



2025:DHC:6894-DB



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

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*Judgment reserved on:01.08.2025**Judgment pronounced on: 18.08.2025*

+ RFA(OS) 61/2024, CM APPL. 65523/2024, CM APPL. 65526/2024, CM APPL. 5802/2025, CM APPL. 5821/2025, and CM APPL. 35594/2025

SUMAN SINGH VIRK & ANR.Appellants

Through: Mr. Tanmaya Mehta, Mr. Anirudh Bhatia and Ms. Shreya Sethi, Advs.

versus

DEEPIKA PRASHAR & ANR.Respondents

Through: Mr. Sanjay Gupta, Mr. Ateev Mathur and Mr. Anmol Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Appeal has been filed by the Appellants under Section 96 read with Order XLI Rule 1 read with Section 151 of the Code of Civil Procedure, 1908¹ read with Section 10 of the Delhi High Court Act, 1966 assailing a judgment dated 04.10.2024 [hereinafter referred to as 'Impugned Order'] passed by the learned Single Judge in CS(OS) 71/2015 captioned *Deepika Prashar & Anr.*

¹ CPC



vs. Suman Singh Virk & Anr.

2. By the said Judgment, the learned Single Judge decreed partition of property being L-1/8, South Extension Part-II, New Delhi [hereinafter referred to as ‘suit property’] and directed the Appellants (Defendants before the learned Single Judge) to handover possession of one-half (1/2) of the fourth floor of the suit property to the Respondents (Plaintiffs before the learned Single Judge). By the Impugned Order, the Appellants/Defendants were further directed to pay *mesne* profits of Rs.48,000/- per month from 07.01.2015, i.e. the date of institution of the suit till delivery of vacant and physical possession, along with interest at the rate of 6% p.a. Additionally, the learned Single Judge directed the Registrar General to file a complaint under Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023² (erstwhile Section 340 of the Code of Criminal Procedure, 1973³) for the offences committed by the Appellants/Defendants.

3. The brief facts of the case are that Late Shri Jamna Dass s/o Pt. Ram Jas purchased the suit property by a registered Sale Deed. Last Will and Testament of Shri Jamna Dass, duly registered, left the property to Late Mrs. Santosh Prashar (mother of Appellants), and Late Mr. Nidhish Prashar (husband of Respondent No. 1). Each of the two was given one-half (1/2) undivided share each.

4. Subsequent to the unfortunate demise of Mrs. Santosh Prashar, the following was admittedly the undivided shareholding in the suit property:

- i. Late Mr. Nidhish Prashar – 50%

²BNSS

³Cr.P.C.



- ii. Appellant No. 1 – 25%
- iii. Appellant No. 2 – 25%

5. A Family Settlement dated 27.11.2012⁴ was entered into between the Appellants (*as First Party*) and Late Mr. Nidhish Prashar, by which it was allegedly agreed that the suit property would be demolished and constructed by a builder. Subsequently, a Builders’/Developers’ Agreement dated 04.12.2012⁵ was executed between the Appellants and Late Mr. Nidhish Prashar (*collectively as the First Party*) and the Builders (*as the Second Party*).

6. There was a difference in the way the freshly constructed floors of the suit property were referred to in the Family Settlement and the Builders’ Agreement. While the Family Settlement finds mention of the ground floor, first floor, second floor, third floor and fourth floor with roof/terrace, the Builders’ Agreement records the corresponding floors as stilt, ground floor, first floor, second floor and third floor with terrace.

7. Before the demise of Late Mr. Nidhish Prashar, the Builders had handed over the possession of the first floor (as per Builders’ Agreement) of the suit property to him, pending the completion of the other floors. Later, the Builders handed over the third floor (as per Builders’ Agreement) jointly to the Appellants and Respondent No.1.

8. Respondents/Plaintiffs therein filed the Suit before the learned Single Bench seeking partition of the suit property in accordance with the terms of the Family Settlement.

⁴Family Settlement

⁵Builders’ Agreement



9. It is Appellants'/Defendants' case that the Builders' Agreement is the only agreement executed between the parties for the undivided half share of Late Mr. Nidhish Prashar and for the remaining undivided half share held jointly by the two Appellants in the suit property, and as per the terms of the same, fourth floor in the suit property does not even exist.

10. It is Respondents'/Plaintiffs' claim that despite the Family Settlement clearly demarcating the shares of the Appellants and the Respondents in the suit property, the Appellants have nonetheless trespassed on some part of the fourth floor (third floor as per the Builders' Agreement) of the suit property and have illegally and unauthorisedly deprived the Respondents of the complete possession of the said floor, thereby causing harassment and nuisance to them.

11. Upon appreciation of pleadings, *vide* Order dated 04.10.2024, the suit was allowed by the learned Single Judge. Learned Single Judge has allowed the suit primarily on the following grounds:

- i. The Family Settlement was acted upon by the parties when accepting the ground floor and second floor (as per Builders' Agreement).
- ii. Builders' had no concern in the *inter se* division of the reconstructed building falling in the share of co-owners and thus the mentioning of the Family Settlement in the Builders' Agreement was not required.
- iii. Family Settlement is admissible even if it is neither registered nor properly stamped.



iv. Family Settlement cannot be reopened at the stage of its implementation on the pretext of practical inconvenience.

12. Pursuant to this, an application being CM APPL. 35594/2025 is filed by the Appellants under Section 151 of the CPC seeking permission to rent out half portion of the fourth floor.

13. Learned counsel for the Appellants has made the following submissions:

i. On 04.12.2012, it was acknowledged that Appellant Nos. 1 and 2 are owners to the extent of 25% each in the suit property. Hence, there was a novation of the contract. Consequently, the Family Settlement stood superseded;

ii. The Family Settlement required registration as it amounts to relinquishment/creation of a right in an immovable property worth Rs.100/- or more;

iii. By the Family Settlement, the property was partitioned by metes and bounds and hence, required to be registered as well as stamped; and

iv. That the learned Single Judge has erred in granting damages for use and occupation of a portion of the fourth floor at the rate of Rs. 48,000/- per month, whereas the Appellants/Defendants are in possession of only a part thereof.

14. *Per contra*, learned counsel for the Respondents has submitted that Late Mr. Nidhish Prashar was suffering from a condition known as *retinitis pigmentosa* and was nearly blind. Learned counsel submits that the Appellants/Defendants therein have not produced the Will,



and Late Mr. Nidhish Prashar was in possession of the entire suit property.

15. It is further submitted by the learned counsel for the Respondents that by way of the Family Settlement, the manner of enjoyment of the suit property has been regulated and no fresh right has been created. Consequently, the Family Settlement did not require registration. The Respondents/Plaintiffs were deprived of the usage of the fourth floor, as the tenant inducted by them left, because of the situations created by the Appellants/Defendants.

16. On a careful reading of the Family Settlement, it becomes evident that it is a Memorandum of Family Settlement. The second and fourth floors of the building, which were proposed to be constructed, along with roof rights, fell to the share of Late Mr. Nidhish Prashar, whereas the first floor of the building fell to the share of the Appellants, namely Mrs. Suman Singh Virk and Mrs. Sushma Choudhary. It was agreed between the parties that the third floor would be given to the Builders or their nominee. Such a settlement does not require registration because neither any new right is sought to be created nor extinguished, only the manner of enjoyment of suit property has been delineated, which does not result in the creation of any right.

17. The Supreme Court in *Kale & Ors. vs. Deputy Director of Consolidation & Ors.*⁶, held that a Memorandum of Family Settlement apportioning the property between the family members without creation of new rights does not require registration. The Supreme

⁶ (1976) 3 SCC 119



Court further held that if a Memorandum of Family Settlement suffers from a legal defect, then the doctrine of estoppel can be invoked to uphold the family settlement.

18. This judgment has recently been followed by the Supreme Court in *Ravinder Kaur Grewal & Ors. vs. Manjit Kaur & Ors.*⁷, whereby the Supreme Court reiterated that a Memorandum of Family Settlement does not require registration because it neither creates nor extinguishes rights, title or interest in an immovable property. It was also held that if the family arrangement has been acted upon, it is permissible to apply the doctrine of estoppel to thwart any attempt to avoid family settlement.

19. In the present case, the Memorandum of Family Settlement did not extinguish or create any rights. The Builders' Agreement is between Mrs. Suman Singh Virk, Mrs. Sushma Choudhary and Late Mr. Nidhish Prashar on the one side and the Developers/Builders on the other. Such an agreement does not amount to acknowledging the Appellants'/Defendants' share to the extent of 50% because this is not an agreement between the family members, in fact, all the three members of the family, namely Mrs. Suman Singh Virk, Mrs. Sushma Choudhary and Late Mr. Nidhish Prashar were collectively acting as the *First Party* in the abovementioned agreement. Once, by virtue of the Memorandum of Family Settlement, the respective shares of the family members were identified, the Builders' Agreement, which is essentially an agreement to construct the building, will not result in its modification or novation.

⁷ (2019) 8 SCC 729



20. Modification, novation and alteration of a contract is regulated by Section 62 of the Indian Contract Act, 1872. Its first requirement is that the parties to the contract agree to substitute a new contract, which is not the case herein. There is no fresh agreement between Late Mr. Nidhish Prashar and Mrs. Suman Singh Virk, and Mrs. Sushma Choudhary. Hence, the Builders' Agreement is not between the same parties as was the Memorandum of Family Settlement.

21. The second requirement is that there should be an intention to substitute the previous contract with a new contract, which cannot be gathered from the facts of the present case. *Vide* Memorandum of Family Settlement, right, title and interest of each of the family was delineated, whereas the Builders' Agreement does not result in substitution of the previous contract, i.e. Memorandum of Family Settlement dated 27.11.2012. Moreover, there must be an intention to substitute the previous contract, which does not appear to be so in the present case.

22. Admittedly, there is no reference to the Family Settlement in the Builders' Agreement because it was not relevant. Hence, there is no acknowledgement as to the ownership of Appellant Nos.1 and 2 to the extent of 25% share each, in the suit property.

23. The requirement of registration of the Memorandum of Family Settlement has been drawing the attention of the Court. The Supreme Court in *Kale (supra)* has held that the Memorandum of Family Settlement does not require registration. The Memorandum of Family Settlement is not a deed of partition, which requires registration and stamping.



24. Learned counsel for the Appellants has relied upon the judgment of the Supreme Court in *Sita Ram Bhama vs. Ramvatar Bhama*⁸, to submit that the Family Settlement required registration. This Court has carefully read the judgment of the Supreme Court in *Sita Ram Bhama (supra)*. It is evident that the Supreme Court was analysing the case at a stage when Family Settlement Deed and relinquishment documents were sought to be produced in evidence, and their admissibility was objected to. The Supreme Court observed that the document was compulsorily registrable and stamped. However, for collateral purposes, it was permitted to be produced in evidence, subject to payment of stamp duty and penalty.

25. The Memorandum of Family Settlement does not create any right, title or interest in the immovable property for the first time by this document. Hence, it is not required to be registered.

26. In any case, the objection with regard to the admissibility of the document was required to be taken when the document was sought to be admitted in evidence. At this stage, the Appellants/Defendants cannot object to its admissibility in view of Section 36 of the Indian Stamp Act, 1899.

27. The last submission of the learned counsel for the Appellants lacks substance as it is the Appellants/Defendants who forcibly entered possession of a portion of the fourth floor without any entitlement, which resulted in deprivation of usage to the Respondents/Plaintiffs, who are the widow and son of a pre-deceased brother. Hence, the learned Single Judge has correctly directed the

⁸ (2018) 15 SCC 130



Appellants/Defendants to pay *mesne* profits for use and occupation of the premises at the rate of Rs.48,000/- per month from 07.01.2015, i.e., the date of institution of the suit till delivery of vacant and physical possession of fourth floor of the suit property along with interest at the rate of 6% p.a.

28. Similarly, the direction issued by the learned Single Judge to the Registrar General to file a complaint under Section 379 of BNSS (erstwhile Section 340 Cr.P.C.) against the Appellants/Defendants for having falsely claimed the Memorandum of Family Settlement, a forged and fabricated document, requires no interference because the Appellants/Defendants were neither honest nor made a correct statement. The Appellants/Defendants did not express any regret for the false statement, but also set up a new case altogether by claiming that the Family Settlement was signed by them by Late Mr. Nidhish Prashar by practising fraud, which has also been found to be false.

29. Keeping in view the aforesaid discussion, the Appeal, along with the pending applications, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 18, 2025/jn/sh