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

Date of Decision: 17th May, 2024

+ **CS(OS) 2613/2015**

SHRI INDER PRAKASH SINGH Plaintiff

Through: Mr. S.C. Singhal, Adv.

versus

SHRI RAJ MAHATIM SINGH & ORS Defendants

Through: Mr. Ramjee Pandey, Adv. (M-9911269778)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

PRATHIBA M. SINGH, J.

1. This hearing has been done through hybrid mode.
2. The Plaintiff has filed the present suit seeking declaration and partition in respect of property bearing no. RZ-65, Gali No.10, Madanpuri, West Sagarpur (Nasir Pur Village), New Delhi-110045 (hereinafter, '*suit property*').
3. The Plaintiff- Shri Inder Prakash Singh and Defendant Nos.1, 2 and 3 *i.e.*, Shri Raj Mahatini Singh, Shri Chander Prakash and Shri Rajesh Kumar Singh are real brothers. The case of the Plaintiff is that the suit property has been purchased jointly by all the four brothers - however, the Plaintiff is not being given enough portion in the property for his occupation and ownership. Hence he is unable to enjoy the property as per his 1/4th share and considering the fact that he also has children, he requires accommodation of more than one room which is currently in his occupation.



Hence, he seeks partition of his share.

4. Written statement has been filed on behalf of Defendant No.1 as also Defendant Nos. 2 and 3 jointly. The stand of Defendant No.1 in the written statement is that the property already stands partitioned vide settlement deed dated 17th December, 1999.

Submissions

5. It is submitted by Id. Counsel for Defendant No.1 that, being the eldest brother, he had come to Delhi from Jaunpur, Uttar Pradesh in 1982 and was engaged in the work of plate polishing and thereafter started working in the chemical business since 1993. It is averred that Defendant No.1, from his hard earned money, purchased the plot of 150 sq. yds. in Vijay Vihar 1988. Thereafter, he purchased a plot in Uttam Nagar after selling the Vijay Vihar plot in 1988, which he sold in the same year. Subsequently, a plot of 100 sq. yards at Sagar Pur was purchased in 1989 which was sold in 1998. Finally the suit property of 200 sq. yards was purchased by him in 1998. The Defendant then constructed the house on the said plot.

6. The Defendant No.1 had also started a firm by the name M/s Mathur Chemicals in 2002 and it was at that stage that he called the Plaintiff as well his other brother *i.e.*, Defendant No.2 and settled them down in the business. However, due to the misconduct by the Plaintiff, the Defendant No.1 had ousted the Plaintiff from the business and had cut all relationship with him.

7. Currently, the stand of Defendant No.1 is that there is a family settlement dated 17th December, 1999. In terms of the said family settlement, the Defendant No.1 is entitled to the whole of the Ground Floor. The basement is in the possession of Defendant No.3. Plaintiff and



Defendant No.2 are jointly in possession of the First Floor of the property.

8. In the written statement of Defendant Nos. 2 and 3, their stand is similar to that of the Defendant No.1. They have categorically pleaded that the entire expense for purchase and for construction has been spent by Defendant No.1. The Defendant No.1 being the elder brother has out of love and affection allowed all the brothers to reside in the same property and in order to avoid any disputes, the family settlement has been executed. The parties are in possession of the property in terms of the family settlement. The roof rights vests with the Defendant No.2 and the Plaintiff.

9. The Plaintiff in the reply to the written statement has denied the existence of the settlement agreement dated 17th December, 1999 and stated that there was no agreement executed or stamped and the said agreement is stated to be fabricated.

Evidence:

10. The Court has also perused the evidence which has been led. The original deed of family settlement dated 17th December 1999, has also been placed on record by the parties. It is not in dispute that the parties are in possession of different portions of the property since beginning. The Plaintiff has merely denied his signatures on the family settlement. However, the same very family settlement is confirmed by Defendant Nos. 1, 2 and 3 in their pleadings.

11. During evidence, the Plaintiff by way of affidavit (Ex. PW-1/A) submitted that the suit property was purchased jointly by him and the Defendants. The Plaintiff has stated that he had completed B.A. from Raj College in Jaunpur. He is stated to have come to Delhi in the year 1986. Further, the Plaintiff admitted that he had not filed any documentary proof



regarding his stay in Delhi from 1986 to 2000. The Plaintiff submitted various documents which were taken on record as Exhibits. The copy of the site plan was exhibited as **Ex.P-1** and copy of Aadhar Card of the deponent and his wife and driving licence of the deponent were exhibited as **Ex.PW-1/1 and PW-1/2 (OSR¹)**. The copy of the electricity bill was exhibited as **Ex.PW-1/3** and mobile bill was **Ex.PW-1/4** and copy of the Life Insurance receipt was **Ex.PW-1/5**. The copy of GPA and Will were exhibited as **Ex.PW-1/6 & 7**. The originals of the same are stated to be in possession of the Defendant.

12. The Plaintiff stated in his evidence affidavit that he resided in one room on the first floor with shared facilities and required more space due to his growing children. He stated that despite requests, the other two parties i.e., Defendants, who occupied the entire property, refuse to divide it equally. The deponent also stated that he sent a notice on 13th August, 2015 seeking partition, which was ignored, and he was threatened with eviction. He then stated to have filed a police complaint but received no action. Consequently, the deponent filed the present suit seeking partition of the 200 sq. yds property into equal shares and claiming damages and mesne profits of Rs.3,60,000 for the last three years and continuing until an equitable partition is achieved.

13. Oral evidence of the Plaintiff was also recorded. The deponent i.e., Plaintiff during examination stated that he did not know when his elder brother, i.e., Defendant No. 1 came to Delhi for earning his livelihood. He stated that Defendant no.1 had not purchased plot measuring 150 sq. yds. in

¹ OSR - Original seen and returned



Vijay Vihar, near Awantika, Delhi in the year 1988 out of his own savings. He stated that the said plot was purchased out of savings of himself (Plaintiff), Defendant No.1, Defendant No.2 and their cousin brother Surajmani Singh. He then submitted that he did not remember when the said plot was sold. As per the Plaintiff, the plot at Uttam Nagar was also purchased in joint name of four persons. He further stated that he did not remember when the said plot at Uttam Nagar was sold. He admitted that the plot at Uttam Nagar was sold and out of proceeds of same, another plot measuring 100 sq. yds. at Sagarpur, Delhi was purchased. He further conceded that out of sale proceeds of Sagarpur plot, suit property was purchased and the same is in joint name of parties to the suit. The Plaintiff further completely denied existence of any settlement deed dated 17th December, 1999. The Plaintiff's statement was recorded on 27th October, 2016.

14. The Plaintiff was then further recalled for cross-examination on 23rd February, 2017 when the settlement deed dated 17th December, 1999 was shown to the Plaintiff. The Plaintiff denied the execution of the same. Further, the Plaintiff denied his signatures at the identified places as shown by the Defendants' Counsel.

15. The Plaintiff during cross examination further stated that Defendant No.1 had been residing on the ground floor and Defendant No.2 had been residing on the first floor. He categorically stated that except for one room and some space in the balcony (used as Kitchen by them) which was in his possession since 1998, rest of the portion of the first floor was in possession of Defendant No. 2. On 24th August, 2017, the evidence of Plaintiff was closed.



16. After, recording the Plaintiff's evidence, Defendant No.1's evidence by way of affidavit was taken on record. The Defendant No.1- Raj Mahatim Singh, deposed that he came to Delhi in the year 1982 and had done the work of plate polishing and thereafter started the working in the chemical business in the year 1993. As he was residing alone in Delhi, he stated that he saved his hard earned money and thereby purchased a plot of 150 Sq. Yards in the Vijay Vihar (Awantika) Delhi and sold that plot in the year of 1988. The deponent *i.e.*, Defendant No.1 then stated that he purchased a plot at Uttam Nagar out of the money realized from the previous sale and by adding some extra money. The plot at Uttam Nagar was sold in the same year and the Defendant No.1 then stated to have further purchased a plot of 100 Sq. Yard in the year 1989 at Sagarpur and thereafter he further sold the plot of 100 Sq. Yard in the year 1998 and purchased the present 200 sq. yard plot at Sagarpur out of sold amount and constructed the building therein by his own hard earned income . The Defendant No.1 stated that he was in possession of the documents of plot No. 65 Land measuring area of 200 square yards out of Khasra No. 333 situated in the area of Village Nasirpur Delhi and abadi known as Madanpuri West Sagarpur New Delhi as a General Power of Attorney executed and registered on 31st December, 1998 by the Land Owner Usha Rani. The General Power of attorney dated 31st December, 1998 was exhibited as **DW-1/1**. In the same manner registered Will dated 31st December, 1998 was exhibited as **DW-1/2**. Along with the said affidavit, Defendant No.1 also submitted the family settlement deed dated 17th December, 1999 exhibited as **DW-1/3**.

17. In the said affidavit, the Defendant No.1 further stated that the present suit is an abuse of process as the property was already partitioned among the



parties through a family settlement deed dated 17th December, 1999, and each party had been in possession of their respective shares since then. He further stated that the Plaintiff was called to Delhi only after the property was purchased and Plaintiff had no financial role in the acquisition or construction of the suit property. The deponent/ Defendant No.1 further stated that he started a firm in 2002, involving the Plaintiff and another brother, but ousted the Plaintiff in 2007 due to his dishonest actions. The Defendant No.1 further claimed that the Plaintiff had been harassing him despite his clear intentions and love for his brothers.

18. The Defendant No. 1 was called for examination on 14th May, 2018 and the documents submitted as exhibits were examined. Further Defendant No.1 was called for examination in chief on 3rd December, 2018. The Defendant No.1 during examination stated that they in total were four brothers and two sisters. He stated that he was in possession of the original title documents of the suit property which have been placed on record. The Defendant No. 1 during examination admitted that suit property was purchased in the joint names of the parties to the suit. He also stated that he was the income tax payee, however he was not paying taxes at the time of purchase of suit property. With regard to the family settlement deed, Defendant No.2 stated that the stamp paper for the same was purchased by Mr. Satbir Gupta and agreement was drafted by him as well. He also stated that the said agreement was not signed on first two pages by any of the parties. However, he denied Plaintiff's assertion that Plaintiff had not signed on the third page of the family settlement. He further denied the allegation that the deed was fictitiously prepared by him and other Defendants to deprive the Plaintiff of his share in suit property. With the statement of



Defendant No.1, evidence was concluded on 3rd December, 2018.

19. In summary, the Plaintiff claims that the suit property was jointly purchased and presented evidence to support this, seeking an equitable partition, damages, and mesne profits due to the Defendants' refusal to divide the property. The Plaintiff asserts that despite living in a single room and requesting a fair division, he was met with threats and inaction, prompting the suit. Conversely, Defendant No.1, Raj Mahatim Singh, argues that he independently acquired and developed the property through his efforts, supported by various documents including a family settlement deed from 1999 that allegedly already partitioned the property. He asserts that the Plaintiff had no financial involvement and was ousted from a family business due to dishonest actions, claiming the suit is an abuse of the legal process.

20. The conflict between the Plaintiff's and the Defendant's narratives centres on the equitable partition of the property and the Plaintiff's right to claim damages and mesne profits. While the Plaintiff seeks a court-ordered division and compensation, the Defendant argues that such claims are baseless given the prior settlement and the Plaintiff's lack of financial contribution.

Analysis

21. The present suit is illustrative of the struggles and conflicts of a migrant family in a big city like Delhi. On the one hand is the elder brother who has come alone from Jaunpur in UP and has built the family house and business. He has also settled his family members and has been able to give them a dwelling house. On the other hand is the younger brother's claim for equal rights, may be owing to the growth of his own family. The initial joint



struggles of the brothers in this case appear to have given way to conflicts between family members leading to disintegration and disputes. Two other brothers support the Defendant No.1's stand, but the Plaintiff – one younger brother, opposes and seeks partition of the property.

22. A family settlement has been executed, in order to avoid court disputes. However, the same seems to have been in vain leading to the filing of the present suit, which was filed almost a decade ago. Amongst all parties, the only person who disputes the family settlement is the Plaintiff. The original family settlement is on record. The court has perused the family settlement.

23. The objection of Mr. Singhal, Id. Counsel for the Plaintiff is that the family settlement deed is not registered and the stamp paper at the back is not visible. So the exact date is not decipherable, as per the Plaintiff.

24. In the opinion of this Court, such technical objections in respect of a family settlement are not liable to be entertained. In addition, the issue of registration of family settlements is no longer *res integra*. It has been settled by a series of judgments of the Supreme Court beginning with ***Kale & Ors. v. Deputy Director of Consolidation & Ors.*** [3 (1976) 3 SCC 119] and the recent decision ***Sita Ram Bhama v. Ramvatar Bhama*** [AIR 2018 SC 3057] that family settlements are to be given effect for maintaining the peace and tranquillity between the parties in a family. In ***Sita Ram Bhama***, the Supreme Court 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.”

25. In view of the settled legal position, a Division Bench of this Court has held in **Nitin Jain v. Anuj Jain & Anr. [ILR (2007) II DELHI 271]** that a memorandum recording an oral family settlement which has already taken place is not an instrument dividing or agreeing to divide property and is



therefore, not required to be stamped. The relevant observations from the said judgment are extracted below:

“6. A Partition Deed is an instrument of partition and has been defined in Section 2(15) of the Stamp Act. The said instrument is chargeable to duty as per Schedule 1. Article 45 of the Stamp Act. Stamp duty payable on an instrument of partition is @ 1% of the value of the property. A decree of partition passed by a Court is also an instrument of partition as defined in Section 2(15) of the Stamp Act, which reads as under:

"2(15). "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue-authority or any Civil Court and an award by an arbitrator directing a partition."

7. However, Courts have recognised oral partitions in cases of joint families. An oral partition is not an instrument of partition as contemplated under Section 2(15) of the Stamp Act. Therefore, as it is not an instrument. on an oral partition no stamp duty is payable.

8. The Courts have recognised that it is legally permissible to arrive at an oral family settlement dividing/partitioning the properties and thereafter record a memorandum in writing whereby the existing joint owners for the sake of posterity record that the property has been already partitioned or divided. The memorandum does not by itself partition the properties but only records for information what has already been done by oral partition. The memorandum itself does not create or extinguish any rights. A record of oral partition in writing is created. The writing records a pre-existing right and does. not by itself partition the properties for the first time. As the memorandum only



records oral partition which has already taken place but does not in praesenti create any right, it cannot be treated as an instrument creating B partition. [Refer. Tek Bahadur Bhujil v. Debi Singh Bhujil and others reported in AIR 1966 SC 292), Bakhtawar Singh v. Gurdev Singh reported in (1996) 9 SCC 370, Kale v. Dy. Director of Consolidation reported in (1976) 3 SCC 119, Roshan Singh v. Zile Singh reported in AIR 1988 SC 881 and Bachan Singh v. Kartar Singh and others reported in 2001 (10) JT (SC) 64.]

9. In view of the legal position explained above, it follows that a decree of partition is an instrument of partition and therefore is required to be stamped under Schedule I of Article 45 r/w Section 2(15) of the Stamp Act. However, an oral family settlement dividing or partitioning the property is not required to be stamped. Similarly, a memorandum recording an oral family settlement which has already taken place is not an instrument dividing or agreeing to divide property and is therefore not required to be stamped."

26. Thus, it is clear that family settlements are not required to be compulsorily registered, and stamp duty is not required to be compulsorily paid in respect of the same, when the settlement has been arrived at initially as an oral partition and is thereafter put into writing for the purpose of information.

27. In the opinion of this Court, during the cross-examination, the Plaintiff has not been able to dislodge the existence and authenticity of the family settlement. All three brothers have confirmed its existence. It is also not disputed that broadly, the brothers are occupying the portions as mentioned in the family settlement, except that the Plaintiff has a lesser portion in his occupation. The extracts from the family settlement read as under:



“This family settlement deed executed at New Delhi on this date of ____ 1999 between

1) Rajesh Kumar Singh son of Shri R.S. Singh resident of RZ-65 Madanpur, West Sagarpur, New Delhi (hereinafter called the First Party)

2) Shri R.M. Singh son of Shri R.S. Singh resident of RZ-654 Madanpur, West Sagarpur, New Delhi (hereinafter called the Second Party)

3) Shri C.P. Singh son of Shri R.S. Singh resident of RZ-65 Madanpur, West Sagarpur, New Delhi (hereinafter called the Third Party) AND

4) Shri I.P. Singh son of Shri R.S. Singh r/o RZ-65 Madanpur, West Sagarpur, New Delhi (hereinafter called the Forth Party)

That the aforesaid all the fourth parties are resident of RZ-65 Madanpur, West Sagarpur, New Delhi.

Whereas the aforesaid all the parties are jointly owner and in possession of Built up property No. RZ-65 area measuring 200 sq. yds. Out of Khasra No.333 area of village Nasirpur, abadi known as Madanpuri Gali No.10 and 11 West Sagarpur, New Delhi and bounded as under:

East : Plot No. 64

West : Plot No. 66

North : Road

South: Road

and consisting one basement, ground floor in the aforesaid plot.

Now whereas the all the parties partition or family arrangement regarding the aforesaid property as under: with their own consent and without any pressure divided the aforesaid property as per details given below :

1. That the Basement of the aforesaid property



shall go and devolve in favour of the First party and Now the first party became absolute and rightful owner of the basement.

2. That the Ground floor of the aforesaid property Second given to the Second party and Now the second party is the absolute and rightful owner and in possession of the Ground floor without any interference of the other parties.

3. That the First floor with roof right is given to the Third party and Fourth party jointly.

4. Now the each of the four parties aforesaid shall be at liberty & free to sell, mortgage construct reconstruct sell etc. etc. as the Sole owner of the same in any manner and use and utilize their portion of property according to their own sweet WILL and that None among the aforesaid parties shall raise any objection against any one.

5. That the aforesaid terms and conditions shall also be binding upon the legal heirs and successors of the aforesaid four parties including their own self.

6. That all the parties have full right to get Electric connection and water connection in his own name from the authority concerned.

Note one original & three its Photo state copies should be accompany treated as ORIGINAL ONES.

In witness where of the aforesaid four parties herein have hereunto set their own hands on this Instrument in the presence of the following witnesses on the day month and year already first above written.”

28. The terms of the above document clearly show that all brothers had subsisting rights in the property, as it was registered in their name. All the parties were in possession of different parts of the property. In effect, the document merely recorded what had already been agreed and hence did not require registration. As per clause 3 of the family settlement, the Plaintiff



along with Mr. C.P. Singh is entitled to the First Floor with roof rights jointly. In view thereof, there can be no doubt that this was a full and final settlement of the shares of the parties i.e., the four brothers. The same cannot be re-agitated or dislodged in the present suit, as even without the family settlement the share of the Plaintiff and the other three brothers could have at best been 1/4th each. In such disputes, the Court has a bounden duty to bring a finality and closure to the disputes for the peace and harmony of the family members.

29. A decree is accordingly passed in the suit in terms of the family settlement dated 17th December, 1999 and it is further declared –

- That Defendant no.1, Raj Mahatim Singh is the exclusive and absolute owner of the Ground floor of the property
- That Defendant no.3, Rajesh Kumar Singh is the exclusive and absolute owner of the basement of the property;
- that the Plaintiff- Inder Prakash Singh and Defendant No.2- Chander Prakash Singh are the exclusive and absolute owners of 50% rights in the First Floor as also the roof rights on the First Floor.

30. The suit is decreed in the above terms. The family settlement dated 17th December 1999 shall form part of the decree.

31. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 17, 2024

Rahul/bh

(corrected & released on 28th May, 2024)