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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 14th February, 2022

+ RSA 37/2020 & CM APPLs.7988-89/2020

RAJINDER PERSHAD & ANR. Appellants
Through: Mr. J. K. Jain, Advocate (M:
8904697393)
versus

RAM NIWAS (DECEASED) THR LRS & ORS. Respondents
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present second appeal has been filed challenging the judgment dated 18th November, 2019 passed by the Id. ADJ-VII (Central), Tis Hazari Courts, Delhi (*hereinafter*, “*Appellate Court*”) in **RCA No.11/2019** titled **Sh. Rajinder Pershad v. Sh. Ved Prakash v. Ram Niwas & Ors.** By the impugned order, the Appellate Court has dismissed the first appeal filed against the judgment and decree dated 30th January, 2016 passed by the Ld. Civil Judge-14, Central District, Tis Hazari Courts, Delhi (*hereinafter*, “*Trial Court*”) in **Suit No.38/15** titled **Sh. Rajender Pershad & Ors. v. Ram Niwas & Ors.** Therefore, in effect, the Appellate Court and the Trial Court have arrived at concurrent findings.
3. The dispute in the present case is between the legal heirs of the brothers i.e., Sh. Udey Ram, Sh. Teeka Ram, Sh. Tokh Ram, Sh. Ram Niwas & Sh. Yad Ram, who are all sons of Pt. Har Lal. The Plaintiffs are the legal



heirs of Sh. Udey Ram. A suit for partition was filed by the Plaintiffs seeking partition and permanent injunction. The reliefs sought in the said suit are as under:

“i) a decree for partition be passed in favour of the plaintiffs and against the defendants in respect of joint properties bearing Kh. No. 70/2/3 measuring’ 1250 sq. yds, situated at within the colony of Village Palam, New Delhi as shown in red colour in the site plan, by metes and bounds and holding the plaintiffs as co-sharer of 1/5th share in the said property.

ii) a decree of permanent injunction be passed in favour of the plaintiffs and against the defendants thereby restraining the defendants, their agents, servants and associates and any other person, acting on their behalf from, raising any illegal and unauthorized construction in any manner in the aforesaid property as shown in the site plan attached and also from selling, transferring or alienating, or part with possession and creating any third party interest in respect of the aforesaid property.

iii) a decree of mandatory injunction may also be passed in. favour of the plaintiffs and against the defendants thereby directing the defendants, to remove and demolish the illegal and unauthorized construction as shown in the site plan of the property no.70/2/3, measuring 1250 sq. yds. situated within the colony, of Palam, New Delhi .

iv) Costs of the suit be also awarded in favour of the plaintiffs.

v) Any other relief which this Hon'ble Court deems fit and proper in the circumstances of the case be also granted in favour of the plaintiffs.”

4. As per the plaint, the case of the Plaintiffs in the said plaint was that all the properties are joint properties. In paragraph 5 of the said plaint, the



Plaintiffs pleaded that there was a settlement and agreement between the parties. Apart from the settlement, the Plaintiffs staked their entitled to 1/5th share in the suit property. The Plaintiffs further claimed that the Defendants have raised illegal and unauthorised construction on the suit property, during the pendency of the suit being **Civil Suit No. 17/2004** titled “**Sh. Rajinder Pershad v. Sh. Ram Niwas**”. However, the said suit was withdrawn with permission to file afresh. Thereafter, the Defendants threatened to take forceable possession of the suit property. Under such circumstances, on the strength of joint ownership, the partition and injunction in respect of the suit property was sought by the Plaintiffs before the Trial Court.

5. Vide judgment and decree dated 30th January, 2016, the Trial Court framed the following issues:

- “1. Whether the suit has not been properly valued for the purpose of court fees and jurisdiction? OPD*
- 2. Whether the suit of the plaintiff is barred in view of Section 185 of the DLR Act? OPD*
- 3. Whether the suit of the plaintiff is bad for non joinder of necessary parties? OPD*
- 4. Whether the plaintiff is entitled to a decree of partition as prayed for in prayer clause-1 of the plaint? OPP*
- 5. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for in prayer clause-2 of the plaint? OPP*
- 6. Whether the plaintiff is entitled to a decree of mandatory injunction as prayed for in prayer clause-3 of the plaint? OPP*
- 7. Relief.”*

6. The first three issues related to the valuation of the suit for the purpose of court fees and jurisdiction, whether the suit was barred in view of the provisions of the Delhi Land Reforms Act, 1954, and whether the suit is



bad for non-joinder of necessary parties.

7. On Issue No. 4, which was the substantive issue, the Trial Court has analysed the facts of the case and the evidence on record including the oral evidence which was led. Reliance was placed by the Trial Court upon Exhibit DW1/1 which was a compromise or family arrangement dated 27th April, 1979. On the strength of this document, while relying upon the judgment of the Supreme Court in **Roshan Singh v. Zile Singh [AIR 1988 SC 881]**, the Trial Court holds that the suit property was already divided between the parties in terms of the said settlement, and the same did not require registration. The finding of the Trial Court on Issue No.4 is extracted below:

“A reading of the document Ex. DW1/1 clearly shows that it records the oral compromise between the parties to the family settlement which had already taken place. It is well settled that a family settlement which is drawn up with an intention of reciting an already completed oral partition does not require registration (See Roshan Singh v. Zile Singh AIR 1988 SC 881). Moreover, it is the admitted case of the plaintiffs that some properties were already divided between the parties which further supports the inference that the suit property had also been partitioned along with other properties and the settlement Ex.DW1/l is only reciting an already completed partition. Therefore, the family settlement dated 27.04.1979 Ex. DW1/1 is not required to be compulsorily registered.”

8. In view of the finding set out above, the Trial Court has held that the partition of the suit property has already taken place. Therefore, the Plaintiffs are not entitled to the relief of partition. Hence, the prayer seeking injunction was also rejected.



9. The Appellate Court considered the entire matter in the appeal preferred by the Plaintiffs, challenging the findings of the Trial Court. The Appellate Court also considered the settlement dated 27th April, 1979, and rejected the Plaintiffs' contention that the said settlement required registration. The relevant portion of the Appellate Court's judgment dated 18th November, 2019, reads as under:

“(2) The primary objection of the appellants/plaintiffs to the compromise document dated 24.07.1979 is that the same is not admissible, as the same ought to have been registered, as per Registration Act. The appellants/plaintiffs advanced the argument that in view of the pleadings in the Written Statement that the properties were partitioned on 24.07.1979, the compromise document is inadmissible being unregistered. The said argument is flawed. Even if it is presumed that the oral discussions were held on 24.07.1979 (although, the parties were in possession of their respective portions since 1966), there is no requirement in law that there ought to have a considerable gap for reducing that arrangement in writing. In Tek Bhadur Bhujil, the Hon'ble Apex Court has held that 'Oral Family arrangement is permissible but its terms must be reduced into writing'. There no proposition that there must be a time lag between the oral family arrangement & reducing the same into writing. The objection of the appellants/plaintiffs has no substance, since the document by its very nature cannot be termed as one on which a title can be founded, thus, required no registration.”

10. The Appellate Court further held that a clear admission was made by the Plaintiffs in the suit which was earlier filed by the Plaintiffs in respect of the suit property, being **Civil Suit No. 17/2004** titled “**Sh. Rajinder Pershad v. Sh. Ram Niwas**”. In view of the said admission made by the Plaintiffs, the



Appellate Court held that the Trial Court was right in dismissing the suit. The said pleadings in the earlier suit read as under:

“The plaintiff Shri Rajender Pershad had earlier filed the Suit for Partition and Permanent Injunction (Ex.PW-1/D1). It is apt to reproduce Paras 1 to 3 of the said suit:-

“1. That Shri Uday Ram, Tokha Ram, Tikka Ram, Ram Niwas and Yad Ram were real brothers and belongs to Village Palam, New Delhi. They were having a plot bearing Khasra No.70/2/3, Measuring 1 bigha 5 biswas (1250 sq.yds.), situated within the Revenue Estate of Village Palam, New Delhi.

2. That a family oral partition has taken place among all the brothers and it was decided that each brother would get 160 sq.yds. from the plot in dispute. It was also decided that a 20 feet Rasta (Path) would also be left in the middle of this plot for the use of all the brothers and for their family members. It was also decided/mutually agreed between them to leave 4 feet Gali on Southern Side and 6 feet Gali on the East Side. The plaintiff & defendants are in joint possession of the land in dispute.

3. That except the defendant No.1 and 2 other brothers built 1 or 2 rooms in their share and a Boundary was also constructed around the plot, jointly by all the brothers. It was also agreed that the remaining 450 sq.yds. would be subsequently partitioned among all the brothers or their children. The defendant No.1 and 2 are also in joint possession and were using the same, alongwith plaintiff and other defendants.”

The bare perusal of para no.1 reveals that the property in question is same, as pleaded by the plaintiffs in the present case. The plaintiff in the said suit has categorically pleaded that there was a “family oral partition”, which has taken-place qua the part of



the suit property i.e., 800 sq. yds. and the plaintiff in the said suit has sought the partition of 450 sq. yds. There was categorical admission in the said suit qua family oral partition qua the part of the suit property, which was totally done away in the present suit. The plaintiffs have failed to show in the entire pleadings that suddenly how the “family oral partition” qua the part of the property was merged into no partition at all. The plaintiffs have totally changed the pleadings in the present suit, which was earlier filed and interestingly, although, the plaintiffs have alleged that they have earlier filed the suit and withdrawn the same to file the fresh suit, but they have not placed even copy of the Plaint filed in the earlier suit. The plaintiff has deliberately withdrawn his candid and categorical admission, which was made in the earlier suit. During the cross-examination of PW-1, the said plaint was put and the same was exhibited as Exhibit PW-1/D-1. The plaintiff has not approached the Ld. Trial Court with clean hands and has tried to play fraud upon the Court.”

11. This Court has considered both- the judgment dated 30th January, 2016 passed by the Trial Court, as also the judgment dated 18th November, 2019 passed by the Appellate Court.

12. Mr. Jain, Id. Counsel for the Appellants/Plaintiffs has taken this Court through the settlement dated 27th April, 1979, which has been placed on record. The said document of partition has also been relied upon by both – the Trial Court as also the Appellate Court. The said document has been reproduced below:

“आज दिनांक 27.04.79 शुक्रवार श्री उदेराम, तोखराम, टीकाराम, राम निवास, XXX पिशरान हरलाल आपस का बामी फैसला इत्तफाक राय से मंजूर हुआ। कालोनी



में बना हुआ हिस्सा उदेराम को मिला। बाकी बिना बना शेष चारों भाईयों को दिया गया। गाँव में हवेली में तोखराम व टीकाराम के दिया गया। हवेली में और किसी भाई का हिस्सा नहीं रहेगा। गितवाड़ राम निवास व यादराम को दिया गया। गितवाड़ में किसी और भाई का हिस्सा नहीं होगा। गोरे की क्यारी में तोखराम व टीकाराम को 150 – 150 गज जमीन दी गई। उदेराम को भी 150 गज दी गई। शेष जमीन क्यारी रामनिवास व यादराम की रहेगी। यह फैसला पंचायत के सामने इत्तफाक राय से हुआ। अब किसी भी तरह का कोई ऐतराज किसी भाई को नहीं है और न आगे करेंगे।
हस्ता. (उर्दू में)

टीकाराम
यादराम
(अंग्रेजी में)
देसराम
प्रधान ग्राम सभा”

[Reproduced from the handwritten settlement deed placed on record.]

13. A perusal of the settlement set out above shows that all the brothers have agreed to the partition which was then effected. The same has also taken place in front of the *Panchayat*. The Plaintiffs do not dispute the fact that Sh. Udey Ram was a party to this settlement. Sh. Udey Ram has also benefitted from the settlement which was entered into between the brothers. Thus, considering the facts and circumstances of this case, this Court is of the opinion that once peace has been brought amongst the family members, by way of a family settlement or compromise, the same ought not to be reopened by this Court.

14. Insofar as the question of registration of family settlement is concerned, as per the judgment of the Supreme Court in *Kale & Ors. v. Deputy Director of Consolidation & Ors. [3 (1976) 3 SCC 119]*, technical objections, such as registration of the family settlement, should not come in



the way of giving effect to a family settlement. This settled position of law was upheld by the Supreme Court in ***Sita Ram Bhama v. Ramvatar Bhama*** [AIR 2018 SC 3057], wherein it was observed that if there was an oral settlement which was later on reduced into writing, the same does not require registration. Relying upon the judgments in ***Kale (supra)*** as also ***Sita Ram Bhama (supra)***, this Court in ***Murali Lal v. Sant Ram & Anr.*** [RSA 221/2018 decided on 15th December, 2021] has reiterated the settled law, as under:

*“21. The question as to whether the Settlement Deed dated 15th 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.”

15. Mr. Jain, Id. Counsel relies upon the admission made by the Defendants in the written statement at page 133. However, the Appellate



Court has gone by the admission made by the Plaintiffs in the earlier plaint itself, in the suit being ***Civil Suit No. 17/2004*** titled “***Sh. Rajinder Pershad v. Sh. Ram Niwas***”.

16. A reading of Paragraph 2 of the earlier plaint, extracted hereinabove, categorically mentions the oral family settlement and partition, which was pleaded by the Plaintiffs themselves. As per the provisions of Order XII Rule 6 CPC, the admission can be either in a pleading or in a document or ‘otherwise’. Thus, in the opinion of this Court, the statement made in the earlier plaint constitutes an admission under Order XII Rule 6 CPC. Thus, the Plaintiffs would be bound by the said admission.

17. Under such circumstances, the findings of the Appellate Court deserve to be upheld. Accordingly, since no substantial question of law arises in this present second appeal, the impugned judgment dated 18th November, 2019 does not warrant any interference.

18. The present second appeal is dismissed. All pending applications are also disposed of. Parties shall be bound by the terms of the family settlement dated 27th April, 1979, executed between them.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 14, 2022

dj/ad