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

% ***Reserved on: 04.05.2026***
Pronounced on: 15.05.2026

\+ FAO(OS) 8/2025, CM APPL. 4959/2025 & CM APPL. 29876/2026
ASHOK KAMAL DECEASED THR LRS & ORS.
.....Appellants

Through: Mr. Aayush Agarwala & Ms. Utkarshani Srivastava, Advs.

versus

PRABHAT KAMAL GUPTA & ORS. .....Respondents

Through: Mr. Akshay Makhija, Sr. Adv. with Ms. Seerat Deep Singh, Advs./R1

\+ FAO(OS) 10/2025, CM APPL. 4349/2026, CM APPL. 5891/2026
SHRI PRABHAT KAMAL GUPTA .....Appellant

Through: Mr. Akshay Makhija, Sr. Adv. with Ms. Seerat Deep Singh, Advs.

versus

SHRI ASHOK KAMAL DECEASED THROUGH LRS & OTHERS .....Respondents

Through: Mr. Aayush Agarwala & Ms. Utkarshani Srivastava, Advs.

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

1. The present two appeals assail Judgment dated 18.11.2024 passed by the learned Single Judge in I.A. No. 6709/2024 in CS(OS) 109/2016 and the communication dated 04.10.2023 issued by the Registry of this Court directing the parties to pay stamp duty for drawing up the decree in terms of a Memorandum of family settlement dated 25.11.2018 ("Memorandum of family settlement"). Since both appeals arise from the same impugned

judgment and involve common issues, they are being decided by this common judgment.

2. The dispute pertains to property bearing No. 10, Friends Colony (West), Mathura Road, New Delhi (hereinafter referred to as "the Property"), which was purchased in the year 1957 by late Sh. Om Prakash Gupta and was treated as part of the Hindu Undivided Family comprising of himself and his two sons, Mr. Prabhat Kamal Gupta and Mr. Ashok Kamal Gupta. Upon his demise on 14.05.1994, under a Will dated 02.09.1993, his one-third share in the property, at its rear end, was bequeathed to his daughter namely Smt. Amita Rani Gupta. The specific portion of her share was acknowledged by the family and recorded in a Deed of Declaration dated 22.07.2004. Rest of the property remained jointly held by the two brothers, namely Mr. Prabhat Kamal Gupta and Mr. Ashok Kamal Gupta. The brothers attempted for division of the property but could not succeed and hence, CS(OS) 109/2016 for partition came to be instituted.

3. The learned Single Judge on 20.10.2016 passed a preliminary decree for partition and further on 08.05.2017 passed a final decree. He further found that partition by metes and bounds was not possible and accordingly directed for sale of the property and distribution of proceeds. At this stage the parties arrived at an oral settlement *inter se* on 22.11.2018, agreeing to effect partition by metes and bounds by accommodating each other. The said oral settlement was thereafter recorded in a Memorandum of family settlement.

4. A joint application by the parties was filed seeking modification of the final decree dated 08.05.2017 in terms of the said Memorandum of

family settlement and v*ide* Order and Decree dated 18.12.2018, the final decree was modified and a final decree for partition of the property by metes and bound was directed to be drawn in terms of the family settlement.

5. The Registry of this Court, at the stage of drawing of final decree *vide* communication dated 04.10.2023 raised a demand of ₹1,81,49,571.86/- towards stamp duty from the parties. The said demand was disputed by the parties and I.A. No. 6709/2024 was filed, which came to be dismissed by the learned Single Judge *vide* the impugned Order dated 18.11.2024 on the ground that the Memorandum of family settlement is not bonafide as the same is executed to save stamp duty. Aggrieved thereby, the present appeals have been preferred.

6. Before this Court, CM APPL. 29876/2026, has been filed that since the parties have already bifurcated their shares and taken physical possession on their respective share as per the family settlement, therefore, instead of decree of partition, a decree of declaration may be passed. There is no objection to this application by any party**.**

7. We have heard learned counsel for the parties and have perused record. The issues that arise for consideration are whether, in the given facts and circumstances, the Memorandum of family settlement recording an earlier oral settlement dated 22.11.2018 is exigible to stamp duty or not; and whether the same is bonafide.

8. The facts of the case reveal that the learned Single Judge found that the shares of the parties in the property could not be divided by metes and bounds and directed for sale of the same and to distribute the proceeds as per the shares. It appears that the parties, having affection to the ancestral

property accommodated each other and orally partitioned the property, mutually adjusting the shares and thereafter recorded the same in writing by Memorandum of family settlement. The Memorandum does not itself affect any partition, but merely records the oral arrangement already concluded by exchange of possession effected between the parties. Even the learned Single Judge, in the impugned Order dated 18.11.2024, has noted this position, and the same is not in dispute.

9. The legal position with regard to liability of such a recording in writing of an earlier oral settlement is no longer *res integra*. In ***Madho Das v. Mukand Ram*, (1955) 1 SCC 344,** the Supreme Court held: -

> *"46… It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary."*

10. In ***Kale v. Deputy Director of Consolidation*, (1976) 3 SCC 119**, the Supreme Court held: -

> *"10…*
> *(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;"*

11. In view of the above settled law, an oral settlement of property amongst family members jointly owning the same is permissible under law. Recording of such an oral settlement in writing is also not liable to registration or stamp duty as no right is created or extinguished by such a document.

12. Now coming to the second issue of bonafide in the oral settlement and thereafter recording the same in writing for submission to the Court is concerned, suffice is to say, that, any person is well within his right to manage his affairs in a manner which attracts minimum tax liability unless the law restricts or curtails such right to choice. In ***Commissioner of Income Tax v. Shiv Raj Gupta***, 2014 SCC OnLine Del 7305, the Co-ordinate Bench of this Court held: -

> *"**50. The assessee is well within his right to choose any one event between two or more events and select an event to minimise or reduce his tax liability.** The Act, i.e., the Income-tax Act, 1961, imposes and saddles tax liability on the chosen tax event. The Act per se, unless a provision so stipulates, **does not restrict or curtail the right of choice**. Tax is determined and gets crystallised on the tax event adopted by the assessee. For example, in Vodafone's case (supra), the assessee had several options and, therefore, right to choose a particular tax event. As long as the choice is within the*

framework of law, the Assessing Officer cannot disturb the tax effect or liability, which is the consequence of the event. The choice of the assessee is not abrogated or invalidated. For example, a company has several legal options and, therefore, right to choose how to dispose of a capital asset, as in Vodafone's case (supra). Similarly, an assessee can opt for and has multiple options for raising debt to finance business expansion plans. The assessee may have several legally permissible alternatives to effect and divide the assets on partition. Such examples are numerous. The choice might result in mitigation of tax liability but the tax effect would not classify or help us differentiate between tax avoidance and abusive tax avoidance. Any attempt to minimise or eliminate tax liability would not make the choice of the taxpayer abusive tax avoidance. The foundation of the said principle is that the tax code by its nature differentiates between different types of actions, transactions, arrangements and activities and then identifies and stipulates the consequences. The tax code, i.e., the Income-tax Act, 1961, is rule based and complex. The Act is not entirely principle based. The provisions are read and applied. The principle of purposive interpretation both in favour of the Revenue or the assessee can be applied but within the four corners of law. In fact, in some cases, the assessee may find themselves taxed at a higher liability for failure to choose a more tax friendly event. But the right of choice is hedged with one significant condition. ***The event selected, as noticed above and, subsequently, should be real and not a colourable device, sham and deceit.****"*

(emphasis added)

13. Thus, merely because the option availed by the parties, permissible under law, reduces or nullifies the stamp liability, would by itself not make the same malafide. Further, in the present case, the learned Single Judge itself found that it was not possible to divide the property by metes and bounds and directed for sale and division of sale proceeds as per the shares. It was at this stage that the parties adjusted their claims/shares and settled for partition by metes and bounds. In the given circumstances there is no basis to presume any malafide on either count.

14. In view of CM APPL. 29876/2026 which is not opposed and considering that the parties have already bifurcated their shares and taken

physical possession of their respective share as per the family settlement, this Court deems it appropriate to pass a decree of declaration instead of a decree for partition, as prayed for.

15. Therefore, the present appeals are allowed. The impugned Order dated 18.11.2024 is set aside and the communication dated 04.10.2023 issued by the Registry is quashed.

16. Accordingly, the Judgment and Decree dated 18.12.2018 passed in CS(OS) 109/2016 stands modified and a decree of declaration is hereby passed. It is declared, *inter se* between the parties to the present proceedings and in terms of the family settlement, that the Appellants in FAO (OS) 8/2025 namely Mr. Ashok Kamal, Mr. Avikshit Saras, Ms. Manassvi Rani and Ms. Akshita Rani, collectively, shall be entitled to hold and enjoy as exclusive owners the portion of the property shown as ABCD in the site plan annexed with the family settlement, and the Respondents in FAO (OS) 8/2025, namely Mr. Prabhat Kamal Gupta, Mr. Shiv Gupta and Ms. Pratyusha Gupta, collectively, shall be entitled to hold and enjoy as exclusive owners the portion shown as CDEF therein. The Memorandum of family settlement along with the site plan shall form part of the decree.

17. Pending application(s), if any, also stand(s) disposed of.

VIVEK CHAUDHARY
(JUDGE)

RENU BHATNAGAR
(JUDGE)

MAY 15, 2026/ht/nc