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

Date of Decision: 19th February, 2024

+ **CS(OS) 2972/2015 & I.As.13372/2017, 1104/2023**

ANKUSH GUPTA Plaintiff

Through: Mr. Anish Chawla, Advocate along
with Plaintiff in person. (M-
9953541910)

versus

ARUN KUMAR GUPTA & ORS. Defendants

Through: Mr. Akhil Sachar and Ms. Sunanda
Tulsyan, Advocates for D-1 to 4 (M-
9891105069).

Mr Abhinav Sharma & Mr Ayush
Srivastava, Advs. for D-5 & 6 (M-
9557423051)

Mr. Rohit Oberoi, Mr. Umang Bhatia,
Mr. Paramjeet Bhati, Advs. for D-7.
(M- 9810383816)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. This hearing has been done through hybrid mode.
2. The present suit which is of the year 2015 emanates from an intra-family dispute between the parties. The said family dispute culminated in a family settlement by means of a Memorandum of Understanding (MoU) dated 29th July, 2010 between the Plaintiff and Defendant Nos 1 to 3. The agreement outlined in the MoU aimed to amicably settle the disputes among the family members by detailing the terms of the settlement, the



responsibilities of each party involved, and the distribution of property to each party.

3. The suit has been filed by the Plaintiff- Ankush Gupta seeking *inter alia* a decree of Rs. 4,00,000/- along with *pendente lite* interest, a declaration that the MoU dated 29th July, 2010 between the Plaintiff and Defendant Nos. 1 to 3 as void and possession of the one-third share in the property House No. F-29, Hauz Khas Enclave, New Delhi.

4. The relationship between the Plaintiff and the Defendants is encapsulated in the following table:

Defendant No.	Name	Relationship with Plaintiff/ Role of the Defendant
1	Sh. Arun Kumar Gupta	Father
2	Ms. Alka Gupta	Mother
3	Sh. Ankur Gupta	Brother
4	Ms. Urmi Gupta	Sister-in-law (Bhabhi)
5	Sh. Vinay Gupta	Uncle (Chacha)
6	Ms. Anjali Gupta	Aunt by marriage (Chachi)
7	Sh. Arun Aggarwal	Occupant of Second Floor of House No. F-29, Hauz Khas Enclave, New Delhi

5. ***I.A. 13372/2017*** is an application under Order XII Rule 6 CPC filed by the Defendant Nos. 1 to 4 seeking a decree of the suit in terms of MoU dated 29th July, 2010. The submission of the said Defendants is that the



Plaintiff has admitted the signatures on the MoU as also on the affidavit. It is further submitted that the Plaintiff has also admitted that various registered gift deeds in terms of the MoU were executed in favour of the Plaintiff. In fact, in terms of the affidavit, the Plaintiff has also given up certain rights on the same date as the MoU was executed. Thus, it is the submission of the Defendants that the suit deserves to be decreed in terms of the MoU as also the affidavit which has been placed on record.

6. *Per Contra*, it is the stand of the Plaintiff that the admission of the signatures on the MoU and the affidavit would not make any difference as the execution of the MoU is itself not admitted. In this regard, Id. Counsel for the Plaintiff has also contended that without admission of proper execution of the MoU, the mere acknowledgment of signatures to the MoU does not confer validity to the said MoU.

7. The Court has heard Id. Counsel for all the parties to the dispute at length and perused the record.

8. The Plaintiff himself is present in Court and his statement has been recorded today. The statement of the Plaintiff is set out below:

“Mr. Arun Gupta is my father. Mrs. Alka Gupta is my mother. Mr. Ankur Gupta is my elder brother. Ms. Nidhi Gupta is my younger sister.

The property F-29, Hauz Khas Enclave, New Delhi is in the name of the partnership firm Arial Brothers. 50 percent possession in the property at D-86, Hauz Khas Enclave, New Delhi is with me and the rest of the 50 percent possession is with my parents’. I run a shop at D-86, Hauz Khas, New Delhi by the name ‘Bath Interior and Decorators’. The shop has been in operation since 2007 under a different name and has been known as Bath Interior and Decorators since



2010. I have possession of Property No. B-140, DDA Shed Okhla Industrial Area Phase I, Delhi.

In respect of properties mentioned in paragraph (a) to (g) in the MoU except property mentioned at paragraph (d), I have the gift deeds executed in my favour which are also registered. My signatures appear on all pages of MoU which has been shown to me in the Court also but contents are disputed. My parents, my brother - Mr. Ankur Gupta and myself have signed the MoU.

Ms. Vasudha Gupta is my wife. Ms. Urmi Gupta is Mr. Ankur Gupta's wife. I submit that Mr. Ankur Gupta was not in the country when this document was executed.

The signature on the affidavit dated 29th July, 2010 are mine but contents are disputed. I have signed the affidavit. However, the date in the affidavit and in the MoU are different.

Insofar as the property bearing no.140, Okhla, New Delhi is concerned, it is a disputed property and the title is not with my parents. From property bearing no. B-140, DDA shed Okhla Phase I, Delhi, I get a rent of Rs.80,000 to Rs.85,000/- per month.

All the properties mentioned at paragraphs (a) to (g) of the MoU are in my possession."

9. As per the statement made by the Plaintiff, he is in possession of the property bearing No. D-86, Hauz Khas Enclave, New Delhi and is also running a shop by the name '*Bath Interior and Decorators*' in the said property. It has also been stated by the Plaintiff that gift deeds have been executed in his favour in terms of the MoU dated 29th July, 2010. The only property qua which according to him the gift deed has not been executed is number (d) in the recital in the terms of the MoU i.e., 1/3rd share in 480 sq. ft. in property bearing No. 9, Hauz Khas, New Delhi. The Plaintiff also



admits that he is getting rent to the tune of Rs. 80,000/- to Rs 85,000/- after deduction of TDS from the property bearing no. B-140, DDA shed Okhla Phase I, Delhi.

10. After hearing the Plaintiff and the Id. Counsels for the parties, it is clear that the MoU dated 29th July, 2010 is in the nature of a family settlement. The said MoU has been signed by the first party- Shri Arun Gupta, the second party- Smt. Alka Gupta, the third party- Shri Ankur Gupta and the fourth party- Shri Ankush Gupta. It has recorded the various properties *qua* which rights have been given to the Plaintiff and the properties *qua* which the Plaintiff had to give up his rights. In fact, the Plaintiff has even executed release deeds in respect of F-29, Hauz Khas Enclave, New Delhi. Further, the affidavit has been executed by the Plaintiff on which the signatures are admitted. The MoU terms and the affidavit are extracted below:

MoU

“PROPERTIES TO BE GIVEN BY THE FIRST PARTY, SECOND PARTY AND THIRD PARTY TO FOURTH PARTY

(a) 135 Sq ft in Basement of property No. D-86, Hauz Khas, New Delhi bearing private No. F15 in the name of first party.

(b) 126 Sq ft. In Basement of property No. D-86, Hauz Khas, New Delhi bearing private No. F-14, in the name of Second Party.

(c) 1/3rd share in 480 sqft. In the shop bearing private no. 9 in property No. D-86, Hauz Khas New Delhi in the name of Second party.

(d) 1/3rd share in 480 sqft. In property bearing No. 9, Hauz Khas, New Delhi in the name of the Third Party.

(e) 1/3rd share in 480 sqft. In property bearing part no.



9, Hauz Khas, New Delhi in the name of first Party.
(f) 340 Sqft. In property bearing no. D-86, Hauz Khas,
New Delhi bearing No. 10 in the name second party.
(g) B-140, DDA shed Okhla Phase I, Delhi.

The said property is in the name of M/s Lal Sons, a partnership concern consisting of Ms. Alka Gupta wife of Shri Arun Kumar, Ms. Kiran Gupta Wife of Shri Pawan Kumar Gupta; Ms. Neena Gupta wife of Shri Ajay Kumar Gupta and Shri Vinay Gupta son of late Shri Ram Lal Gupta. In the family partition of the larger group executed on 14.3.1998 this property has fallen to the first party and the first party has unencumbered right to deal with the same in any manner he likes.

5. That it has been mutually agreed upon between the parties to this memorandum that a formal dissolution deed shall be drawn with respect to the partnership business being run under the mane and style of M/s Bath Interiors & Decorators and Bath Concepts and all the accounts have been settled to the said partnership business. All liabilities of both the Companies on or before will be the responsibility of the Fourth Party.

6. That as per the understanding the Party of the First part, Second part and Third Part have agreed to release, give up, gift all their rights, title, share in the Properties "stated above in para-4" along with vacant, clear and legal possession of the above properties in favour of the Fourth Party & also assumed & confirmed to sign, execute any other documents, as required by the party & register the same, at the risk, cost and expenses of the party of the Fourth Part.

7. That the fourth party has agreed to execute a registered Deed of Relinquishment relinquishing all his rights, title, interest, claims in the following properties:

(a) Property No. F-29 (Second Floor) Hauz, Khas, New Delhi;



(b) Property No. 4/100 Kaushalya Park, Hauz Khas, New Delhi;

(c) 115 sqft. In property bearing No. D-86, Hauz Khas, New Delhi bearing private No. F-6 in the name of First Party, which is now on rent to Chowdhury Jewellers.

(d) 84 Sqft. In property bearing No. D-86, Hauz Khas, New Delhi bearing private No. F-4 in the name of first party, which is now on rent to Chowdhury Jewellers.

(e) 84 Sqft. Property bearing No. D-86, Hauz Khas, New Delhi bearing private No. F-4, in the name of Third party, which is now on rent to Chowdhury Jewellers.

(f) G-12 in which the first party is the tenant and running the business of M/s Nidhi Ceramics.

8. That the fourth party is in physical possession with respect to one room and one kitchen on the second floor of property bearing No. F-29, Hauz Khas Enclave, New Delhi as licensee under the first party. The fourth party has voluntarily agree that on taking possession of the properties which are being given to the fourth party, the fourth party shall surrender the actual, physical vacant peaceful possession of the room and kitchen peacefully to the first party without payment of any consideration.

9. That it has been mutually agreed by and between the parties that they shall, honor each and every part and parcel of this Memorandum of Understanding and shall not assail any part of it for want of mutuality.

10. That this memorandum of understanding has been executed bonafidely and, to safeguard the honor, dignity and reputation of the family. ”

11. The registered gift deeds which have been executed are also on record. The Plaintiff has not merely given up rights in respect of a property



but has also enjoyed the registered gift deed in his favour pursuant to an MoU. Thus, the Plaintiff has derived benefits from the MoU and has himself acted on the MoU.

12. It is noticed that the present case, like in most family disputes, is one in which the family settlement is sought to be resiled from. The MoU and the affidavit in fact operate as a family settlement which would be binding on all the parties. Neither of the parties would be permitted to resile from the said terms and conditions especially after enjoying benefits under the said settlement. The Plaintiff having already enjoyed the benefits of the MoU, the only right that the Plaintiff would have outstanding is of full implementation of the MoU i.e., in terms of execution of a gift deed in respect of 1/3rd share to be executed by Mr. Ankur Gupta in favour of the Plaintiff.

13. The Supreme Court in *Kale & Ors. vs. Deputy Director of Consolidation & Ors.*, AIR 1976 SC 807 has underscored the importance of family settlements in resolving disputes over property within a family. In the said judgement the apex Court highlighted the recognition of such family settlements as a practical mechanism to maintain harmony and reduce litigation within families, while also laying down guidelines for their validity and enforceability. The judgment reinforced the binding nature of family settlements on the parties involved, stating that once a family settlement is arrived at, it should be held sacrosanct, and parties should be dissuaded from attempting to alter it, ensuring stability and certainty in family arrangements. The relevant extracts of the said judgement are set out below:



“9. Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise Kerr on Fraud at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

“The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.”

The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold



the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term “family” has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In Halsbury's Laws of England, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

“A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by



compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term “family arrangement” is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.

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."

14. The Supreme Court, in its recent judgement in ***Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors., 2019 INSC 869***, revisited the decision made in ***Kale (supra)***, emphasising the formal recognition of efforts to restore peace and maintain familial bonds. The essence of these arrangements is to preserve familial bonds, averting animosity and fostering goodwill among kin. Further, the Supreme Court highlighted the significance of harmony and collective well-being over individual disputes. The relevant extracts of the



said judgement are set out below:

16. *Be that as it may, the High Court has clearly misapplied the dictum in the relied upon decisions. The settled legal position is that when by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangement ought to be governed by a special equity peculiar to them and would be enforced if honestly made. The object of such arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family, as observed in Kale (supra) ...*
15. Upon perusal of the settled law in ***Kale (supra)*** and ***Ravinder Kaur Grewal (supra)***, the legal position that emerges is that family settlements are arrangements/understandings which are entered into to maintain a peaceful equilibrium in the family. Parties to such settlements arrange their affairs in a manner so as to sort out issues and enjoy peaceful family life rather than continue to litigate. Any attempt to disturb the same would have to be curbed by courts failing which family members remain entangled in expensive litigations. These arrangements/understandings primarily aim to amicably resolve intra-family disputes or to safeguard the harmony and collective interests of family members. They are also intended to ensure the equitable distribution of familial assets and require the voluntary consent of all involved parties. Clearly, such settlements or arrangements can be upheld



even if established through oral agreements, provided that the participants hold a pre-existing title, claim, or vested interest in the subject property. Additionally, the requirement for formal registration of the arrangement/understand is also waived. Furthermore, once established, a family arrangement imposes an estoppel on the parties, precluding them from contesting the agreed-upon terms in the future, thereby reinforcing the binding nature and legal standing of such family settlements/understandings.

16. In the present case, the MOU being admittedly signed by the Plaintiff, the bogey which is sought to be raised that the contents are not admitted is nothing but a dishonest attempt to wriggle out of the said settlement, which this Court would not permit. Accordingly, in view of the settled legal position the suit is decreed in terms of the family settlement/MOU dated 29th July, 2010 holding the Plaintiff to be the absolute owner of the following properties:

- (a) 135 Sq ft in Basement of property No. D-86, Hauz Khas, New Delhi bearing private No. F15 in the name of first party.*
- (b) 126 Sq ft. In Basement of property No. D-86, Hauz Khas, New Delhi bearing private No. F-14, in the name of Second Party.*
- (c) 1/3rd share in 480 sqft. In the shop bearing private no. 9 in property No. D-86, Hauz Khas New Delhi in the name of Second party.*
- (d) 1/3rd share in 480 sqft. In property bearing No. 9, Hauz Khas, New Delhi in the name of the Third Party.*
- (e) 1/3rd share in 480 sqft. In property bearing part no. 9, Hauz Khas, New Delhi in the name of first Party.*
- (f) 340 Sqft. In property bearing no. D-86, Hauz Khas, New Delhi bearing No. 10 in the name second party.*
- (g) B-140, DDA shed Okhla Phase I, Delhi.*



17. In terms of the affidavit dated 29th July, 2010 executed by the Plaintiff, the Plaintiff has given up rights in the following properties:

- (a) *Property No.F-29, (Second Floor) Hauz Khas, New Delhi.*
- (b) *Property No. 4/100 Kauxhalya Park, Hauz Khas, New Delhi.*
- (c) *116 Sq. ft. In property bearing No. D-86, Hauz Khas, New Delhi bearing Private No. F-6, in the name of First Party which is now on rent to Chowdhury Jewellers.*
- (d) *84 Sq. Ft. In property bearing No. D-86, Hauz Khas, New Delhi bearing Private No.F-4 in the name of First Party which is now on rent to Chowdhury Jewellers.*
- (e) *84 Sq. Ft. Property bearing No. D-86, Hauz Khas New Delhi bearing private no. F-4 in the name of Third party, which is now on rent to chowdhury Jewellers.*
- (f) *G-12, in which the first party is the tenant and running the business of M/s Nidhi Ceramics.*

The Plaintiff shall accordingly not be entitled to claim any rights in properties (a) to (f) above.

18. The above order is essential considering the fact that the Plaintiff, while admitting his signatures, attempts to challenge the MOU and the affidavit on the ground that the contents of the same are denied. He also justifies the said challenge on the ground that various contrary positions have been taken by other Defendants including his own parents and his brother – thereby seeking to justify the challenge. The Court, therefore, holds that the Plaintiffs and all the other Defendants, namely, Defendant Nos. 1, 2, 3 and 4 would be bound by the MoU as also the affidavit.



19. Ld. Counsel for Defendant Nos. 5 and 6 submits that the challenge raised by his clients in respect of the B-140, DDA shed Okhla Phase I, Delhi shall also stand withdrawn.

20. In this view of the matter, the following directions are issued:

- i) The suit is decreed in terms of the MoU and the affidavit dated 29th July, 2010.
- ii) The Plaintiff is declared to be the absolute owner and enjoying ownership rights in the following properties:
 - (a) 135 Sq ft in Basement of property No. D-86, Hauz Khas, New Delhi bearing private No. F15 in the name of first party.
 - (b) 126 Sq ft. In Basement of property No. D-86, Hauz Khas, New Delhi bearing private No. F-14, in the name of Second Party.
 - (c) 1/3rd share in 480 sqft. In the shop bearing private no. 9 in property No. D-86, Hauz Khas New Delhi in the name of Second party.
 - (d) 1/3rd share in 480 sqft. In property bearing No. 9, Hauz Khas, New Delhi in the name of the Third Party.
 - (e) 1/3rd share in 480 sqft. In property bearing part no. 9, Hauz Khas, New Delhi in the name of first Party.
 - (f) 340 Sqft. In property bearing no. D-86, Hauz Khas, New Delhi bearing No. 10 in the name second party.
 - (g) B-140, DDA shed Okhla Phase I, Delhi.
- iii) In respect of 1/3rd share in 480 sq. ft. in property bearing No. 9,



Hauz Khas, New Delhi, Mr. Ankur Gupta shall execute the gift deed within 8 weeks, in favour of the Plaintiff.

- iv) It is further declared that Plaintiff shall have no rights in respect of the following properties:
- (a) Property No.F-29, (Second Floor) Hauz Khas, New Delhi.
 - (b) Property No. 4/100 Kauxhalya Park, Hauz Khas, New Delhi.
 - (c) 116 Sq. ft. In property bearing No. D-86, Hauz Khas, New Delhi bearing Private No. F-6, in the name of First Party which is now on rent to Chowdhury Jewellers.
 - (d) 84 Sq. Ft. In property bearing No. D-86, Hauz Khas, New Delhi bearing Private No.F-4 in the name of First Party which is now on rent to Chowdhury Jewellers.
 - (e) 84 Sq. Ft. Property bearing No. D-86, Hauz Khas New Delhi bearing private no. F-4 in the name of Third party, which is now on rent to chowdhury Jewellers.
 - (f) G-12, in which the first party is the tenant and running the business of M/s Nidhi Ceramics.
- v) The challenge to the ownership of property bearing B-140, DDA shed Okhla Phase I, Delhi by Defendant Nos. 5 and 6 shall also stand withdrawn. The said property shall also now exclusively vest with the Plaintiff.
- vi) The Defendant Nos. 1 to 4 shall also withdraw their maintenance complaints and any other proceedings which may



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have been filed which would be contrary to the decree in the present suit.

21. The suit is accordingly decreed in these terms and the same is disposed of. Decree sheet be drawn. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 19, 2024

Rahul/am

[Corrected and released on 29th February, 2024]