



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 21st March, 2022
Pronounced on: 03rd June, 2022

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RFA(OS) 5/2022

CM APPL. 12413/2022 (Stay)
CM APPL. 12414/2022 (Addl. evidence)
CM APPL. 12415/2022 (Exemption)
CM APPL. 12416/2022(Summoning of the complete Trial Court record)

DR SURAJ MUNJAL

Son of Dr. Ramesh Chander Munjal,
Resident of 702A, LCG/Court Greens
The Laburnum, Sushant Lok-I,
Block-A, Sector-29,
Gurugram, Haryana.

..... Appellant

Represented by: Mr. Ankit Jain, Mr. Sumit
Tomar & Mr. Nishant Datta,
Advocates.

versus

1. Chandan Munjal,
Son of Dr. Ramesh Chander Munjal,
E-161, Richmond Park,
DLF Phase IV,
Gurugram, Haryana.

2. Dr. Ramesh Chander Munjal,
Son of Late Shri Munshi Ram Munjal,
Resident of Munjal Hospital,
Arya Samaj Road, Sirsa,
Haryana 125055



3. Dr. (Mrs.) Chand Munjal,
Wife of Dr. Ramesh Chander Munjal,
Resident of Munjal Hospital,
Arya Samaj Road, Sirsa,
Haryana 125055

4. Mrs. Neha Munjal,
Wife of Chandan Munjal,
E-161, Richmond Park,
DLF Phase-IV,
Gurugram, Haryana

5. Dr. Ashita Munjal
(Performa Defendant),
Wife of Dr. Suraj Munjal,
Resident of 702A, LCG, Court Greens
The Laburnum, Sushant Lok-I,
Block-A, Sector-29,
Gurugram, Haryana.

6. M/s R.C. Healthcare (P) Ltd.
(Performa Defendant),
having its registered office at
E-82A, Basement, Greater Kailash-I,
New Delhi - 110 048.

....Respondents

Represented by: Mr. J.P. Sengh, Sr. Advocate
with Mr. Sandeep Bajaj & Ms.
Aakanksha Nehra, Advocates
for R-1.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



J U D G E M E N T

NEENA BANSAL KRISHNA, J.

CM APPL. 12414/2022 (Addl. evidence)

1. Application under Order XL Rule 27 read with Section 151 Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC, 1908'*) filed on behalf of the appellant/plaintiff for leading additional evidence. It is submitted in the application that the plaintiff had filed a suit for partition, declaration, mesne profits, mandatory & permanent injunction against the respondents in respect of the properties mentioned in the suit. The appellant in his petition had taken a plea that he had paid 80.55% of the sale consideration and is entitled to a share to the said extent in the suit property. Moreover, there was an oral agreement by virtue of which respondent No.1 had agreed to execute a Relinquishment Deed in his favour making him an absolute owner of the suit property.

2. To support his assertions that he had paid approximately 80.55% the appellant wants to place the following documents on record:

(i) Loan Account Statement which reflects that on 9.7.2010 appellant and respondents No.1, 4 and 5 took a loan against property No.B-121, 12th Floor, DLF City, Regency Park, Phase-IV, Gurgaon for ₹43,15,807/-.

3. On 05th May, 2015, out of the sale of joint property in Regency Park, Gurgaon, a sum of Rs.1,15,00,000/- was received in equal amount of Rs.57,50,000/- by appellant and respondent No.2. While respondent No.1 deposited his share in a personal bank account, the appellant out of this amount had deposited ₹46,00,000/- in joint bank account from which partial



payments have been made towards sale consideration for the basement property and had deposited only ₹10,00,000/- in his personal account.

4. It is further stated that EMIs for the aforesaid loan were paid from the joint account of appellant and respondent No.1 which account received credited balance only from rental income in the name of appellant and on 07.04.2015 payment of ₹13,36,264/- was made from the personal bank account of the appellant to the joint account.

(i) Copy of the passbook of personal bank account of appellant in Canara Bank which shows that ₹13,36,264/- was transferred from this account on 8.4.2015 towards the repayment of loan.

(ii) Joint Bank Account Statement of Oriental Bank of Commerce in which appellant and respondent No.1 have a joint account. The payments towards EMIs of the loan taken by respondent No.1 were made from this account. It is again claimed that most of the amounts were credited in this account from the appellant's share in rental income received from the joint properties. Further, on 17.08.2010 an amount of ₹40,00,000/- was transferred to Jaypee & Co. (Father in law of respondent No.1) and on 15.09.2011 an amount of ₹50,00,000/- was credited from Jaypee & Co. in the joint account which was also used for repayment of the aforesaid loan. On 17th September, 2011, a payment of ₹48,00,000/- was made through this joint account towards part sale consideration.

(iii) The Sale Deed of property bearing No.B-121, 12th Floor, DLF City, Regency Park Phase-IV, Gurgaon.



(iv) Account Statement of Dr. Suraj Munjal for the month of October, 2011 to show that ₹48,49,000/- were paid by Dr. Suraj Munjal on 08.10.2011 towards sale consideration of the suit property.

5. It is submitted that these documents are relevant and need to be proved in a trial to corroborate the assertions of the appellant in regard to his share in the property to be 80.55%.

6. The appellant intended to place these documents on record merely to show that the amounts being credited in the joint account were largely by the appellant from the rental income or from the sale of property or other sources which amounted to 80.55%, while the amount being deposited by respondent No.1 was only to the extent of 19.45%. The assertions made by the appellant in regard to his contribution made in the joint account or the EMI's having been paid by him from his resources as reflected in the documents which is sought to be proved through these documents, even if accepted in toto, do not create any right beyond what has been defined in the sale deed. The documents sought to be relied upon, for the reasons, as discussed in detail, as under, would not be of any help or assistance to the appellant.

7. The application is accordingly dismissed.

RFA(OS) 5/2022

1. The appeal under Section 96 read with order XLIII Rule 1 of CPC, 1908 read with Section 10 of the Delhi High Court Act, 1966 has been filed by the plaintiff/appellant against the judgment dated 01st February, 2022, whereby a preliminary decree of partition determining the respective shares of the parties in the joint properties, has been made under Order XII Rule 6 of the CPC.



2. The facts stated in brief are that a Suit for Partition, Declaration, Mesne Profits, Mandatory & Permanent Injunction was filed by the plaintiff/appellant- Dr. Suraj Munjal, against his brother respondent no.1 Dr. Chandan Munjal; father/respondent no. 2 Dr. Ramesh Chander Munjal; mother/respondent no.3 Dr. (Mrs.) Chand Munjal; sister-in-law/Mrs. Neha Munjal- respondent no.4; his wife/ Dr. Ashita Munjal- respondent no.5(proforma respondent) and respondent no.6- M/s R.C. Healthcare (P) Ltd. On completion of pleadings, an application under Order XII Rule 6 CPC was filed by Chandan Munjal- respondent no.1, seeking preliminary decree of partition declaring the shares of the parties in respect of four properties, in the light of admitted facts.

3. The appellant had stated in the plaint that the parties were co-owners in respect of the properties as detailed below:

S.No.	Particulars of the Property	Share of Plaintiff	Share of Defendant no. 1
1.	Property bearing NO. 620 Phase V in Udyog Vihar Gurgaon (“Property No. 4A”) (<i>hereinafter Udyog Vihar</i>)	25%	75%
2.	Flat A-22, Second Floor, Spazedge (The Mall), Sohna Road (“Property No. 4C”) (<i>hereinafter Spazedge</i>)	25%	75%
3.	9 acres of land in village Bhambur, Rania Road, Sirsa, Haryana(“property No. 4C”) (<i>hereinafter Sirsa</i>)	3 acres	6 acres
4.	Basement of E-82A, Greater Kailash Part-I, New Delhi- 110016(“Property No. 4D”)	50%	50%



4. The appellant in his original plaint had claimed partition of certain properties pertaining to HUF in addition to joint properties which were thereafter excluded from the amended plaint though his right to claim his share in respect of HUF properties was reserved to be agitated in separate suit.

5. The appellant had claimed in his amended plaint that the properties at Udyog Vihar, Spazedge and the land at Sirsa were in the joint name of plaintiff and defendant no. 1 to defendant no. 3. The property in GK-I (hereinafter as '*suit property*') was in the joint name of appellant and respondent no.1 but it was asserted by the appellant that the sale consideration in respect of this property was paid in the ratio of 80.55 per cent by the appellant and 19.45 per cent by the respondent no.1. It was further claimed by the appellant that a partial oral settlement took place between the parties in respect of suit property, in terms of which the suit property came to the share of the appellant.

6. The respondent no. 1 in his application under Order XII Rule 6 of CPC contended that there was no dispute regarding the properties at Udyog Vihar and Spazedge as the appellant had admitted his share to be 25% each in the two properties. The respondent nos. 2 and 3 jointly transferred their respective shares in these two properties vide registered Transfer Deed in favour of respondent no. 1, making him the owner of 75% of the share in the two properties respectively. The appellant also admitted his share to be only 3 acres out of 9 acres in respect of the property at Sirsa. It is not in dispute that the remaining 6 acres was in the name of respondent no. 3 who has transferred his share in the property in favour of respondent no. 1 vide



registered Transfer Deed. The suit property was in the joint name of appellant and respondent no.1 as per the sale deed.

7. A preliminary decree of partition for declaring the respective shares of the parties in respect of the aforementioned four properties was sought on the basis of admissions, under Order XII Rule VI of the CPC by Respondent No.1.

8. The learned Single Judge considered the admissions made in the pleadings and, determined the share of the plaintiff/appellant respondent no. 1 as 25% and 75 % respectively in each of the two properties at Udyog Vihar and Spazedge. The share of the appellant in respect of land in Sirsa was declared as 3 acres while that of respondent no. 1 as 6 acres. The shares of plaintiff/appellant and respondent no. 1 in the suit property was declared as 50% each on the basis of sale deed which was in the joint name of appellant and respondent no.1.

9. Aggrieved by the said judgment, the present appeal has been preferred by the appellant.

10. Arguments were addressed before this Court by both the sides. During the course of arguments, the appellant fairly conceded that there was no dispute or challenge to the declaration of the shares in the property at Udyog Vihar, Gurgaon and flat in Spazedge, Sohna Road, Haryana.

11. There is also no challenge to the declaration/ determination of share of the appellant and respondent no. 1 in the land at Sirsa being in the ratio of 3 acres and 6 acres respectively. The only grievance of the appellant was that while determining the shares of appellant and respondent no. 1 in village Bhambhur, Sirsa, the Learned Single Judge has failed to determine the disputed question of fact as to whether the land which comprised of two



already divided separate portions of 3 acres and 6 acres land, stood apportioned as was claimed by the respondents in their amended written statement or whether it was an undivided parcel of land which was still to be demarcated. The Id. Single Judge while correctly determining the appellant's share, has committed an error in not determining whether the property already stands divided into two portions.

12. This submission of the appellant does not hold any merit since at the stage of preliminary decree, only the shares of the claimants to be ascertained. The mode and manner in which physical partition is to be affected, is required to be considered at the stage of final decree of partition. The aspect of physical partition shall be considered at the stage of Final decree.

13. In the present appeal, the challenge essentially is to the declaration of share of the appellant as 50% in respect of the suit property. Two contentions have been raised by the appellant. The **first contention** is that he had contributed 80.55% towards sale consideration and since the Sale Deed was silent about the share of the two joint holders, the appellant in terms of Section 45 of the Transfer of Property Act, 1882, (hereinafter referred to as the TPA) is entitled to a share to the extent of the payment made by him, that is, 80.55%. The **second contention** is that in terms of the oral family settlement, the suit property had come absolutely to the share of the appellant along with the entire shareholding in Respondent no. 6/Company.

14. The appellant has asserted that his claim of being 80 % owner of the suit property, and his plea of oral settlement was required to be proved by way of evidence during trial and could not have been determined summarily



as there are no admissions in this regard. The impugned judgment on admissions on this count is therefore, contrary to settled law and also has overlooked the facts of this case.

15. The appellant has also filed an application under **Order XLI Rule 27 of CPC** to bring on record additional documents and his bank account statements, in support of his assertions.

“A. Determination Of Shares In Suit Property in Accordance with the Proportion of Sale Consideration in Terms of S.45 of Transfer of Property Act, 1882.”

16. The first contention raised by the appellant is that he had contributed about 80% of the sale consideration and therefore he is entitled to 80% of the share in the suit property and not 50% as has been declared by the impugned judgment.

17. The appellant in paragraph 4 (d) of amended plaint dated 27th May, 2020, has explained that the suit property which is built on a land measuring 632 Sq. Yards, was purchased vide Sale Deed dated 12th October, 2011 in the joint name of appellant and respondent no.1. The total consideration as per Sale Deed was ₹1,02,00,000/-. A sum of ₹70,99,600/- was raised through loan from the joint account in OBC, Overseas Branch, Udyog Vihar, Phase-V, Gurugram which was sanctioned on 5th October, 2011. An amount of ₹4,00,000/- was sanctioned for the purpose of renovation. The total loan taken was ₹75,00,000/-. Another top up loan of ₹35,00,000/- was taken on 6th May, 2013 in this account. The appellant liquidated the loan in May, 2015. It is claimed by the appellant that out of the loan amount of ₹1,44,45,574/-, he contributed a sum of ₹1,24,61,474/- that is 80.55 % share therein, while the contribution of respondent no. 1 (from his account and



from the account of his wife) was only ₹19,84,100/- i.e. 19.45 % which too, was withdrawn from the Company account in part adjustment. It is thus claimed that even though the Sale Deed is silent about the extent of shares of appellant and respondent no. 1 respectively, but considering the contribution of the sale consideration by appellant and respondent no.1, their respective shares must be held to be in ratio of 80 % of the plaintiff and 20 % of the respondent no.1 in view of the Section 45 of the TPA.

18. In this context it would be significant to observe that while the assertions in the plaint were vague but some semblance of the claim of the appellant can be gathered from the averments made in the application under Order XL Rule 27 of CPC wherein it was claimed that EMIs for the aforesaid loan were paid from the joint account of appellant and respondent No.1 which account received amounts only from rental income in the name of appellant and on 07.04.2015 payment of ₹13,36,264/- was made from the personal bank account of the appellant to the joint account. Further, on 17.08.2010 an amount of ₹40,00,000/- was transferred to Jaypee & Co. (Father in law of respondent No.1) and on 15.09.2011 an amount of ₹50,00,000/- was credited from Jaypee & Co. in the joint account which was also used for repayment of the aforesaid loan. On 17.9.2011 a payment of ₹48,00,000/- was made through this joint account towards part sale consideration.

19. The basic premise of the appellant to claim a share to the extent of 80% is without any foundation. Admittedly, a loan was taken in the name of appellant and respondent no. 1 which got credited to their joint account for the purchase of the suit property and the payment of the sale consideration



was also made from that joint account. The Sale Deed also records the appellant and respondent no.1 as joint owners thereby implying that they have equal share in this property.

20. The appellant has tried to confound the entire facts by mixing the payment of sale consideration with the contribution of the money being put by either party in the joint account from which the EMI repayment of loan was made. However, the source of money or the proportion of money contributed by either joint holder of the account cannot be determinative of their respective shares in the suit property.

21. The appellant has tried to seek support for his claim from Section 45 of TPA which reads as under:

“S.45 Joint transfer for consideration- where immoveable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.”

22. Section 45 of TPA provides that contributions towards *consideration* made from joint funds may be ascertained in the ratio in which the two



persons have their interest in the fund. In the absence of any evidence of their respective shares, it shall be presumed to be equal interest.

23. There is no averment made by the appellant that the interests of appellant and respondent no. 1 in the joint account were in the ratio of 80% and 20%. Rather there is a categorical assertion that joint loan in the sum of ₹1,44,45,574 had been taken jointly from OBC, Oversees Branch, Udyog Vihar, Phase-V, Gurugram in the joint account of the appellant and respondent no. 1 for the payment of Sale consideration towards the purchase of suit property. This is also supported by the statement of the joint account of the OBC, placed on record by the appellant along with his application under Order XLI Rule 27 of CPC. The interest of the appellant and respondent no.1 in the bank account from which sale consideration was paid, was equal. There is neither any averment nor any document to establish that the appellant and respondent no. 1 had respective share in the ratio of 80% and 20% in the account from which the sale consideration was paid. The sale consideration has therefore, been paid from the joint account in which admittedly the joint loan amount was credited by the appellant and respondent no.1.

24. Section 45 of TPA is not attracted to the given situation and would not come to the rescue of the appellant even if all his assertions are admitted. Section 45 refers to payment of sale consideration either individually or jointly and *not to the repayment of loan*. The Parties may repay the loan in any manner or in any ratio as per their mutual agreement, but that is absolutely irrelevant for the purpose of Section 45 of the TPA. The appellant has tried to raise his edifice of entitlement on a foundation that does not



exist. The remedy, if any, is not under Section 45 as has been sought by the appellant.

25. The learned Single Judge has rightly mentioned that in the entire Sale Deed dated 12th October, 2011 there is no mention whatsoever of the property having been acquired by the appellant and respondent no. 1 in the ratio of 80% and 20%. When the shares are not specified, it necessarily implies that they are joint owners in equal share.

26. It would also be pertinent to mention that the appellant in his plaint had alleged that an oral agreement was entered into between him and respondent No.1 whereby it was agreed that respondent No.1 shall execute a relinquishment deed in respect of *his half undivided share* in the suit property. This again re-enforces that intent of the parties at the time of execution of the sale deed in the year 2011, was that each shall have 50% share in the property and was so accepted always and even till the filing of the suit in 2017. Therefore, the claim of the appellant of being entitled to 80% share is nothing but an afterthought, as has been rightly observed by the learned Single Judge.

27. Moreover, Sections 91 and 92 of Indian Evidence Act, 1872 clearly bars any oral evidence in regard to covenants of a written document.

28. Relevant part of Section 92 of the Evidence Act, 1872 reads as under:

“92. Exclusion of evidence or oral agreement. - When the terms of any such contract, grant or other disposition of 17 property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of



contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.”

29. Section 92 of the Evidence Act, 1872 provides that a document is executed as required by law its contents cannot be varied or modified by any oral evidence. The appellant could have sought invalidation of its contents in terms of the proviso, by proving fraud in execution of the sale deed. However, the appellant has not alleged any fraud in the suit by him. The appellant is bound by the written document/Sale Deed which he has admitted to have been executed by him and respondent No.1. Section 92 in clear terms, prohibits any oral evidence to vary or dispute the terms of the sale deed dated 12th October, 2011.

30. Hon’ble Supreme Court of India in its decision in Placido Francisco Pinto (D) By Lrs & Anr. v. Jose Francisco Pinto & Anr. Civil Appeal No. 1491 Of 2007 decided on September 30, 2021 observed that it is beyond dispute that a sale deed is required to be registered i.e. a document required by law to be reduced to the form of a document. Therefore, no evidence of any oral agreement or statement shall be admitted for the purpose of contradicting, varying, adding or subtracting from its terms.

31. The aspect of explaining and varying the terms subsequently also needs to be considered in the light of Limitation Act, 1963. The Apex Court in its three-Judge decision reported as Ramti Devi (Smt.) v. Union of India, 1995 (1) SCC 198, held that until the document is avoided or cancelled by



proper declaration, the duly registered document remains valid and binds the parties. So the suit necessarily challenging a document has to be laid within three years from the date when the cause of action had occurred.

32. Similarly, in the decision of Lata Chauhan vs. L. S. Bisht & Ors. (2010) SC OnLine Del 2291 it was held by this court that Articles 58 and 59 of Limitation Act, 1963 prescribe the period of limitation in regard to Declaration in respect of a registered document, as three years from the date when the cause of action arises.

33. The Sale Deed was admittedly executed on 12th October, 2011 mentioning the appellant and respondent No. 1 as the joint owners of the property. If the appellant was aggrieved or was claiming his share to be 80%, the sale deed or its contents could have been challenged within a period of 3 years from 12th October, 2011 and since it was not so done, any challenge now has become time barred and the Deed and its contents have to be read as such. The assertions made by the appellant to prove his share to be to the extent of 80 per cent also stands barred by the limitation.

34. Further, the Limitation Act, 1963 as a general principle, does not extinguish the right itself but merely bars the recourse to the courts for redressal, on the expiry of period of limitation. However, the only exception is contained in **Section 27 of the Limitation Act, 1963** which once it comes into play, extinguishes the right to property by operation of the Limitation Act.1963. Since the Sale Deed has become beyond challenge because of limitation, any claim of the appellant to enhanced share in the suit property stands extinguished and no amount of evidence can revive it.

35. It is trite law that no amount of evidence or argument in the absence of pleadings can be gone into by the Court. In the decision of Trojan & Co.



Ltd. V. Rm. N. N.Nagappa Chettiar, AIR 1953 SC 235, the Supreme Court referred to the Privy Council decision in Mahant Govind Rao v. Sita Ram Kesho and Ors., (1898) 25 IA 195 (PC) and held that decisions cannot be founded on grounds outside the pleadings and what has to be considered or granted is the case pleaded. It was also held that without amendment of the pleading in light of facts disclosed or discovered subsequently, the Court would not be entitled to modify or alter the relief claimed. These rulings were followed in Ram Kumar Barnwal v. Ram Lakhan (dead), 2007 (5) SCC 660.

36. Thus, in the absence of any challenge to the registered Sale Deed conferring equal rights to him and respondent no.1, the appellant's claim is now beyond challenge. The averments of the appellant that 80% of the refund of the loan was made by him, would not entitle him to claim the right in the property in the same proportion and his claim is totally untenable.

B. Oral Settlement:

37. The other Limb of the argument of the appellant is that the parties had entered into an oral settlement in respect of the properties including the suit property. The relevant paragraph 6 of the amended plaint reads as under:

“6. That as regard the shareholding in the Defendant No 6 Company and the joint properties, the same was matter between the Plaintiff and the Defendant No. 1, both in fact stood settled long ago but made effective w.e.f. January, 2017 when the Plaintiff and the Defendant No. 1 in the presence and concurrence of the Defendant Nos. 2, 3, 4 & 5 agreed as follows:-

a) That the Defendant No. 1 to execute the relinquishment deed in favour of the plaintiff in respect of his half undivided share in the basement premises of the larger property no. E-



82A, Greater Kailash-I, New Delhi in terms of the sale deed dated 12.10.2011;

b) That the plaintiff shall forego all his claims that arose due to withdrawal from above joint A/ c No. 09872151000168, OBC Bank, Overseas Branch and consequently formally undertake to withdraw all his claims over the present residence of the Defendant No, 1, as co-owner having $\frac{1}{2}$ (half) undivided share.

c) Acting upon that settlement and pending formalization of documents, the defendant number-one made a request to the plaintiff for raising some personal finances for his individual benefit and requested the same to be done by mortgaging the title deed dated 11.10.2011 for the basement premises. The plaintiff out of good-faith and with a view to secure above interest, gave personal guarantee as well.

d) **The Plaintiff to remain in exclusive control of the Defendant No, 6 Company, the Defendant Nos. 1 to 5 have given an unconditional authority to run the affairs in a manner convenient to the Plaintiff as if the Defendant No.6 has been a proprietorship firm, the Defendant Nos. 1 to 5 have agreed to transfers of their shareholding without any further consideration or claim on business of any kind in the name so decided by the Plaintiff alone and similarly the Defendant No. 1 to remain a sleeping director pending formalization of the documentation** which was to after the decision about another joint interest which are mentioned herein as the HUF properties and the claims out of the Business off the rental income from Sirsa properties as well as revenue in the Munjal hospital.”



38. Before embarking on the facts, it would be pertinent to first understand the scope and concept of the oral family agreement.

39. The family settlement or arrangements between the members of a family have been recognized as a mechanism to settle their differences and disputes, conflicted claims or disputed titles once for all in order to bring peace, complete harmony and goodwill in the family.

40. The Supreme Court in Kale and Others Vs. Deputy Director of Consolidation and Ors. (1976) 3 SCC 119 observed that the object of such an arrangement is to protect the family from long drawn litigation and perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between various members of the family. However, the *bonafide* and propriety of a family arrangement has to be judged by the circumstances prevailing at the time when such settlement was made. The onus of proving the family settlement lies solely on the person claiming that a family Agreement existed.

41. This Court in Prem Prakash vs. Champa Devi (2012) SCC OnLine 3899 relied on Section 9 of the Transfer of Property Act which provides that transfer of property may be made without writing in every case when not expressly required by law to conclude that the law does not require a written relinquishment deed to be made without consideration.

42. In *Prem Prakash* (supra) reliance was placed on the decision of this Court in Lieutenant Col. Gaj Singh Yadav vs. Satish Chander Yadav, 1999 (51) DRJ 240 wherein it was explained that if a party had a share in the property, enlargement of such share by relinquishment or gift by the other defendant would not require registration. It is only when a right in the property is created for the first time by a particular document that it would



require registration. Therefore, mischief of Section 49 of the Registration Act would not fall on an oral settlement.

43. The Supreme Court in Subraya M.N. vs. Vittala M.N. (2016) 8 SCC 705 held that there is no provision of law requiring family settlements to be reduced to writing, though, if so done, they would require registration or else would be inadmissible in view of Section 49 of the Registration Act.

44. Similarly, the Supreme Court in a recent judgment of Vineeta Sharma vs. Rakesh Sharma & Ors. (2020) 9 SCC 1, while answering the reference to the interpretation of section 6 of the Hindu Succession Act, 1956, held that a plea of oral partition cannot be accepted as the statutory recognized mode of partition because a deed of partition must be registered under the provisions of the Registration Act, 1908 or affected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally advanced in the same manner as if it had been affected via decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and has to be rejected outrightly.

45. There is no dispute about the proposition that an oral agreement may be acted upon by the parties without its formal registration provided it is established by some cogent evidence. However, what has been raised by the appellant is merely a vague plea of oral agreement. He claims, “*That as regard the shareholding in the Defendant No 6 Company and the joint properties, the same was matter between the Plaintiff and the Defendant No. 1, both in fact stood settled long ago but made effective w.e.f. January, 2017*”. No date of alleged Oral settlement is pleaded by the appellant except claiming it be have been done “long ago” but interestingly, the same is



claimed to have been made effective from January, 2017. Once a fact itself is not pleaded and is absolutely vague it cannot be considered by the court and merits rejection.

46. Also, the alleged oral agreement was that respondent no. 1 shall execute the relinquishment deed in favour of the appellant. Admittedly, no relinquishment deed has been executed by the respondent no.1 in respect of his share in favour of the appellant; till such time a relinquishment deed is executed as claimed, he cannot claim himself to be the absolute owner of the suit property.

47. The clause (d) of the alleged oral agreement also mentioned about the management of the Company being with the appellant till the documentation for transfer of the shares in the Company in favour of appellant was undertaken and till then the respondent no.1 was to remain a sleeping partner. The appellant had asserted that this part of Oral Agreement was acted upon by respondent no.1 as is evident from the Petition no.227 (ND)/2017 filed by him in National Company Law Tribunal (NCLT) dated 16.08.2017 under Sections 241 and 242 of the Indian Companies Act where he has stated he had been regularly participating in the activities of the Company till December 2016, but he has no objection to the appellant (herein) to run the business since January, 2017.

48. The petition before NCLT has to be read as a whole to determine if there is any admission on behalf of the respondent no.1 about the oral agreement or if the same was acted upon but respondent no. The respondent no.1 has asserted in his petition that while day to day management was taken over by the appellant herein, however, he was mindful that he would be



receiving notices for Board meetings and shareholders meetings and participate in the affairs of the Company.

49. These averments merely show that appellant had taken over the affairs of the Company/ Respondent No.6 but it was at best only an understanding that till the execution of requisite documents, the respondent no.1 would continue to participate in the affairs of the Company. By no stretch of interpretation can it be said that there is an admission of oral agreement dividing the properties as claimed by the appellant. In fact, the covenants of the alleged oral agreement belie the claim of the appellant of an oral partition. At best it may be termed as an understanding to resolve the disputes by dividing the properties on execution of requisite documents but by no interpretation can it be termed as an oral partition.

50. In the end reference be made to Zulfiquar Ali Khan Vs Straw Products Ltd. 87(2000) DLT 76, wherein it was observed that it is a notorious fact that to drag the case, a litigant often takes all sorts of false or legally untenable pleas and it was held that legal process should not be allowed to be misused by such persons and only such defence as give rise to clear and bona fide dispute or triable issues should be put to trial and not illusory or unnecessary or mala fide based on false or untenable pleas, to delay the suit.

51. The appellant has set up a plea of oral settlement in a desperate attempt to succeed in his claim but as discussed, it is neither tenable in facts nor in law and has been rightly rejected by the Ld. Single Judge while allowing the application under Order 12 Rule 6 CPC and passing the preliminary decree.



52. Accordingly, there is no merit in the present appeal which is hereby dismissed.

CM APPL. 12413/2022 (Stay)

CM APPL. 12415/2022 (Exemption)

CM APPL. 12416/2022 (Summoning of the complete Trial Court record)

In view of the judgment passed in the appeal, the applications are disposed of as infructuous.

(NEENA BANSAL KRISHNA)

JUDGE

(MUKTA GUPTA)

JUDGE

JUNE 03, 2022

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