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

***Date of Decision: 15<sup>th</sup> December, 2021***

+ **RSA 221/2018 & CM APPL. 54576/2018**

MURARI LAL ..... Appellant

Through: Mr. L K Singh, Advocate for LR's of  
deceased Appellant.

versus

SANT RAM & ANR ..... Respondents

Through: Mr. Subhash Chawla & Mr. Jagdish  
Prasad, Advocates for R-1.  
(M:9899779583)

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. The present second appeal arises out of the judgment dated 2<sup>nd</sup> November, 2018 passed by the Ld. ADJ-05, South District, Saket Courts, New Delhi (*hereinafter* "Appellate Court") in **RCA NO.8742/16** titled ***Murari Lal v. Sant Ram & Ors.*** By the impugned judgment, the Appellate Court has dismissed the appeal filed by the Plaintiff/Appellant herein (*hereinafter* "Plaintiff") against the judgment and decree dated 5<sup>th</sup> June, 2003 passed by the Ld. Civil Judge, Saket Courts, Delhi (*hereinafter* "Trial Court") in **CS No.41/99** titled ***Sh. Murari Lal v. Sh. Sant Ram.*** By the said judgment of the Trial Court, the suit for possession filed by the Appellant-Sh. Murari Lal, against his brothers Sh. Sant Ram and Sh. Bijender, in respect of property bearing no. D-I/183, 1<sup>st</sup> Floor, Madangir, New Delhi

(*hereinafter as 'suit property'*) was dismissed by the Trial Court.

3. The background of the case is that the three parties i.e., the Plaintiff, Defendant No.1 and Defendant No.2 are real brothers. The plaint was filed on the basis of the fact that a Settlement Deed had been executed between the parties on 15<sup>th</sup> June, 1997, as per which certain agreements were arrived at between the parties. The case of the Plaintiff is that the said Settlement Deed was not given effect to by the Defendants. As per the said Settlement Deed, the suit property was to vest with the Defendant No.1, subject to Defendant No.1 delivering 4 tolas of gold to the Plaintiff. However, since the said reciprocal promise was not honoured by the Defendant No.1, the property was to be delivered back to the Plaintiff as the original ownership of the said property vested with the Plaintiff. The Settlement Deed dated 15<sup>th</sup> June, 1997, which is in Hindi, is set out below:

मैं मुरारीलाल पुत्र श्री इतवारी लाल निवासी गाँव जोहरा  
थाना छायासी ज़िला फरीदाबाद हरियाणा का निवासी हूँ।  
मैंने व मेरे भाई श्री संतराम पुत्र इतवारीलाल गाँव  
उपरोक्त हर दोनों भाइयों का ज़मीन जायदाद का  
बंटवारा पंचों में इस प्रकार हुआ है कि मैंने अपना  
सैन्ट्रल मार्केट डीआई-183, मदनगीर, नई दिल्ली का  
नीचे से ऊपर तक का सारा मकान व शीतला मार्केट  
वाला खोखा जो पहले से ही संतराम के पास था। अब  
यह हर दोनों उपरोक्त मकान व खोखा आज के बंटवारे  
में मैंने अपने भाई संतराम को दे दिए हैं और बाकी  
मकान नं. सीआई-717-718 व जीआई-25, 48 हर  
चारों प्लॉट व आगे वाला खोखा मुरारीलाल के पास ही  
रहेगें जिनमें से जीआई-25 या जीआई-48 में से कोई  
सा एक मकान मुरारीलाल अपने भाई बिजेंदर सिंह को

देना है। जो भी मुरारीलाल के पास किसी भी प्रकार का कर्ज़ा है। जो भी है वह सब मुरारीलाल को ही अदा करना है। संतराम को किसी भी प्रकार का कर्ज़ा नहीं देना है। संतराम को मकान नं. जीआई-25 जो कि संतराम के नाम पर है। उसकी पॉवर ऑफ़ अटॉर्नी मुरारीलाल के नाम करवानी है। और मुरारीलाल ने यह मकान बिजेंदर सिंह को देना है। इसलिए जीआई-25 की पॉवर ऑफ़ अटॉर्नी बिजेंदर सिंह के नाम करवानी है। मकान नं. सेन्ट्रल मार्किट डीआई-183 मुरारीलाल जी अपने बड़े भाई के नाम पॉवर ऑफ़ अटॉर्नी करवानी है। वह संतराम अपने भाई मुरारीलाल को चार तोले सोना देंगे। और जो गाँव में श्री इतवारी लाल जी के नाम पर जो ज़मीन है वह उससे इनका दोनों भाइयों का कोई सम्बन्ध और न ही कोई लेना-देना है। और जो गाँव की ज़मीन है पिताजी के नाम है उसके चार छोटे भाई हक़दार होंगे। जो केवल जोत(?) की है । आज से पहले दोनों भाइयों का किसी भी प्रकार का कोई लेन-देन होगा वो अपने आप जिम्मेदार होंगे। यह सभी बातें मौजूद आदमी और रिश्तेदारों के सामने हुई हैं। यह सभी काम सात दिन के अन्दर होंगे।

हस्ता./- संतराम  
(अंग्रेजी में)

हस्ता./- मुरारीलाल  
(हिन्दी में)

गवाहों के हस्ताक्षर:-

1. बी.एस. चौधरी
2. जीत राम निवासी जीवन नगर, फरीदाबाद  
हस्ता./- (अपठनीय) दिनांक 15.06.97
3. अँगूठे का निशान (अपठनीय)
4. अँगूठे का निशान (अपठनीय), गाँव---, फरीदाबाद
5. हस्ता./- (अपठनीय), इक्सत पाल सिंह, मधुपुरा

पंचों के नाम  
(अपठनीय)

*(Extracted from the handwritten settlement deed on record)*

4. In the suit before the Trial Court, the Plaintiff sought the following reliefs:

*“It is, therefore, prayed that:*

*a) a decree of possession in respect of property No.D-  
I/183, Madangir, New Delhi;*

*b) any other relief which this Hon’ble Court deem fit  
and proper in the circumstances of the case may also  
be passed in favour of the plaintiff and against the  
defendants with cost of the suit and damages.”*

5. Evidence was led by the parties before the Trial Court. The Trial Court framed the following issues:

*“1. Whether the property bearing no. D 1/183,  
Madangir was acquired from the sale proceeds of a  
plot which was purchased out of the profits of joint  
family business as stated in the W.S.?”*

*2. Whether the mutual settlement between the parties  
on 15-06-1997 had taken place as a result of assault  
made by the children of defendant no. 1 on the wife and  
son of the plaintiff as alleged in para 6 of the plaint?*

*3. Whether the mutual settlement dated 15-6-1997 was cancelled on 15-10-1997 as alleged by the plaintiff.*

*4. Whether defendant no. 1 took possession of the ground floor of H.No.D 1/183, Madangir in collusion with the police as stated in the plaint?*

*5. Whether the suit is bad for misjoinder of defendant no. 2?*

*6. Relief.”*

**Findings of the Trial Court:**

6. **Issue No.1-** Relying upon the Statement dated 7<sup>th</sup> May, 2001 of the Plaintiff recorded under Order X CPC, the Trial Court arrived at the finding that the suit property was acquired from the sale proceeds of the plot situated at Village Lakkarpur which was purchased out of the profits of the joint family business. Thus, the Plaintiff cannot be recognised as the exclusive owner of the suit property. Accordingly, Issue No.1 was decided in favour of Defendant No.1 and against the Plaintiff.

7. **Issue No.2-** Trial Court arrived at the conclusion that a Settlement Deed had been executed between the parties on 15<sup>th</sup> June, 1997. The same was executed out of the free will and consent of the parties without any duress, and not as a result of an assault as alleged. Contradictory statements were made by the Plaintiff in this respect. Accordingly, Issue No.2 was decided in favour of the Defendant No.1 and against the Plaintiff.

8. **Issue No.3-** On this issue, the Trial Court considered as to whether the mutual settlement dated 15<sup>th</sup> June, 1997 was cancelled on 15<sup>th</sup> October, 1997 as alleged by the Plaintiff, or not. The Trial Court arrived at the conclusion that it has not been cancelled. In fact, the said Settlement Deed has been acted upon by the parties concerned. Accordingly, this issue was decided in

favour of Defendant No.1 and against the Plaintiff.

9. **Issue No.4**- On this issue as to whether the possession of the ground floor of the suit property was taken by Defendant No.1 in collusion with the police as stated in the Plaint, the Trial Court has held that the depositions falsified the stand of the Plaintiff. Accordingly, this issue was decided in favour of Defendant No.1 and against the Plaintiff.

10. **Issue No.5**- This issue, as to mis-joinder of Defendant No.2, has been rejected by the Trial Court. The Trial Court held that the suit cannot be said to be bad for misjoinder of Defendant No.2. Accordingly, this issue was decided in favour of Plaintiff and against the Defendants.

11. In light of the foregoing findings, the relief of possession as prayed for by the Plaintiff has been rejected by the Trial Court. Accordingly, the suit has been dismissed.

**Findings of the First Appellate Court:**

12. **Issue No.1**- The finding of the Trial Court in respect of Issue No.1 was upheld by the Appellate Court after dealing with the objections raised by the Plaintiff. The Appellate Court arrived at the conclusion that the circumstances of this case clearly reflected that the suit property was purchased from the sale proceeds received by the sale of the plot at Village Lakkarpur. The finding of the Appellate Court is set out below:

*“19. The circumstances rather reflect in favour of respondent no. 1 who says that the suit property was purchased from the consideration amount received by selling the plot at Lakkarpur. His stand appears to be more probable because the suit property was purchased in the same year in which plot at Lakkarpur was sold.*

*20. Respondent no. 1 has also stated that the*

*consideration amount of the plot was kept by the appellant and there is no averment by respondent no. 1 that the consideration amount was divided. Hence, the objection of appellant that fact of division of consideration amount by parties before selling the suit property was not considered by Ld. Trial Court is without merits.”*

13. **Issue No.2-** The Appellate Court has concurred with the Trial Court and clearly held that the Plaintiff had not given any reasons as to why he did not approach the Court for annulment of the Settlement Deed, if the same was executed under coercion or duress. In view of the contradictions in the Plaintiff's case, the Court held that the credibility of the Plaintiff was in doubt. Hence, the Settlement Deed dated 15<sup>th</sup> June, 1997 was held to be executed by the parties, out of their own free will and consent.

14. **Issue No.3-** The Appellate Court examined the objections raised by the Plaintiff in respect of the cancellation of the Settlement Deed, and held that the case of the Plaintiff is, in fact, preposterous to the effect that the document dated 15<sup>th</sup> June, 1997 cannot be disbelieved. As per the Settlement Deed, the suit property was to vest with the Defendant No.1 for which some gold was to be given by Defendant No.1 to the Plaintiff. The Appellate Court has further observed in the impugned judgment that there was a secret settlement entered into between the Plaintiff and the Defendant No.2, vide which it was agreed that the property bearing No.G-I/25, which was earlier supposed to be given to the Defendant No.2 by the Plaintiff, would be retained by the Plaintiff. There is no denial of the Plaintiff on this aspect either in the pleadings or during the trial. Thus, the Appellate Court came to the conclusion that the settlement was never cancelled and the said issue is also decided against the Appellant.

15. **Issue No.4-** On this issue, the Appellate Court held that the findings of the Trial Court are neither perverse nor faulty. The contradictory statements of the Plaintiff were found to be unworthy of credit. It was held that the Defendant No.1 has always been in possession of the suit property. Accordingly, the Appellate Court arrived at the conclusion that the Trial Court has rightly decided this issue in favour of the Defendant No.1 and against the Plaintiff.

16. **Issue No.5-** On this issue, as to mis-joinder of Defendant No.2, the finding of the Trial Court has been upheld by the Appellate Court.

17. The Trial Court and the Appellate Court have arrived at concurrent findings. Vide the impugned judgment dated 2<sup>nd</sup> November, 2018, the Appellate Court has dismissed the first appeal against the Trial Court's judgment dated 5<sup>th</sup> June, 2003.

**Proceedings in the Present Second Appeal:**

18. Mr. L. K. Singh, Id. Counsel appearing for the Plaintiff, submits that the Plaintiff does not deny that the execution of the Settlement Deed dated 15<sup>th</sup> June, 1997. He submits that the said Settlement requires registration. According to him, the four *tolas* of gold was also not given by the Defendant No.1 to the Plaintiff in terms of the Settlement Deed. In support of this submission, he relies upon the cross-examination of DW-1, Sh. Sant Ram, who appeared before the Trial Court, wherein he states that it is not clear as to whose presence the gold was given. He, further, submits that Defendant No.1 does not have any title document in respect of the suit property. If the Settlement Deed had been finalised, the Defendant No.1 ought to have sought specific performance of the said Settlement Deed. He submits that the title in the suit property cannot be claimed on the basis of the family

settlement. Thus, the Defendant No.1 not having availed of his remedy in law, for finalising his title in the suit property, it clearly shows that the family settlement was not acted upon by the Defendant No.1.

19. On the other hand, Mr. Subhash Chawla, Id. Counsel appearing for the Defendant No.1, who is the contesting Defendant, submits that the entire Settlement Deed dated 15<sup>th</sup> June, 1997 had been acted upon by the parties. He relies upon the Statement under Order X CPC made by the Plaintiff, wherein he stated as under:

*“I have got the title deeds of H.No. D1/183, C1/717, C1/718, Madangir I have sold properties bearing No.G1/48 and G1/25 to a neighbourer whose name I do Not remember. I sold the said properties in the year 1998 for a consideration of about R.2 lac. I had told my counsel at the time of filing the suit that my signature had been forcibly obtained on 15.6.97 by Ram Prashad on a paper.”*

20. Mr. Chawla, Id. Counsel, further, relies upon the cross-examination of DW-1- Sh. Sant Ram, to argue that the gold in terms of the family settlement was handed over to the Plaintiff. In the said cross-examination, DW-1 states that the DW1 had delivered the gold in terms of the Settlement Deed on the evening of 15<sup>th</sup> June, 1997. He further submits that, in any case, there is an independent corroborative witness being DW-3, Sh. Iksat Pal Singh, who stated that the four *tolas* of gold that was to be given by Defendant No.1- Sh. Sant Ram, was given by him at the time of the settlement. Finally, he relies upon paragraph 32 of the impugned judgment dated 2<sup>nd</sup> November, 2018 to submit that the secret settlement entered into between the Plaintiff and Defendant No.2 itself shows that the Settlement Deed was acted upon between the parties.

21. The question as to whether the Settlement Deed dated 15<sup>th</sup> June, 1997 requires registration or not is no longer *res integra*. If an understanding has been arrived at between the parties previously, and it is only written down in a document after the settlement has been arrived at, the same would not require registration. This is the settled position of law as is clear from ***Kale & Ors. v. Deputy Director of Consolidation & Ors.* [3 (1976) 3 SCC 119]**. Taking into account the decision in ***Kale (supra)***, the Supreme Court in a subsequent judgment in ***Sita Ram Bhama v. Ramvatar Bhama* [AIR 2018 SC 3057]** has settled this position of law by holding as under:

*10. The only question which needs to be considered in the present case is as to whether document dated 09.09.1994 could have been accepted by the trial court in evidence or trial court has rightly held the said document inadmissible. The Plaintiff claimed the document dated 09.09.1994 as memorandum of family settlement. Plaintiff's case is that earlier partition took place in the life time of the father of the parties on 25.10.1992 which was recorded as memorandum of family settlement on 09.09.1994. There are more than one reasons due to which we are of the view that the document dated 09.09.1994 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 father could have made Will in favour of his two sons, Plaintiff and Defendant. Neither the Plaintiff nor 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 10.09.1993. After his death Plaintiff, Defendant and their mother as well as sisters become the legal heirs under Hindu Succession*

*Act, 1955 inheriting the property being a class I heir. The document dated 09.09.1994 divided the entire property between Plaintiff and 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, courts below are right in their conclusion that there being relinquishment, the document dated 09.09.1994 was compulsorily registrable Under Section 17 of the Registration Act.*

*11. Pertaining to family settlement, a memorandum of family settlement and its necessity of registration, the law has been settled by this Court. It is sufficient to refer to the judgment of this Court in **Kale and Ors. v. Deputy Director of Consolidation and Ors. MANU/SC/0529/1976 : (1976) 3 SCC 119.** The propositions with regard to family settlement, its registration were laid down by this Court in paragraphs 10 and 11:*

*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 be even 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.

**11.** The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of this Court as also those of the Privy Council and other High Courts, which we shall discuss

*presently.*

*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 09.09.1994 was compulsorily registrable. The document also being not stamped could not have been accepted in evidence and order of trial court allowing the application Under Order XII Rule 3 Code of Civil Procedure and the reasons given by the trial court in allowing the application of the Defendant holding the document as inadmissible cannot be faulted.*

22. In the present case, a perusal of the Statement given by the Plaintiff under Order X CPC itself shows that there was a plot in Village Lakkarpur which was sold, and thereafter, the suit property was purchased. The factum of sale and the ownership of the Lakkarpur property by the joint family, is not disputed by the Plaintiff in the said statement. Thus, this is not a settlement *in presenti* but a mutual understanding which has been previously arrived at between the parties who are brothers, which has thereafter, it has been given effect to by way of the Settlement Deed dated 15<sup>th</sup> June, 1997.

23. Secondly, insofar as property bearing No.G-I/25, Madangir is concerned, as per the Settlement Deed, the title in respect of the same was with the Defendant No.1, and the rights over the said property have been given up by the Defendant No.1, subsequent to the execution of the power of attorney in favour of the Plaintiff. Any settlement which the Plaintiff may have entered into with Defendant No.2 is not the concern of this Court. So long as the Defendant No.1 has given up the rights to property bearing No. G- I/25, Madangir, he has in effect accepted the family settlement.

24. Insofar as the gold is concerned, four *tolas* of gold was to be given by Defendant No.1 to the Plaintiff in order for the suit property to vest with the

Defendant No.1. Evidence on this aspect, as per DW-1, indicates that the said gold was given as is under:

*“I had delivered the gold in terms of the deed of settlement Ex. PW 1/D on the evening of the date the settlement was arrived at. In regard to the said delivery of the gold I had not taken any receipt from the plaintiff. Volt. The gold was delivered in the presence or my father Sh. Itwari, Sh. Jeet Ram, plaintiff and the plaintiff’s wife. It is wrong to suggest that no such delivery was made. Again witness has deposed that the delivery was made in the presence of my wife my son and other persons.”*

25. From the above evidence of DW-1 who is Defendant No.1, it is clear that the Defendant No.1, states that he gave the gold to the Plaintiff, initially, in the presence of the father. However, later on, he stated that he has delivered the gold in the presence of his wife, his son and other relatives. Evidence of DW-3, who is an independent witness, has also been perused. He has deposed to the effect that gold has been given on the date of the settlement itself i.e., 15<sup>th</sup> June 1997. The said evidence reads:

*“DW-3-Sh. Iksat Pal Singh S/o Sh. Harchand Singh R/o H. no. 1090, Block-D, Gali No.- 16, Khajoori, Delhi-94 on SA*

*I know the parties as my bhanji is married in the house of omparkash, whose is son of deft. No. 1 was present at the time of family partition between the parties. At the time of said partition apart from me father of the parties and one Mausaji of party, whose name I do not know were also present, sh. Jagmal Singh was also present at the settlement. The partition had taken place in our presence. In the partition prop. No. D-I/183 Madangir and one khoka were given to Sant Ram Deft. NO. 1 one plot whose no. I do not know was given to Bijender Singh deft. No. 2 the remaining prop. Were*

*given to pltff. As per agreement sh. Sant Ram was to give four tola Gold to the pltff. Which sh. Sant Ram had given at the same time. Ex.Pw1/D2 was prepared at the Time of partition. All the persons who have on Ex.Pw1/D2 had signed in my presence.”*

In any event, the question as to whether the gold was in fact paid or not is a factual issue on which there are concurrent findings by the Trial Court and the Appellate Court.

26. On the question as to whether the family settlement dated 15<sup>th</sup> June 1997 was acted upon or not, the evidence adduced before the Trial Court and the Appellate Court, as also the findings rendered, are sufficient to hold that the family settlement was, indeed, acted upon by the parties. The Defendant No.1 having given upon his rights *qua* G-I/25, Madangir cannot be made to give up rights in respect of the suit property in question.

27. The issue raised in respect of the family settlement requiring registration is not tenable inasmuch as the same does not require registration in terms of the settled position of law, as upheld by **Kale & Ors. (supra)** as also **Sita Ram Bhama (supra)**. Accordingly, this Court is of the opinion that no substantial questions of law arise in the present second appeal.

28. The present second appeal, along with all pending applications, dismissed.

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

**DECEMBER 15, 2021**

*dj/ad*

*(corrected & released on 18<sup>th</sup> December, 2021)*