent (hereinafter ‘plaintiff’) are siblings. The suit property belonged to the father of the parties who died intestate on 22nd December, 1995, and the ownership of the suit property delved upon the plaintiff and the defendant, their mother and two more sisters.

3.2 All the aforesaid parties including the plaintiff executed a registered Relinquishment Deed, relinquishing their respective shares in the suit property in favour of the defendant. The registered Relinquishment Deed was executed by the plaintiff on 10th April, 2007 relinquishing her share in the suit property in favour of the defendant.

3.3 On 8th December, 2010, the suit from which the present petition arises was filed by the plaintiff against the defendant, seeking reliefs of declaration, possession, mandatory injunction and permanent injunction.

3.4 In the suit, it was averred that there was an oral understanding arrived at between the defendant and plaintiff on 9th April, 2007, and a Memorandum of Understanding (MoU) was executed on 16th September, 2008 between the defendant and the plaintiff as per the aforesaid oral understanding, in terms of which the plaintiff would become the owner of the ground floor of the suit property in lieu of her 1/5th share therein.

3.5 The suit was contested by the defendant by filing a written statement and issues were framed in the case on 20th February, 2014.

3.6 On 15th March, 2018, the defendant filed an application under Order VII Rule 11 of the CPC seeking rejection of the plaint.

3.7 No reply was filed to the said application on behalf of the plaintiff, however, written arguments were submitted.

4. Vide the impugned order dated 12th February, 2020, the application under Order VII Rule 11 of the CPC was dismissed by the Trial Court, by

observing that (i) the application had been filed at a very belated stage when the matter was at the stage of defendant's evidence; (ii) questions raised by the defendant in the application were mixed questions of facts and law and could not be decided in a summary manner without taking evidence; (iii) as per the Central Forensic Science Laboratory (CFSL) report, the signatures of the defendant on the MoU dated 16th September, 2008 were forged, however, parties had to be given an opportunity to prove/disprove the said report by leading evidence; and (iv) averments with regard to misrepresentation/fraud require evidence to be led and could not be decided at that stage.

5. Aggrieved by the aforesaid impugned order, the defendant has preferred the present petition. At the very outset, the counsel for the defendant does not press the grounds taken in the application under Order VII Rule 11 of the CPC regarding the findings in the CFSL report and misrepresentation/fraud. He confines his submissions to the following:

- (i) The suit is premised on the basis of an unregistered MoU dated 16th September, 2008, which cannot be treated as a family settlement and as such, has not even been claimed to be so in the plaint.
- (ii) For the said MoU to be treated as a memorandum of family settlement, there has to be a pre-existing interest of the parties to the MoU in the property in question, which is not the case here, since the plaintiff had already relinquished her entire share in the suit property in favour of the defendant vide Relinquishment Deed dated 10th April, 2007.
- (iii) The Relinquishment Deed dated 10th April, 2007 was a registered document and the terms of the said registered deed could only be varied or

altered by another registered document. Admittedly, the MoU is not a registered document.

(iv) The MoU which is purporting to create rights in an immovable property in favour of the plaintiff, was compulsorily required to be registered in terms of Section 17 (1) (b) of the Registration Act, 1908.

(v) The plaint, in so far as relief of declaration seeking cancellation of the Relinquishment Deed is concerned, is time barred, in terms of Article 59 of Schedule I of the Limitation Act, 1963, as the Relinquishment Deed was executed on 10th April, 2007 and the suit was filed on 8th December, 2010.

6. The counsel for the defendant has relied upon the following judgments of the Supreme Court in support of his contentions:

6.1 ***Sita Ram Bhama Vs. Ramvatar Bhama*** 2018 (5) SCALE 122 to contend that a document evidencing family settlement was a compulsorily registrable document under Section 17 of the Registration Act, 1908 as the parties were relinquishing their rights in terms of the said document and the party did not have any share in the property when the said document was executed.

6.2 ***Chandrakant Shankarrao Machale Vs. Parubai Bhairu Mohite*** 2008 (4) SCALE 197 in support of the contention that the terms of a registered document can only be varied or altered by another registered document.

6.3 ***Yellapu Uma Maheswari & Anr. Vs. Buddha Jagdheeswararao & Ors.*** 2015 (13) SCALE 615 in support of the contention that any document that has the effect of creating or taking away rights in respect of an immovable property, has to be a registered document. It was further held

that the nomenclature given to the document is not a decisive factor but the substance of the document has to be seen.

7. Further, reliance has been placed on a judgment of a Division Bench of this Court in ***Keshav Chander Thakur & Anr. Vs. Krishan Chander & Ors.*** 211 (2014) DLT 149 (DB) to contend that even *de hors* Order VII Rule 11 of the CPC, there are inherent powers of the Court to throw out vexatious suits and that continuation of frivolous suit against any person can be dismissed without waiting for the trial in the suit.

8. *Per contra*, the counsel appearing on behalf of the plaintiff has made the following submissions:

- (i) In the present case, limitation has to be counted from 16th September, 2008 when the MoU was entered into between the parties;
- (ii) The application in question has been filed at a very belated stage when the plaintiff's evidence was going on;
- (iii) Averments made in the application under Order VII Rule 11 with regard to the CFSL report and averments with regard to fraud and misrepresentation can only be proved at the stage of trial, as evidence would be required to be led in respect of the same;
- (iv) The averments made in the plaint with regard to the oral understanding entered into between the parties on 9th April, 2007 as well as execution of the memorandum of family settlement would require evidence to be recorded.

9. I have heard the rival contentions. It is the settled position of law that an application under Order VII Rule 11 of the CPC has to be decided only on the basis of averments made in the plaint and the documents filed along with the plaint and no reference can be made to the written statement.

Therefore, it may be relevant to refer to the relevant portions of the plaint as filed by the plaintiff:

*“11. That the plaintiff initially refused but due to the intervention of friends and relatives the oral understanding was arrived between the plaintiff and defendant on 9th April, 2007 that the plaintiff, who is facing the matrimonial discord and trauma shall get and become the owner of the ground floor of A-15, Vishal Enclave in lieu of her 1/5 share and it was also agreed that the Plaintiff shall executed a relinquishment deed in favour of defendant **temporarily** so that the disputes of the defendants with his uncle are sorted out.*

*12. That in terms of oral understanding arrived at between the Plaintiff and the defendant, a relinquishment deed was executed on 10th April, 2007 whereby the plaintiff relinquished her 1/5 share in the property in favour of defendant. **The said relinquishment deed was duly registered in the office of sub-registrar on 10th April, 2007.** In the said relinquishment deed it has been mentioned that the said relinquishment deed is executed out of love and affection.*

13. That after the execution of the relinquishment deed by the plaintiff in favour of the defendant, the defendant settled his all business disputes with his uncles in or about May 2008 as was told to the plaintiff by the defendant. That the relatives and friends on coming to know about the settlement of disputes as well as the plaintiff on coming to know that the settlement has been arrived between the defendant and his uncles, the plaintiff requested that it is better to record the oral understanding in writing so that the future of the minor children who are with the plaintiff is secured as the plaintiff was facing the mental trauma and matrimonial discord.

14. That finally the divorce decree was granted by mutual consent between the Plaintiff and her husband and the plaintiff also got the permanent custody of both the minor children. The said decree of divorce was granted to the plaintiff in July, 2008.

The plaintiff after getting the divorce decree requested the defendants to write the oral understanding arrived at between the plaintiff and defendant on 9th April, 2007. The defendant assured the plaintiff that it shall be done very shortly.

15. That finally a memorandum of understanding was arrived at between the plaintiff and defendant in terms of the oral understanding between the parties and in the said memorandum of understanding it was written and agreed by the defendant that the plaintiff shall be the owner of the ground floor of A-15, Vis hal Enclave and she will be also entitled to 1/5 share in the land of the said property. The said Memorandum of Understanding was executed between the plaintiff and the defendant on 16th September 2008. It was also agreed by the defendant that the defendant shall cooperate -in all respect to get the ground floor of the property mutated in the name of plaintiff in the official record and also to get the connections of electricity and water transferred in the name of plaintiff."

10. Reference may also be made to clauses 2, 3 and 4 of the MoU dated 16th September, 2008 relied upon by the plaintiff, which are set out below:

"2. That the Second Party executed a deed of relinquishment in favour of the First Party of her share. Before the execution of the said deed on 9th April, 2007 a joint meeting was held between First Party and the Second Party that the Second Party shall get the Ground Floor of the said building, despite executing deed of relinquishment and 1/5 share in the land.

3. That the First Party 'in terms of oral understanding of 9th April, 2007 now declares that the Second Party shall be the owner of the Ground Floor of property bearing no. A15 Vishal Enclave, New Delhi and accordingly she is also entitled to 1/5 share in the land of the said property.

4. That the Second Party shall be the owner of the Ground Floor in her own respective rights, as the Second party has also the liability of two minor children and is a divorcee as such being the real brother and well-wishers of the Second Party the First Party hereby gives the Ground Floor exclusively to the Second Party.”

11. In clause 2, it is clearly admitted by the plaintiff that she had executed a Relinquishment Deed in favour of the defendant in respect of her share. The aforesaid clause is also at variance with what has been pleaded in the plaint. In the plaint, the plaintiff has specifically pleaded that the Relinquishment Deed has been executed in favour of the defendant “temporarily” whereas there is no such word “temporary” or “temporarily” used in the aforesaid document.

12. A reading of clauses 3 and 4 above also clearly brings about that the said document is creating rights in favour of the plaintiff in respect of ground floor of the suit property.

13. From a perusal of the record, the position that emerges is that the plaintiff had relinquished her share in the suit property in favour of the defendant vide a registered document viz the Relinquishment Deed dated 10th April, 2007. If the aforesaid document was to be varied or modified, in view of the settled position of law the same could only be done through a registered document. Admittedly, the MoU relied upon by the plaintiff is not a registered document. Therefore, reliance has rightly been placed by the counsel for the defendant on ***Chandrakant Shankarrao Machale*** supra. Relevant paragraphs of the said judgment are set out below:

“11. The deed of mortgage dated 28-2-1983 was a registered document. The terms of a registered document could be varied

or altered only by another registered document. A finding of fact has been arrived at that the appellant could not prove his possession as a tenant. We have noticed hereinbefore that the appellant was put in possession as a mortgagee. **It was, therefore, in our opinion, impermissible in law to change his status from a mortgagee to that of a lessee by reason of an unregistered deed of lease (even if we assume that the same had been executed).**

The learned court of appeal may not be entirely correct in taking recourse to Section 92 of the Contract Act or holding that the deed of lease required registration even for the purpose of month-to-month tenancy, but, as indicated hereinbefore, we have considered the question from a different angle.

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13. The deed of mortgage was a registered one. It fulfilled the conditions of a valid mortgage. Its terms could not have been varied or altered by reason of an unregistered document so as to change the status of the parties from mortgagee to a lessee. [See *S. Saktivel v. M. Venugopal Pillai* [(2000) 7 SCC 104 : AIR 2000 SC 2633] (SCC p. 108, para 6 : AIR paras 6-7).]

14. Counsel for the defendant is correct in his submissions that the aforesaid MoU is by itself creating/declaring rights in favour of the plaintiff in respect of the suit property and is therefore, compulsorily registrable in terms of Section 17(1)(b) of the Registration Act, 1908. The document is not just recording an earlier settlement arrived at between the parties. The document by itself, declares the plaintiff to be the owner in respect of the ground floor of the suit property. Reliance in this regard has correctly been placed by the counsel for the defendant on *Yellapu Uma Maheswari* supra. Relevant paragraphs of the said judgment are set out below:

“15. Section 17(1)(b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be

registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered under Section 17 of the Act.

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17. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition.”

15. Admittedly, the plaintiff at the time of execution of the MoU did not have interest in the suit property as she had already relinquished her share by means of the registered Relinquishment Deed on 10th April, 2007. Therefore, The counsel for the defendant is also correct in his submissions that the aforesaid MoU could not be taken to be a memorandum of family settlement. In fact, the aforesaid document has nowhere been referred in the plaint as memorandum of family settlement and throughout, the nomenclature used in respect of the said document is that of being a MoU. It

may also be relevant to mention here that the MoU was only executed between the defendant and the plaintiff and not the remaining family members. Therefore, the dicta in *Sita Ram Bhama* supra would squarely be applicable to the present case, where it was observed as under:

“10. The only question which needs to be considered in the present case is as to whether document dated 9-9-1994 could have been accepted by the trial court in evidence or the trial court has rightly held the said document inadmissible. The plaintiff claimed the document dated 9-9-1994 as memorandum of family settlement. The plaintiff's case is that earlier partition took place in the lifetime of the father of the parties on 25-10-1992 which was recorded as memorandum of family settlement on 9-9-1994. There are more than one reasons due to which we are of the view that the document dated 9-9-1994 was not mere memorandum of family settlement, rather a family settlement itself. Firstly, on 25-10-1992, the father of the parties was himself owner of both, the residence and shop being self-acquired properties of Devi Dutt Verma. The High Court has rightly held that the said document cannot be said to be a will, so that the father could have made the will in favour of his two sons, the plaintiff and the defendant. Neither the plaintiff nor the defendant had any share in the property on the day when it is said to have been partitioned by Devi Dutt Verma. Devi Dutt Verma died on 10-9-1993. After his death, the plaintiff, the defendant and their mother as well as sisters become the legal heirs under the Hindu Succession Act, 1956 inheriting the property being a Class I heir. The document dated 9-9-1994 divided the entire property between the plaintiff and the defendant which document is also claimed to be signed by their mother as well as the sisters. In any view of the matter, there is relinquishment of the rights of other heirs of the properties, hence, the courts below are right in their conclusion that there being relinquishment, the document dated 9-9-1994 was compulsorily registrable under Section 17 of the Registration Act.”

12. We are, thus, in full agreement with the view taken by the trial court as well as the High Court that the document dated 9-9-1994 was compulsorily registrable. The document also being not stamped could not have been accepted in evidence and the order of the trial court allowing the application under Order 13 Rule 3 CPC and the reasons given by the trial court in allowing the application of the defendant holding the document as inadmissible cannot be faulted.

16. With regard to the plea of limitation, it may be relevant to refer to Article 59 of Schedule I to the Limitation Act, 1963, which is set out below:

59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years.	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.
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17. In terms of the aforesaid, when the plea is to cancel or to set aside an instrument, the period of limitation of three years runs from the date when the plaintiff became aware of the facts entitling the plaintiff to cancel the said instrument. In the present case, the plaintiff has clearly admitted the execution of the Relinquishment Deed on 10th April, 2007. It is the plaintiff's case that the Relinquishment Deed is contrary to the oral understanding arrived at between the parties on 9th April, 2007. Therefore, the limitation would run from the date of the Relinquishment Deed i.e. from 10th April, 2007, and the suit was filed on 12th December, 2010, which is beyond the period of three years. Therefore, the suit would also be barred by limitation.

18. The Supreme Court in *Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Through LRs. And Ors.* (2020) 7 SCC 366, while discussing the scope of Order VII Rule 11 of the CPC, has observed that if no cause of action is disclosed in the plaint or if the suit is barred by limitation, the Court would not permit protraction of the proceedings. It would be necessary to put an end to the sham litigation so that further judicial time is not wasted.

19. The Supreme Court in *Raghwendra Sharan Singh Vs. Ram Prasanna Singh* (2020) 16 SCC 601 has further observed that power under Order VII Rule 11 of the CPC can be exercised by the Court at any stage of the suit. If on an entire meaningful reading of the plaint, it is viewed that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the Court should exercise power under Order VII Rule 11 of CPC.

20. In view of the aforesaid position of law, and having perused the plaint as well as the documents filed with the plaint, I am of the firm view that there is no valid cause of action disclosed in the plaint and further, the suit itself is barred by limitation. I am further of the view that the suit in question is completely vexatious. Once the plaintiff has relinquished her share in the suit property in favour of the defendant, she cannot be allowed at a later point of time to undo the same by placing reliance on an unregistered document purported to be a MoU. The pleadings made in the plaint are also inconsistent with the documents filed along with the plaint. Therefore, in my view the suit is manifestly vexatious and meritless. It is a fit case where the Trial Court should have exercised its powers under Order VII Rule 11 of the CPC and rejected the plaint.

21. Unfortunately, the Trial Court has not gone into the aforesaid aspects, but has only proceeded on the grounds of the validity and authenticity of the CFSL report as well as the averments with regard to fraud and misrepresentation. *De hors* such issues, which rightly the counsel for the defendant did not press before this Court, the application under Order VII Rule 11 of the CPC filed by the defendant made specific averments with regard to the MoU being an unregistered document and therefore, such a document could not be led in any evidence in view of the Sections 17 and 49 of the Registration Act, 1908, as well as the averment of the suit being barred by limitation.

22. In view of the above, there is manifest error in the impugned order that requires interference by this Court in exercise of its powers under Article 227 of the Constitution of India.

23. The petition is allowed. The impugned order passed by the Trial Court is set aside and the application filed on behalf of the defendant under Order VII Rule 11 of the CPC is allowed.

DECEMBER 3, 2021

Sakshi R./d. negi

AMIT BANSAL, J.