IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.73 OF 2020
WITH
INTERIM APPLICATION NO.3844 OF 2019

Maya @ Neelam Hiralal Kukreja : Appellant
Vs.
Jaisingh Sadhwani
Since deceased through legal heirs
Rajni Jaisingh Sadhwani & Ors. : Respondents

Adv. Sanjay Jain a/w Adv. Bhavik Lalan, Counsel & Adv. Fatema Tankiwala i/by LJ Law for Appellant.
Adv. Minal Chandani, for the Respondent Nos.1/1, 1/2 & 1/3.
Adv. Rajesh S. Datar a/w Adv. Akshay J. Kandarkar, for the Respondent Nos.2, 5 & 6/2.
Adv. Dushyant Pagare, for the Respondent No.3.
None for the Respondent Nos. 6/1 & 6/3.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 28th FEBRUARY, 2024.
PRONOUNCED ON : 25th APRIL, 2024

JUDGMENT

1. The present Appellant/Plaintiff was original Defendant No.4, who later on got herself transposed as Plaintiff, as during the pendency the original Plaintiff, mother of the present Plaintiff namely Kamlabai died. By way of impugned judgment and decree, learned Trial Court dismissed the suit, so also, counterclaim of Defendant No.5.

2. Facts in short are that the Plaintiff and Defendants are the members of Sadhwani family. One Gagandas Topandas Sadhwani and Naraindas Jhamatmal Sadhwani formed a partnership firm in the name and style of M/s. Central Engineering Works. In the said firm Gagandas Sadhwani was having 45% share. Various immovable properties were acquired by the members of the family of the said Engineering Works. Some properties were purchased by individuals and some properties were purchased jointly. Gagandas Sadhwani died intestate on 21.01.1998 leaving behind hid widow Kamlabai and daughter Maya i.e. present Plaintiff as his legal heirs. Another partner Naraindas Sadhwani died intestate on 27.10.2006 leaving behind his widow Janki and daughters Hema and Kanchan.

3. After death of Gagandas, brother of Naraindas namely Jagdish with the help of his sons namely Mahesh and Lal started misappropriating and siphoning of the properties and income of the said firm by fabricating documents and forging signatures of Kamlabai and Maya. As widows of Gagandas and Naraindas were uneducated, they never participated in the business of the firm. In the month of 2010, they came to know that sons of Jagdish have misappropriated income of the firm. On that the differences arose between family regarding ownership, use and distribution of benefits arising out of family properties. The family members therefore decided to put an end to differences and entered into an arrangement. The said arrangement was reduced into writing by

executing Memorandum of Oral Family Arrangement dated 14.09.2010 (hereafter referred as "MOFA") by the Trial Court. The members were divided into two groups i.e. heirs of Gagandas and Naraindas along with Pradeep Jaisingh Sadhwani formed "Group-A". Jaisingh and his two sons, namely Mahesh and Lal formed "Group-B". Daughter of Gagandas, Maya i.e. present Plaintiff and daughters of Naraindas, namely Hema and Kanchan relinquished their shares in favour of the mothers i.e. Maya relinquished a share in favour of her mother Kamalabai, Hema and Kanchan relinquished their shares in favour of Janki. By way of memorandum, it was recorded to transfer the family properties as set out in "Annexure-B".

4. The parties of "Group-B" confirmed and assured to pay lump sum amount of Rs.2,00,00,000/- to parties in "Group-A". Till payment of amount, a statutory charge was created on the property coming to the share of parties of "Group-B". It was further agreed between the parties that the premises which were given on leave and licence to the licencees, the parties to whom the said premises belong to shall be entitled to such premises by executing appropriate letters by the parties to such licencees directing them to pay the licence fees. "Group-B" was to get all the licenced premises vacated from the licencees at their own costs and expenses as mentioned in "Annexure-C". It was further agreed that the parties of "Group-B" shall repay the loans and advances. In spite of said arrangement, the members of "Group-B" to pay the amount of Rs.2,00,00,000/- before 30.06.2011 as decided. In spite of requests

and reminders, Defendant Nos.1 to 3 also failed to pay Rs.72,00,000/- till 14.09.2010 that was received by them from the parties mentioned in "Annexure-C" and other amounts.

5. Initially the daughters of Plaintiff Nos.1 and 2 were made proforma Defendant Nos.4 to 6. After death of Kamalabai, Defendant No.4, Maya got herself transposed as Plaintiff No.1. Plaintiff No.2 also died during the pendency and therefore original Defendant Nos.5 and 6 were transposed as legal representatives of Plaintiff No.2. However, during the pendency, legal heirs of Plaintiff No.1 and Plaintiff No.3 settled their grievance with Defendant Nos.1 to 3 and got their names deleted as Plaintiffs. Instead of accepting their prayer, they are transposed as Defendant Nos.4 to 6. It is thus the present Plaintiff continued the suit as sole Plaintiff and the plaint came to be amended. Accordingly, now the claim by Plaintiff is of amount of Rs.66,66,667/- from Defendant Nos.4 to 6 with interest and thus the suit continued only to that extent and specific performance of the MOFA dated 14.09.2010.

6. Present Defendant Nos.1 to 3 opposed the claim of the Plaintiff mainly on the ground that the MOFA is unregistered, no suit can be based on unregistered document. They also denied allegations of misappropriation of properties purchased from the income of firm. They however admitted that for the purpose of partition two groups are formed and they are members of "Group-B" and assured to pay amount of Rs.2,00,00,000/- to the members of

"Group-B" by exchanging the property by way of gift-deed, lease-deed to each other. They did not dispute Annexures A, B, C and D to the MOFA. Their objection was that though the Defendants have paid loan liabilities to the extent of 70%, members of "Group-A" never gave documents of transfer in the name of Defendants, though they are ready to pay amount of Rs.2,00,00,000/- by cheque. The members of "Group-A" refused to accept the cheque and demanded the cash.

7. As per the MOFA the parties were to execute necessary documents to achieve family arrangement required registration and therefore held that MOFA is not legally valid document. Before this Court, it is mainly argued that from reading the MOFA, it is clear that the MOFA is not document creating rights but has only recorded the settlement that had already taken place between the parties and as such did not require any registration. Now all other heirs have settled the dispute with the Defendants, except the present Appellant. It is also not disputed that Defendant Nos.4 to 6 have received Rs.2,00,00,000/- from the members of "Group-B". The present Appellant/Plaintiff is entitled to 1/3rd of the amount from the amount of Rs.2,00,00,000/-. The Plaintiff suitably amended the prayer clause also to that effect. The present Plaintiff claimed relief through Kamalabai and therefore she is entitled to receive amount as stated above. He invited attention to the prayer clauses. He submits that prayers (c1) and (c3) ought to have been granted, which read as under :-

"(c1) It be declared that the Plaintiff is entitled to claim 1/3rd of the sum of Rs.2,00,00,000/- (i.e. 66,66,667/-) and interest thereon @ 18% p.a. from the Defendant nos.4 to 6.

(c2) ……………..

(c3) The Defendant nos.1 to 3 be ordered and decreed to pay to the Plaintiff a sum of Rs.98,42,758/- as set out in para 13 herein above."

8. Learned advocate for the Respondents/Defendants opposes the First Appeal by submitting that issue No.18, which reads as, "Does the defendant No.5 prove that plaintiffs are liable to execute necessary documents and handover possession of the property referred in clause 21 of the schedule ?, ought to have been answered in favour of Defendant Nos.4 to 6.

9. The Court has already held that the Plaintiff has proved that her mother Kamalabai had discharged liability towards Defendant Nos.1 to 3 to pay Rs.40,00,000/- and obtained full possession as per the terms of MOFA dated 14.09.2010 in the affirmative. It is also viewed that the Plaintiff proved that the Defendant Nos.1 to 3 are liable to pay Rs.98,42,758/- share as per the terms of MOFA as partly affirmative. So far as issue Nos.3 to 7 are concerned, those are answered in negative only for the reason that the MOFA is not registered.

10. Learned advocate for the Appellant relied upon the

judgment in the case of ***Kale & Ors. Vs. Deputy Director of Consolidation & Ors.*** reported in ***(1976) 3 SCC 119,*** wherein it is held that the documents recording family arrangement already taken place need not be registered. Paragraph 10 of the judgment reads as under :-

> "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. In view of this judgment, this Court finds force into argument of learned advocate for the Appellant. This Court holds that it was not necessary to register MOFA. Once the MOFA is held to be valid and not requiring registration, it follows that the Plaintiff's suit needs to be allowed, so also, to record finding in affirmative in respect of issue No.18.

12. It is held that the Plaintiff is entitled to receive amount of Rs.66,66,667/- along with interest from the date of amended suit. The counterclaim is also allowed directing the Plaintiff to execute necessary conveyance in favour of Defendant Nos.4 to 6. The decree be modified accordingly.

13. The Appeal is thus allowed in above terms. No order as to costs.

14. Pending Interim Application also stands disposed of.

[KISHORE C. SANT, J.]