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

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Judgment delivered on: 09.12.2021

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**FAO 272/2021 & CM APPLS. 44348-49/2021**

PUNEET SHARMA

..... Petitioner

versus

ARCHANA SHARMA & ANR.

.....Respondent

**Advocates who appeared in this case:**

For the Petitioner:

Ms. Rajdipa Behura, Advocate with Mr. Philomon Kani, Mr. Ashray Behura, Ms. Neha Lingwal and Mr. Swayamthosh Rath, Advocates.

For the Respondent:

Ms. Shilpa Chauhan Advocate for respondents

**CORAM:-**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

1. Appellant impugns order dated 07.10.2021, whereby the application of the appellant under Order XXXIX Rules 1 and 2 has been dismissed and no interim injunction granted in favour of the appellant.

2. Respondents No.1 and 2 are the mother and brother, respectively, of the appellant. The case of the appellant is that the subject suit properties were owned by the father of the appellant and

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FAO 272/2021

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respondent No.2, late Sh. Arun Kumar Sharma, who expired intestate on 10.06.2015.

3. It is contended that thereafter on 14.08.2015, a settlement deed/memorandum of family settlement was arrived at between the parties, whereby it was agreed that both appellant and respondent No.2 shall relinquish their shares in the properties in favour of the mother, who would thereafter transfer one property each to appellant and respondent No.2 after payment of the loan taken against the properties. It is contended that some blank documents were got signed by respondent No.2.

4. It is the admitted case of the appellant that on 21.08.2015, registered relinquishment deeds were executed by the appellant and respondent No.2, relinquishing their respective shares in favour of the mother for the properties.

5. It is contended that after the loans on the properties were discharged, respondents changed their mind and started to pressurize the appellant to vacate the property in his possession.

6. Subject suit has been filed by the appellant *inter alia* seeking a declaration that the relinquishment deeds are null and void and seeking enforcement of the settlement deed/memorandum of family settlement dated 14.08.2019 and further seeking partition of the suit properties.

7. By the impugned order, the trial court has noticed that the respondents in their written statement have contended that the relinquishment deeds were executed out of natural love and affection and without any force or pressure. It is also contended that the alleged that settlement deed/memorandum of family settlement dated 14.08.2019 is a forged and fabricated document and signatures of the respondents on the same are forged and fabricated.

8. It is further contended that the relinquishment deeds, which were executed subsequently, do not even refer to the alleged family settlement and as such the settlement deed/memorandum of family settlement dated 14.08.2019 is ex-facie forged and fabricated.

9. It is further the case of the respondents that the mother has initiated proceeding under the Senior Citizens Act seeking eviction of the appellant from the subject property, in which eviction orders have been passed. It is informed that there is a stay from the appellate court against the eviction order.

10. Trial court has further noticed that the admitted case of the parties is that the relinquishment deeds were executed by the appellant. However, at the time of arguments before the Trial Court, learned counsel for the appellant had sought to urge that the relinquishment deeds had been prepared by fraud and forgery.

11. The trial court has held that the relinquishment deeds are

registered documents, which were duly registered before the Sub-Registrar.

12. It may be noted at this stage that the relinquishment deeds even bear the photographs of the parties including the appellant, which photograph was taken at the time of registration of the documents at the Sub-Registrar's office. Prima facie, it can safely be held that the Relinquishment deeds were executed by the appellant.

13. On the other hand, the settlement deed/memorandum of family settlement is an unregistered document and is not even attested by any witnesses.

14. The trial court has rightly held that a legal presumption arises about the validity of the relinquishment deed whereas there is doubt about the validity and execution of the family settlement propounded by the appellant.

15. It may also be further noticed that even though respondents have disputed their signatures on the settlement deed/memorandum of family settlement, appellant has not produced any report from a handwriting expert to *prima facie* establish the genuineness of the signatures of the respondents on the alleged settlement deed/memorandum of family settlement dated 14.08.2019.

16. On a query from the Court, learned counsel for the appellant

states that the original of the settlement deed/memorandum of family settlement dated 14.08.2019 is not in the possession of the appellant as the same was prepared by respondent No.2 and the original is in his power and possession.

17. This is disputed by learned counsel appearing for respondent No.2, who submits that since the document is forged, there is no question of it being in their possession.

18. Be that as it may, a visual comparison of the two documents, *prima facie* shows that the signatures of the mother and brother on the two documents are different. However, it is clarified that this is only a *prima facie* observation and would not be binding on the trial court if any evidence of an expert is produced.

19. In view of the above and in view of the fact that appellant in his Suit has himself admitted the execution of the relinquishment deeds, which are duly registered and there is a doubt about the execution and genuineness of the alleged family settlement, there is no infirmity in the *prima facie* finding returned by the Trial Court holding that appellant has failed to make out a *prima facie* case in his favour.

20. Accordingly, there is no merit in the appeal. The appeal is dismissed.

**DECEMBER 09, 2021/NA**

**SANJEEV SACHDEVA, J.**

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