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

+ **CS(OS) 26/2019 & I.A. 851/2019**

SHRI SUSHIL AGGARWAL & ANR

.....Plaintiffs

Through: Mr. Rajender Agarwal and Mr.
Anoop Kumar, Advocates.

versus

SHRI VIJAY AGGARWAL & ANR

.....Defendants

Through: Mr. Rajiv Saxena, Mr. Sumit K.
Batra, Mr. Manish Khurana & Ms.
Priyanka Jindal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **18.11.2024**

1. The present suit is one for declaration of shares of the suit properties equally as mentioned in prayer clause (a) of the plaint.
2. Vide Order dated 21.01.2019, this Court passed an Interim Order directing that the parties shall maintain status quo in respect of the title and possession of the suit properties as mentioned in prayer clause (a) of the suit.
3. It is stated that the parties have entered into a settlement vide a Memorandum of Settlement (MoU) dated 25.11.2021 and the Interim Order dated 21.01.2019 was lifted and the parties were directed to maintain the possession as agreed into by the parties under the MoU dated 25.11.2021. The MoU dated 25.11.2021 reads as under:

“MEMORANDUM OF UNDERSTANDING

*This MOU is made at New Delhi on this 25th day of
November, 2021 between Shri Sushil Aggarwal Son of*



Shri O.P. Gupta and 2) Mrs Sugam Aggarwal Wife of Shri Sushil Aggarwal, both residents of 10/2, Underhill Lane, Civil Lines, Delhi, hereinafter collectively called the PARTIES OF THE FIRST PART;

AND

Shri Vijay Aggarwal son of Shri O.P. Gupta and 2) Smt Madhu Gupta wife of Shri Vijay Aggarwal, both residents of D-9, Model Town, Delhi, hereinafter collectively referred to as the PARTIES OF THE SECOND PART;

The expressions, “The Parties of the First Part” and “The Parties of the Second Part”, unless repugnant to the context shall mean and include parties themselves, individually and jointly and their respective legal heirs, legal representatives, administrators, successors, executors and nominees, assignees, attorneys etc.

WHEREAS, Shri Sushil Aggarwal and Shri Vijay Aggarwal are the real brothers and sons of late Shri O.P. Gupta, Smt Sugam Aggarwal and Smt Madhu Gupta are the wives of Shri Sushil Aggarwal and Shri Vijay Aggarwal respectively.

AND WHEREAS both the brothers have been carrying on business jointly and during the ensuing period have purchased several properties jointly.

AND WHEREAS certain disputes arose between the parties resulting in filing of cases against each other which are currently pending adjudication as follows:

i) CS (OS) No.26/2019 'Sushil Agarwal & Another Vs. Vijay Agarwal & Another' pending in Delhi High Court filed by the party of the first part;

ii) Co. Pet No.112/241-242/ND/2019 in the National



Company Law Tribunal, New Delhi.

iii) CS (Comm.)2629/2019 'Vijay Aggarwal & Company Vs. Sushil Aggarwal & Co. Pvt Ltd.' pending before Shri Rajneesh Kumar Gupta DJ (Commercial Court) Central, Tis Hazari Courts, Delhi.

AND WHEREAS in the suit filed by the parties of the first part for partition, injunction, rendition of account in Delhi High Court, which was registered as CS (OS) No.26/2019, the partition, in respect of following properties, were claimed :

- i) 10/2. Underhill Lane. Civil Lines, built up property on land admeasuring 265 sq. yards.*
- ii) D-9, Model Town, Delhi, built up property on a land admeasuring 425 sq. yards.*
- iii) 2nd floor, 3rd floor and roof of 5535, Katra Rathi, Nai Sarak, Delhi.*
- iv) Ground floor of property no. 5559, Katra Rathi, Nai Sarak, Delhi.*
- v) First floor of property no. 5559, Katra Rathi, Nai Sarak, Delhi.*
- vi) Flat No.T7-202, having 2530 sq. ft. area in La Tropicana, Mall Road, Delhi,*
- vii) Flat No. T19-502, having an area of 4835 sq. Ft. in La Tropicana, Mall Road, Delhi.*
- viii) Plot No. 51, Sector A2D, Tropicana City, UPSIDC.*
- ix) A-1906, BPTP Princes Park, Faridabad, Haryana.*
- x) GR 211, TDI Rodeo Drive, Kundli.*
- xi) 785-A, 1st floor, Nai Sarak, Delhi (rented property).*
- xii) 785-A, 2nd floor, 3rd floor and roof, Nai Sarak, Delhi (rented out property).*



AND WHEREAS, during the pendency of the said suit, the parties had various meetings, the parties have finally reached an amicable settlement to resolve all their disputes and to put an end to all controversies, in the manner as specifically contained herein after, for all times to come.

NOW THIS MEMORANDUM RECORDING ORAL FAMILY SETTLEMENT ARRIVED AT BETWEEN THE PARTIES IS WITNESSETH AS FOLLOWS:

- 1. That it has been mutually agreed that the properties of the parties shall be divided between both the parties as detailed hereinafter.*
- 2. That the Parties of the First Part shall be the owner with possession of the following properties:*
 - a) 10/2, Unclothe Lane, Civil Lines. Delhi.*
 - b) Ground floor of property no. 5559. Katra Rathi, Nai Sarak. Delhi.*
 - c) First floor of property no 5559, Katra Rathi, Nai Sarak, Delhi.*
 - d) A-1906, BPTP Princes Park, Faridabad.*
 - e) Flat No.T19-502, having an area of 4835 sq ft in La Tropicana, Mall Road, Delhi.*
 - f) Flat No.T7-202, having 2530 sq ft area in La Tropicana, Mall Road, Delhi.*
 - g) Exclusive tenancy right in 785-A. 1st floor, Nai Sarak, Delhi (rented property).*
 - h) Exclusive tenancy right of 785-A, 2nd floor, 3rd floor and roof, Nai Sarak, Delhi (rented property).*
- 3. That the Parties of the Second Part shall have the ownership and possession of the following properties.*
 - a) D-9. Model Town, Delhi.*
 - b) Plot No. D-51 Sector A2 Tronica City, UPSIDC*



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c) GR 211, TDI Rodeo Drive, Kundli.

*d) 2nd floor, 3rd floor and roof of 5535, Katra
Rathi, Nai Sarak, Delhi.*

- 4. That property 10/2, Underhill Lane, Civil Lines is built up property having an area of 265 sq. yards and is presently owned by Shri Sushil Aggarwal and Vijay Aggarwal but since the said property has fallen to the share of Shri Sushil Aggarwal therefore, Shn Vijay Aggarwal shall execute a relinquishment deed in favour of Shri Sushil Aggarwal so as to make him the absolute owner thereof.*
- 5. That since the Ground floor and first floor of property no. 5559, Katra Rathi, Nai Sarak, Delhi have fallen to the share of Shri Sushil Aggarwal but at present this property is in the joint names of Shri Sushil Aggarwal end Shri Vijay Aggarwal, therefore, it is agreed between the parties that Shri Vijay Aggarwal will execute a relinquishment deed in favour of Shri Sushil Aggarwal so as to make hen the absolute owner thereof.*
- 6. That Flat No.T7-202, having 2530 sq. ft. area in La Tropicana, Mall Road, Delhi is in the name of Shri Rajesh Aswani who has sold it to Shri Sushil Aggarwal end entire money has been paid by him but the flat has not been transferred in his favour. Shri Vijay Aggarwal who has been dealing with Parsavnath Developers throughout, hereby agrees and undertakes to get the said flat transferred in favour of Shri Sushil Aggarwal. Shri Vijay Aggarwal will have no right or interest in the said property.*
- 7. That fiat No. T-19-502 having an area of 4835 sq. ft. in La Tropicana, Mall Road, Delhi is at present in the name of Shri Vijay Aggarval and Shri Sushil Aggarwal*



as such Shri Vijay Aggarwal agrees and undertakes to get the said flat transferred in favour of Shri Sushil Aggarwal in the records of the builder. Shri Vijay Aggarwal will have no right or interest in the said property.

- 8. That it is further agreed that Shri Vijay Aggarwal shall clear all the outstanding instalments, whether demanded/called/uncalled, to be paid in respect of the two flats mentioned in clause 6 and 7 including interest or penalties, if any, for any delayed or deferred payment to the builder/promoter. All expenses regarding registration of the conveyance deed, electricity connections etc. shall be borne by Shri Sushil Aggarwal as and when the same are claimed by the builder. However any amount payable for the transfer of the said flats in the records of builder in the name of Shri Sushil Aggarwal will be borne by both the parties equally.*
- 9. That flat No. A-1906, BPTP Princes Park, Faridabad is at present in the name of Shri Vijay Aggarwal, however, the possession of the said flat has not been handed over by the builder, therefore, Shri Vijay Aggarwal shall get the said flat transferred in the record of the builder in favour of Shri Sushil Aggarwal. All the dues which are outstanding against this flat (as on date) shall be paid by Shri Sushil Aggarwal exclusively, including transfer charges, if any.*
- 10. The tenancy right of Premises No 785 A, first floor, second floor and third floor and roof has fallen to the share of Shri Sushil Aggarwal. It is agreed between the Parties, that Shri Vijay Aggarwal will surrender his tenancy rights in respect of the aforesaid premises in favour of Shri Sushil Aggarwal and Shri Vijay Aggarwal (or his assignees/ legal heirs) shall not claim*



any right in the same in future. If, at all, any objection is raised by the landlord with regard to "surrender of the tenancy rights by Shri Vijay Aggarwal" in favour of the party of Shri Sushil Aggarwal, the party of the second part here by agrees to cooperate with the party of first part for confirmation of the said surrender of the tenancy rights.

- 11. That similarly, property No. D-9, Model Town which has fallen to the share of the Party of the Second Part i.e. Shri Vijay Aggarwal. At present, the property is registered in the name of Smt. Sugam Aggarwal and Smt. Madhu Aggarwal. Smt. Sugam Aggarwal hereby agrees to execute a relinquishment deed in favour of Smt. Madhu Aggarwal who shall be the absolute owner thereof.*
- 12. Plot No. D-51 Sector A2, Tronica City, UPSIDC is at present in the name of Shri Vijay Aggarwal. He will continue to remain the absolute owner thereof and the parties of the first part shall not claim any right in the said plot whatsoever.*
- 13. (a) The properties bearing No. GR-211 TDI Rodeo Drive Kundli is at present in the name of Shri Sushil Aggarwal, however, the possession of the said property has not been handed over by the builder till date, therefore, Shri Sushil Aggarwal shall get the said property transferred in the record of the builder in favour of Shri Vijay Aggarwal and get the possession delivered directly by the builder in favour of Shri Vijay Aggarwal. All the outstanding dues against this shop shall, if any, including transfer charges will be borne exclusively by Shri Vijay Aggarwal.*

(b) That since the second floor and third floor with roof rights of property no. 5535, Katra Rathi Nai Sadak, Delhi, has fallen to the share of Shri Vijay



Aggarwal but at present the property is in joint name of Shri Sushil Aggarwal and Shri Vijay Aggarwal, therefore, it is agreed between the parties that Shri Sushil Aggarwal will execute a relinquishment deed in favour of Shri Vijay Aggarwal so as to make him absolute owner thereof.

14. That it further agreed between the parties that the properties which were owned jointly by the parties and which have already been sold prior to filing of the suit for partition, the parties have agreed that they will not claim any share in respect of said properties at any point of time hereinafter.

15. That in addition to the above, title documents of property No. D-9, Model Town are lying as collateral security with Kotak Mahindra Bank, Chandni Chowk branch against the limit/loan extended in favour of Sushil Aggarwal and Company Pvt. Ltd. which company shall now belong to the Parties of the First Part alone, therefore, it is agreed by the Parties that the party of the First Part will clear the entire dues of the bank and get the title documents of the said property duly discharged and released from the bank at their own expense within two months i.e. the time agreed between the parties for execution of necessary documents for the purposes of the present settlement agreement hereof and handover the same to the party of second part.

16. That the time period agreed between the parties for execution of their respective obligations is two months from the date of signing of the present settlement agreement. In case, either of the parties fails to complete their set of obligations, the other party will be at WILL to withhold the title documents of the properties which will be in their possession. It is made clear that once both the parties have complied with



their set of obligations, the title deeds of the properties falling to their share and which are in possession of the other party, will be handed over simultaneously on one designated day as agreed amongst the parties mutually. For sake of clarity, it is clarified that in the event of the Party of the First Part fails to clear the loans availed from Kotak Bank for which property at Model Town which has fallen to the share of party of Second Part, the Party of the Second Part shall be well within their rights to have a lien over properties T-202 and T-502, La Tropicana. Such lien shall continue till such time the title documents of D-9. Model Town, Delhi, are released and handed over to the party of the Second Part along with a no dues certificate is issued by the bank.

Similarly, in case the party of the first part clear the entire outstanding dues (including interest/penalties, if any) of Kotak Mahindra Bank, and get the title documents of D-9 Model Town, Delhi released but the party of the second part fails to get the two flats (T-202 and T-502, La Tropicana), transferred in favour of Shri Sushil Aggarwal within the agreed time frame of two months, the party of the first part shall be within their rights to have a lien over the documents of the property D-9 Model Town, Delhi and will be entitled to withhold the title documents of the property till the time the said flats are not transferred.

17. That time is the essence of this settlement. The parties have agreed to adhere to the prescribed time schedule strictly and have further agreed to execute all the necessary documents in favour of each other within the agreed time schedule.

18. That the title documents in respect of property bearing No.10/2 Underhill Lane, Civil Lines, Delhi, Ground Floor and First Floor of property bearing



No.5559 Katra Rathi, Nai Sarak, Delhi, Flat No.T-19-502 and Flat no. T19-202 La Tropicana, Mall Road, Delhi, copy of rent deed of property bearing no. 785A Nai Sadak Delhi, are with the party of the Second Part. Since the said properties have fallen to the share of the party of the First Part, therefore it is agreed that all acts of release, relinquishment and transfer shall be performed at once on the designated day as mentioned in para no. above.

19. That it has been agreed between the parties that the parties will move a joint application before the Hon'ble Delhi High Court in CS (OS) No. 26/2019 to bring on record the present memorandum of understanding as executed between the parties and seek issuance of appropriate directions for modification of order dated 21.01.2019 by virtue of which a status quo was directed to be maintained by the parties in respect of all the properties as mentioned above which have now fallen either to share of party of first part or the party of second part. Subject to necessary directions/ orders, the parties will perform their set of obligations as per the present settlement agreement and undertake to withdraw the following cases filed by them. namely:

i) CS (OS) No.26/2019 'Sushil Agarwal & Another Vs. Vijay Agarwal & Another' pending in Delhi High Court filed by the party of the First Part;

ii) Co. Pet No.112/241-242/ND/2019 in the National Company Law Tribunal, New Delhi filed by the party of the Second Part.

iii) CS (Comm.)2629/2019 'Vijay Aggarwal & Company Vs. Sushil Aggarwal & Co. Pvt. Ltd.' pending before Shri Rajneesh Kumar Gupta DJ (Commercial Court) Central, Tis Hazari Courts, Delhi filed by the party of the Second Part.



20. That it is further agreed and understood between the parties that apart from the understanding as agreed between the parties by way of present MOU, no other amount is liable to be paid by the Parties to each other irrespective of the fact that any amount has been shown outstanding in their respective books of account either in individual books or in any of the company such as Sushil Aggarwal & Co. And Vijay Aggarwal & Co., as all such amounts have been taken into consideration while signing of the present MOU. To be more precise, immediately on execution of this MOU none of the parties shall be left with any claim against each other except what has been provided herein by way of this MOU.
21. That likewise the children, legal heir etc. hereto shall upon execution of this MOU between the parties hereto be left with no right to title, interest, claim or share in any of the property business or monies of the other party, from any of the parties irrespective of the fact that it has been shown as payable in the books of account of their respective companies/firms.
22. To be more precise, all the liabilities and entitlement of the Parties of the First Part and Parties of the Second Part against each other and their children against any of the group stands absolved and extinguished immediately on execution of this MOU, as all the claims of the parties have been taken care of while arriving at the present MOU.
23. That the present settlement has been arrived between the parties at their own free will without any coercion and duress. The parties agree to abide by the terms of the settlement in entirety and the present arrangement is irrevocable.”



4. Today, learned Counsel appearing for the Plaintiffs and the Defendants submit that the suit be disposed of in terms of the MoU dated 25.11.2021 entered into between the parties. The Plaintiffs and the Defendant No.1, who is the husband of Defendant No.2, are present in Court. The Plaintiffs and Defendants have agreed that the present suit can be disposed of in terms of the MoU dated 25.11.2021 entered into between the parties.

5. The MoU dated 25.11.2021 demarcates the suit properties amongst the Plaintiffs and the Defendants. The said MoU is in accordance with law. The Plaintiffs and the Defendants state that they have entered into the settlement at their own will and without any coercion, duress and undue influence and they have agreed to abide by the terms of the MoU. It is stated that the parties have already apportioned the suit properties and that they have been living peacefully for the last six years in terms of the MoU.

6. In view of the above, the suit is disposed of in terms of the MoU dated 25.11.2021 entered into between the parties. Pending applications, if any, also stand disposed of.

7. The Decree Sheet be prepared accordingly.

SUBRAMONIUM PRASAD, J

NOVEMBER 18, 2024

S. Zakir