



2025:DHC:11740-DB



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

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*Judgment reserved on: 09.12.2025*  
*Judgment pronounced on: 19.12.2025*  
*Judgment uploaded on: 22.12.2025*

+ RFA(OS) 11/2018

GOVINDER SINGH

.....Appellant

Through: Ms. Shyel Trehan, Sr. Adv.  
along with Mr. Gaurav Gupta,  
Mr. Rohan Poddar, Ms. Vidhi  
Jain and Mr. Rupal Gupta,  
Advs.

versus

TEJINDER SINGH & ORS.

.....Respondents

Through: Mr. Giriraj Subramaniam, Mr.  
J. S. Lamba, Mr. Simarpal  
Singh Sawhney, Ms. Aadhyaa  
Khanna, Mr. Jaisal Baath and  
Mr. Aditya Sharma, Advs. for  
R-1.

**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, filed by Appellant [Defendant No.2 before learned Single Judge], assails the correctness of order dated 11.01.2018 [hereinafter referred to as 'Impugned Judgment] whereby the learned Single Judge decreed the suit filed by the Respondents [Plaintiffs before the learned Single Judge] seeking grant of declaration that they are the owners of 3/4<sup>th</sup> share in the property bearing No.3, Sardar Patel Marg, New Delhi [hereinafter referred to as 'suit property']



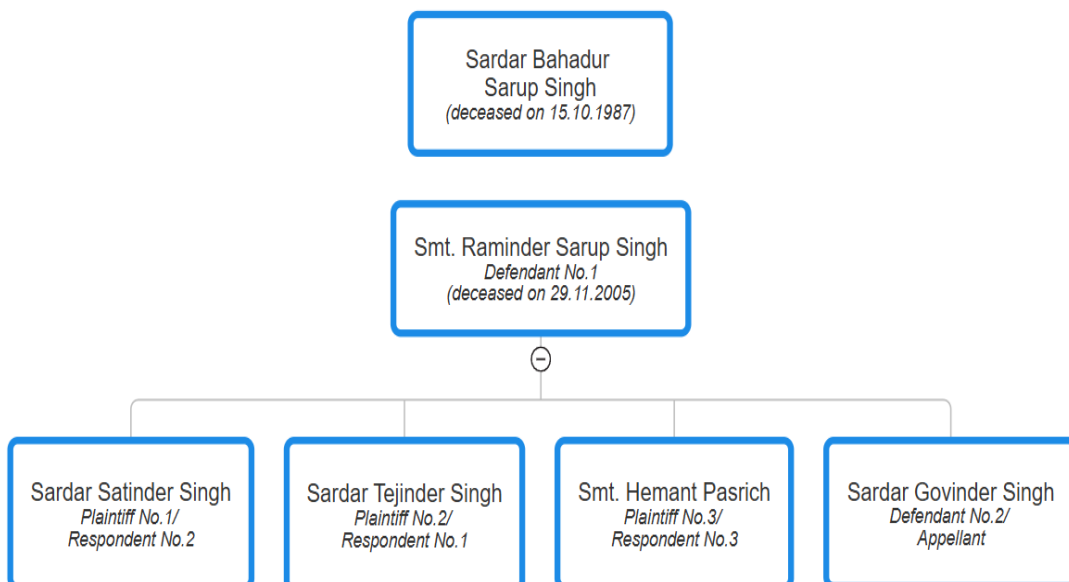
2. The issues which arise for consideration in the present Appeal are:

- i. Whether the Protocol dated 23.10.1987 and the Memorandum of Family Settlement dated 15.09.1988 constitute a valid and binding family arrangement;
- ii. Whether CS(OS) No.973/1994 was maintainable in the face of the prior compromise decree dated 25.11.1993 passed in CS(OS) No.3403/1991; and
- iii. Whether any subsequent agreement, compromise, or unilateral act could override or nullify the said family settlement.

### **FACTUAL MATRIX**

3. In order to appreciate the controversy involved in the present Appeal, it is necessary to briefly notice the relevant facts. For the sake of convenience, the parties are being referred to as they were arrayed before the learned Single Judge.

4. The genealogy of the family is as under:





5. The Plaintiffs and Defendant No.2 are the four children of the late Sardar Bahadur Sarup Singh and Defendant No.1, late Smt. Raminder Sarup Singh. The dispute arises over ownership and rights in respect of the suit property, which formed part of the family property of late Sardar Bahadur Sarup Singh.

6. Late Sardar Bahadur Sarup Singh was granted leasehold rights of the suit property. By virtue of a lease deed dated 15.02.1956, he acknowledged his wife, Defendant No.1, as the exclusive owner of the property. By a registered Gift Deed dated 31.03.1971, Defendant No.1 gifted 25% of the suit property in favour of her youngest son, Defendant No.2. As a result, at that stage, Defendant No.1 retained 75% ownership in the suit property, while the Defendant No.2 became owner of 25% share.

7. On 23.10.1987, the parties executed a protocol recording an understanding that the suit property would ultimately be divided equally among the four children. The document also recorded that Plaintiff No.2 [Respondent No.1 herein] would pay Rs.4,00,000 to the Defendant No.2 in lieu of his share in the Hindu Undivided Family property.

8. On 15.09.1988, a Memorandum of Family Settlement [hereinafter referred to as 'MFS'] was executed between Defendant No.1 and the Plaintiffs. The MFS acknowledged that the three Plaintiffs were entitled to  $3/4^{\text{th}}$  share in the suit property ( $1/4^{\text{th}}$  share each) and that Defendant No.2 was owner of  $1/4^{\text{th}}$  share. The MFS also recorded that it was an acknowledgment of prior family



arrangement and did not, for the first time, create or vest any rights in favour of the Plaintiffs.

9. Subsequently, on 10.03.1989, the Defendants executed an agreement purporting to divide the suit property equally, thereby acknowledging the Defendant No.2 as owner of 50% of the property. Thereafter, the Defendant No.1 filed CS(OS) No.3403/1991, which recorded a settlement on 23.11.1993 dividing the property in accordance with the agreement dated 10.03.1989. The said settlement was decreed by the Court, thereby recognising the Defendant No.2 as owner of 50% of the property.

10. On 28.10.1990, the Defendant No.1 issued a letter purportedly cancelling the MFS. In the year 1994, the Plaintiffs filed CS(OS) No. 973/1994 seeking a declaration that they are owners of 3/4<sup>th</sup> share in the suit property.

11. The learned Single Judge, on 03.03.2003, upon appreciation of the pleadings, framed the following issues:

*“1. Whether the suit is barred under the provisions of Benami Transactions (Prohibition) Act, 1988? OPD.*

*2. Whether the 3/4<sup>th</sup> share of defendant no. 1 in the property bearing No. 3, Sardar Patel Marg, New Delhi was to belong to and vest in the plaintiffs as their exclusive property in equal shares after her death? OPD.*

*3. Whether the compromise filed in suit No. 3403/91 by defendant Nos. 1 and 2 under which defendant No. 1 gave away 1/4<sup>th</sup> share out of 3/4<sup>th</sup> share in the property to defendant No. 2 in null and void and not binding on the plaintiffs? OPP*

*4. Whether the judgment and decree dated 25<sup>th</sup> November, 1993 passed in suit No. 3403/91 is null and void and not binding on the plaintiffs? OPP.*

*5. Whether the plaintiffs are entitled to 3/4<sup>th</sup> share in the air conditioning plant and the furniture in property bearing No. 3, Sardar*



*Patel Marg, New Delhi including all kinds of furnishing etc., under the Will of Sardar Swarup Singh dated 4.6.1981?*

*6. Relief.”*

11.1 Thereafter, on 21.03.2005, an additional issue was framed at the instance of Defendant No.2, which reads as follows:

*“Whether the plaintiffs are not entitled to the reliefs claimed by them in view of the provisions of Section 31 of the Foreign Exchange Regulation Act? OPD 2.”*

11.2 By subsequent agreement of the parties, Issue No.1 framed on 03.03.2003 was not required to be decided, and the additional issue framed on 21.03.2005 was retained for adjudication.

12. In paragraph No.7 of the Impugned Judgment, the learned Single Judge referred to the admitted and proved documents which formed the basis for the decision:

*“7. For the discussion and reasoning hereafter given the following admitted and proved documents are being referred to:-*

*(i) Letter-cum-compromise-cum-agreement dated 23.10.1987 entered into between three plaintiffs and defendant no.2 and confirmed by the defendant no.1, by duly signing the same being Ex. PW1/9.*

*(ii) Family settlement dated 15.9.1988, entered into between defendant no.1 and the plaintiffs, which is Ex.PW1/12. This family settlement stands proved because it is not disputed by defendant no.1 in her written statement that she had signed the family settlement and it was only alleged that this family settlement was signed by her under undue influence, coercion etc but that the defendant no. 1 thereafter in terms of the application filed under Order XXIII Rule 3 CPC with the plaintiffs in the suit, Ex. PW1/41, withdrew her allegations that she had signed the family settlement dated 15.9.1988 under any undue influence, coercion etc.*

*(iii) Agreement dated 10.3.1989 entered into between the defendant nos.1 and 2 (this document is part of Ex.PW1/32 colly). The plaintiffs do not dispute the existence of this document but it is the validity/legality of this agreement dated 10.3.1989 which is questioned on the ground that defendant no.1 had no power to enter into this agreement in view of the defendant no.1 already having given her 3/4th share in the suit property to the plaintiffs in terms of the family settlement/agreement dated 15.9.1988/Ex. PW1/12.*



(iv) Letter of defendant no.1/mother dated 28.10.1990 to the three plaintiffs and defendant no.2 stating cancellation of various agreements including family settlement dated 15.9.1988 is Ex. D-2/12.

(v) Fax dated 23.11.1992 allegedly sent by plaintiff no.1 to plaintiff no.3, and this fax is denied by the plaintiffs and not proved by the defendant no. 2. Legally therefore this document cannot be considered to decide the issues in question.

(vi) Order dated 25.11.1993 recording compromise in Suit no. 3403/1991 between defendant no.1 and defendant no. 2, whereby defendant no. 1 agreed that defendant no. 2 is 50% owner in the suit property. This document is part of Ex. PW1/32 (colly).”

13. Upon appreciation of the evidence and documents, the learned Single Judge decreed the suit in favour of the Plaintiffs, holding that the MFS was binding and that Defendant No.2 was entitled to only 1/4<sup>th</sup> share in the suit property, with the Plaintiffs collectively entitled to 3/4<sup>th</sup>.

### **CONTENTIONS OF THE APPELLANT/DEFENDANT NO.2**

14. Learned senior counsel for the Appellant has made the following submissions:

14.1 Maintainability of the Suit - Bar under Order XXIII Rule 3A of the Code of Civil Procedure, 1908 [hereinafter referred to as ‘CPC’]- It was submitted that CS(OS) No.973/1994 is barred by Order XXIII Rule 3A read with Section 96(3) and Order XLIII Rule 1A(2) of the CPC. The Plaintiffs sought, *inter alia*, to set aside the consent decree passed in CS(OS) No.3403/1991 on 25.11.1993 pursuant to a compromise between the Appellant and Defendant No.1, which recognized the Appellant as owner of 50% of the suit property. The Hon’ble Supreme Court has consistently held that a party cannot maintain a separate suit to challenge a valid consent decree. Previous attempts by the Plaintiffs to challenge the decree, including I.A.



No.6903/1996 and Suit No.40/1997, were dismissed on merits or in view of Order XXIII Rule 3A of the CPC, reinforcing the bar. The learned Single Judge erred in failing to consider these prior failed attempts.

14.2 Invalidity of Protocol dated 23.10.1987 and MFS dated 15.09.1988- Non-Registration under the Registration Act, 1908: It was submitted that the Protocol dated 23.10.1987 and the MFS are unregistered documents, executed without the Appellant's consent, and are therefore hit by Section 17 of the Registration Act. The documents merely recorded intentions regarding a future division of the suit property and did not transfer any rights to the Plaintiffs. The Protocol dated 23.10.1987 was conditional upon Plaintiff No.2 paying Rs.4,00,000 to the Appellant, a condition that was never fulfilled. MFS purported to confer rights on the Plaintiffs only upon the demise of the mother, and in any event, the same does not constitute a valid transfer under Section 123 of the Transfer of Property Act, 1882 ['TPA'].

14.3 Valid Cancellation of Documents by Defendant No.1- It was submitted that the mother validly cancelled all prior arrangements, including the Protocol dated 23.10.1987 and the MFS, by letter dated 28.10.1990. The learned Single Judge erred in holding that she could not do so unilaterally. The documents were either void or voidable under Sections 25 and 55 of the Indian Contract Act, 1872, for lack of consideration and failure to satisfy the conditions precedent, specifically the non-payment of Rs.4,00,000 to the Appellant. Even if the documents are treated as conditional gifts, the law is clear that a



conditional gift may be revoked by the donor, leaving the title with the donor.

14.4 Limitation- It was submitted that CS(OS) 973/1994 filed on 18.04.1994, seeking a declaration of the validity of the protocol dated 23.10.1987 and MFS dated 15.09.1988, is barred by Articles 58 and 59 of the Limitation Act, 1963, which prescribe a period of three years for seeking a declaration regarding a document or contract. Therefore, the suit under Appeal is barred by limitation.

14.5 Violation of Foreign Exchange Regulation Act, 1973 [‘FERA’]- Respondent No.1’s Entitlement- It was submitted that Respondent No.1 acquired British nationality on 15.09.1986. Any claim, acquisition, or transfer of immovable property in India by him thereafter in violation of Section 31 of the FERA is void. The learned Single Judge erred in accepting the purported concession that this issue need not be decided. The law, as affirmed by the Hon’ble Supreme Court in *Asha John Divianathan v. Vikram Malhotra*<sup>1</sup>, is that any transfer in violation of Section 31 of the FERA is void and also violates Sections 10 and 23 of the Indian Contract Act, thereby rendering Respondent No.1 incapable of acquiring any right, title, or interest in the suit property.

14.6 Non-Decided Issue – AC Plant and Furniture- It was submitted that Issue No.5 relating to the entitlement of the Plaintiffs to 3/4<sup>th</sup> share in the air conditioning plant and furniture under the Will of Sardar Swarup Singh dated 04.06.1981 was never decided by the learned Single Judge. Respondent No.1 in cross-examination initially

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<sup>1</sup> (2021) SCC OnLine SC 147



claimed entitlement but later admitted that the AC plant and furniture were owned by the mother. This demonstrates the Respondent's attempt to mislead the Court and underscores that he cannot claim any share in the same.

14.7 Bar under Section 34 of Specific Relief Act, 1963 ['SRA'] & Non-Payment of Court Fees- It was submitted that the suit under Appeal is barred under Section 34 of the SRA as the Respondents only sought a declaration of the validity of the Protocol dated 23.10.1987, MFS dated 15.09.1988, and the Wills dated 17.09.1988 and 10.06.1992, and did not seek partition or possession. Furthermore, the Respondents failed to pay the *ad valorem* court fees as required, which alone warrants dismissal of the suit.

### **CONTENTIONS OF THE RESPONDENT NO.1**

15. Learned counsel for the Respondent No.1 has made the following submissions:

15.1 Maintainability of the suit- No Bar under Order XXIII Rule 3A of the CPC- It was submitted that the suit CS(OS) No. 973/1994 was not barred under Order XXIII Rule 3A read with Section 96(3) and Order XLIII Rule 1A(2) of the CPC. The Plaintiffs therein were not parties to CS(OS) No. 3403/1991, which was instituted by the mother solely against Defendant No.2. The Plaintiffs, having an independent cause of action, could not have challenged the consent decree passed in CS(OS) No. 3403/1991 except by way of a separate suit. It was further submitted that the proceedings arising out of I.A. No. 6903/1996 and CS(OS) No. 40/1997 were disposed of expressly without prejudice to the rights and contentions of the parties in



CS(OS) No. 973/1994. Reliance was placed on the orders dated 07.05.2010 and 10.10.2017, as also the appellate directions requiring adjudication of CS(OS) No. 973/1994 on merits.

15.2 Nature and Validity of the Protocol dated 23.10.1987 and MFS dated 15.09.1988 - No Requirement of Registration- It was contended that the Protocol dated 23.10.1987 and the Family Arrangement dated 15.09.1988 were family settlements recording an already arrived-at understanding amongst family members and did not create rights for the first time so as to attract Section 17(1)(b) of the Registration Act, 1908. The Family Arrangement recorded the intention of the mother to divide her remaining 3/4th share equally amongst the three Plaintiffs, an intention further reinforced by the contemporaneous Will dated 17.09.1988. The learned Single Judge correctly held that the said documents were not in the nature of a partition deed or a conveyance and thus did not require registration. Reliance was placed on the judgments of the Hon'ble Supreme Court in *Roshan Singh v. Zile Singh* and *Kale v. Deputy Director of Consolidation*, emphasising that courts lean in favour of upholding family settlements.

15.3 Invalidity of Alleged Unilateral Cancellation by the Defendant No.1- It was submitted that the mother, Defendant No.1, could not have unilaterally cancelled the Protocol dated 23.10.1987 and the MFS dated 15.09.1988 by her letter dated 28.10.1990, as the said documents constituted a family arrangement involving four parties and could only have been rescinded with the consent of all concerned. In contrast, the Memorandum of Oral Family Settlement dated 10.03.1989, entered into only between the Defendant No.1 and Defendant No.2, was validly cancelled by her. The subsequent Will



dated 10.06.1992, whereby the mother bequeathed her 3/4<sup>th</sup> share to the Plaintiffs to the exclusion of Defendant No.2, was relied upon to demonstrate the consistent intention of the mother.

15.4 Alleged Non-Payment of Rs.4,00,000- Incorrect and Irrelevant-

It was submitted that the contention regarding non-payment of Rs.4,00,000 by Respondent No.1 is factually incorrect and legally misconceived. The said amount pertained to settlement of HUF accounts and had no nexus with the Protocol or the Family Arrangement concerning the suit property. Documentary evidence, including correspondence and bank records, demonstrated repeated attempts by Respondent No.1 to tender the amount, which were avoided by Defendant No.2, ultimately leading to its deposit in fixed deposit. Hence, no breach of any condition precedent was established.

15.5 Limitation- Suit within Time- It was submitted that the cause of action for instituting CS(OS) No. 973/1994 arose only upon the filing and allowance of the compromise application in CS(OS) No. 3403/1991 in November 1993. The suit instituted in April 1994 was therefore within limitation. It was further contended that under the Family Arrangement, the Plaintiffs' rights were to vest upon the demise of the mother, a permissible future vesting under Section 14 of the TPA, and hence Articles 58 and 59 of the Limitation Act were not attracted in the manner suggested by the Appellant.

15.6 FERA- Issue Given Up- It was submitted that the issue concerning alleged violation of Section 31 of the FERA was expressly given up by Defendant No.2 during final arguments before the learned Single Judge, as recorded in the judgment. No application seeking



recall or clarification was filed thereafter. It was further submitted that Respondent No.1 continued to hold an Indian passport till 1999 and, in any event, acquisition by inheritance is expressly permitted under the FEMA Regulations, 2000. The belated attempt to resurrect this issue was characterised as impermissible.

15.7 Issue relating to AC Plant and Furniture- It was contended that Issue No.5 regarding entitlement to the air-conditioning plant and furniture was duly considered and decided along with interconnected issues by the learned Single Judge. The judgment expressly records that Issues 2 to 5 were taken up together, and therefore the contention that the issue remained undecided is unfounded.

15.8 Section 34 of the SRA and Court Fees- It was submitted that the suit was not barred under Section 34 of the SRA, as the Plaintiffs sought appropriate declaratory and injunctive reliefs permissible at the relevant stage, the mother being alive at the time of institution of the suit. The relief of partition could not have been sought prior to vesting of rights. Upon the demise of the Defendant No.1, a separate suit for partition was instituted with payment of requisite *ad valorem* court fees. No objection on this ground was raised at the trial stage, nor was any issue framed.

### **ANALYSIS & FINDINGS**

16. This Court has heard learned counsel for the parties at length and with their able assistance carefully perused the paper book, the pleadings, the evidence on record, and the requisitioned record of the learned Single Judge.



17. The controversy before this Court centres around the legal effect, validity and binding nature of the Protocol dated 23.10.1987 and the Memorandum of Family Settlement dated 15.09.1988, the maintainability of the CS(OS) 973/1994 in the backdrop of a prior consent decree dated 25.11.1993 passed in CS(OS) No.3403/1991, and the consequential objections relating to registration, limitation, alleged unilateral cancellation, violation of the Foreign Exchange Regulation Act, 1973, and Section 34 of the Specific Relief Act, 1963.

18. At this stage it would be appropriate to reproduce the Protocol dated 23.10.1987, which forms the foundation of the present dispute:

*“PROTOCOL DATED 23.10.1987*

*New Delhi, 23rd October, 1987.*

*Protocol between Hemant, Satinder, Tejinder & Govinder, signed at 3 Sardar Patel Mg., N. Delhi.*

*-That as per the wishes of our mother, Sardarni Raminder Sarup Singh, Tejinder is to give Govinder a sum of INrs. 400,000/- (four hundred thousand rupees), which payment to be completed by the end of 1988.*

*Tejinder has agreed to make this payment, and Govinder to accept it; implicit herein is the understanding by the parties hereto that by this payment all matters relating to the HUF of S.B. Sarup Singh & Sons stand resolved and closed, and that matters are amicably settled.*

*-That all Parties to this protocol declares that it is their individual and collective wish, intention and objective that the house/property at 3 S. Patel Mg. be divided in such a manner that each of the four becomes owner of one-fourth (25% each) of the said property.*

*-Since Govinder is already owner of one-fourth of the property, this would mean in fact that our Mother, Sardarni Raminder Sarup Singh, divide the three-fourths share that she owns into three equal shares, one each of Hemant, Satinder and Tejinder, at a time of her choosing.*

*-It is recognized by the Parties hereto that it is within the realm of legal possibility for our Mother to do other than the objective and wish stated above, however unlikely, but this remote possibility would not affect the resolve stated herein to ensure an equal division.*

*-That our mother Sardarni Raminder Sarup Singh shall have full and uninterrupted right of action and of income from No. 3 S. Patel Mg.,*



till the time and manner of her choosing. This right refers to the whole of the property, notwithstanding that Govinder is registered owner of one-fourth of the same.

-That the 'Last Will & Testament of our father, S.B. Sarup Singh, has been conveyed to us by our Mamaji, S. Hardev Singh, and there is no disagreement whatsoever on the contents and the action required for compliance. It is accepted that the Will conveyed to us by Mamaji Hardev is the only one to be complied with.

-That all the above four matters are agreed to collectively and simultaneously.

Signed by the Parties in the presence of witnesses:

\_\_\_\_\_

Hemant

\_\_\_\_\_

Satinder

\_\_\_\_\_

Tejinder

\_\_\_\_\_

Govinder

WITNESSES:

\_\_\_\_\_

S. Hardev Singh

\_\_\_\_\_

Sardani R. Sarup Singh.”

19. Similarly, the Memorandum of Family Settlement (MFS) dated 15.09.1988 reads as under:

**"FAMILY ARRANGEMENT**

*THIS FAMILY ARRANGEMENT is made and executed this 15th day of September, 1988 BETWEEN*

*(1) Sardarni Raminder Sarup Singh wife of the late S.B. Sarup Singh, resident of 3, Sardar Patel Marg, New Delhi (hereinafter called the Party of the First Part)*

AND

*(2) Smt. Hemant Sukhcharan Singh Pasrich daughter of the late S.B. Sarup Singh, temporary resident of 3, Sardar Patel Road, New Delhi (hereinafter called the Party of the Second Part),*

AND

*(3) Sh. Satinder Singh son of the late S.B. Sarup Singh, temporary resident of 3, Sardar patel Marg. New Delhi (hereinafter called the Party of the Third Part),*

AND

*(4) Sh. Tejinder Singh son of late S.B. Sarup Singh, temporary resident of 3, Sardar Patel Marg, New Delhi (hereinafter called the Party of the Fourth Part).*

Cont.....2/



*The terms "Party of the First/Second/Third and Fourth part" unless repugnant to the context, means and includes their respective heirs, successors, legal representatives, assignees, nominees and administrators;*

WITNESSETH AS UNDER :-

*WHEREAS the Party of the first part owned the entire property 3, Sardar Patel Marg, New Delhi.*

*AND WHEREAS the lease of the land underneath the said property was granted by the President of India in favour of the party of the First Part.*

*AND WHEREAS the party of the First Part constructed a two storeyed bungalow over the said plot of land.*

*AND WHEREAS the party of the First Part gifted one quarter (1/4) share in the said property with 1/4th lease-hold rights in the land underneath to Shri Govinder Singh, her youngest son.*

*AND WHEREAS the said property is in the full enjoyment of the party of the First Part inasmuch as the rent of the ground floor is being received by the party of the First Part and the first floor is being self occupied by the party of the First Part.*

*Cont.....3/*

*-3-*

*AND WHEREAS the intention of the party of the First Part has been that in the event of her demise, the parties of the Second, Third and Fourth Parts shall also become the absolute and exclusive owners of one quarter (1/4) share each in the said property.*

*AND WHEREAS Govinder Singh has already been gifted one quarter (1/4) share and the remaining three quarters are to be divided equally between the parties of the Second, Third and Fourth parts.*

*AND WHEREAS with this objective the party of the First Part has also executed a Will bequeathing all her rights, titles and interests in her three quarter (3/4) share of the said property with lease-hold rights in the land to the parties of the Second, Third and Fourth Parts.*

*AND WHEREAS the party of the first part is also trying to create a settlement during her life time to this effect with regard to the said property but in case she is unable to do so, her Will has to be operative.*

*AND WHEREAS the parties to this Family Arrangement are all members of one family and an arrangement has to be arrived at between the parties which is intended.*

*Cont.....4/*

*-4-*



*to be generally and reasonably for the benefit of the family with further objective to compromise at this preliminary stage doubtful or disputed rights for preserving the family property and for preserving the peace and security of the family and in order to avoid disputes and litigation between the members and for saving the honour of the family.*

*AND WHEREAS Govinder Singh presently is outside the country and there has already been a protocol to this effect on 23.10.1987 that parties of second, third, fourth part and Shri Govinder Singh shall, on the demise of the party of first part shall become owners of 1/4th share each in the said property.*

*AND IT IS ADMITTED. acknowledged, and so recorded that Shri Govinder Singh is the owner of 1/4th share in the said property, and accordingly his share remains unaltered and uneffected.*

*AND WHEREAS the consideration for this arrangement being the expectation that such an agreement or settlement will result in establishing or ensuring amity and Good-will among the mother, sister and brothers and in the case of the demise*

*Cont.....5/*

*-5-*

*of the party of the first part among sister and brothers.*

*AND WHEREAS this arrangement is bonafide, fair and equitable.*

*AND WHEREAS the parties have already by a protocol dated 23.10.1987 understood and agreed to be bound by this arrangement, the said protocol is annexed as annexure "A", now this arrangement witnesseth as follows:-*

*1. That the party of the first part shall be entitled to full use, enjoyment of the property, 3, Sardar Patel Marg, New Delhi as is in the present condition and to utilize the First floor for her own use and to receive, utilize and appropriate to herself the rents of the ground floor.*

*The party of the First Part agree to keep the first floor self occupied for her use and that of the temporary use by her children and their families whenever they are in India, and ground floor tenanted as it is.*

*2. That on the demise of the party of the first part, the property, 3, Sardar Patel Marg, New Delhi shall belong to and owned by the parties of the Second, Third, Fourth Part and Govinder Singh in equal shares of one quarter (1/4) each.*

*Cont.....6/*

*-6-*



3. That in the case the party of the first part chooses to do so earlier she may create a settlement in favour of the parties of the Second, Third and Fourth Part for devolving her rights, titles and interests of her three quarters (3/4) share unto them with similar right to enjoyment as per clause (1) above as Settlor.

4. That the Parties of the Second, Third, Fourth Part and Govinder Singh can negotiate for transfer of their share amongst themselves whether before or after the demise of the party of the first part and for valuable consideration and that Party of the First Part agrees to sign, execute and further assurance to this effect.

*THIS ARRANGEMENT is being made for the benefit of the family generally and for the purpose of avoiding family disputes and litigations and the parties shall irrevocably be bound by it.*

*IN WITNESS WHEREOF the parties have signed*

*Cont.....7/*

-7-

*and executed this Family Arrangement on the day and year above written in the presence of :-*

*WITNESSES :-*

1. \_\_\_\_\_sd/-\_\_\_\_\_

\_\_\_\_\_sd/-\_\_\_\_\_

2. \_\_\_\_\_sd/-\_\_\_\_\_

*Party of the First Part*

\_\_\_\_\_sd/-\_\_\_\_\_

*Party of the Second Part.*

\_\_\_\_\_sd/-\_\_\_\_\_

*Party of the Third Part.*

\_\_\_\_\_sd/-\_\_\_\_\_

*Party of the Fourth Part."*

20. The first argument raised by the learned senior counsel for the Appellant/Defendant No.2 pertains to the maintainability of CS(OS) No.973/1994 under Order XXIII Rule 3A of the CPC, read with Section 96(3) of the CPC and Order XLIII Rule 1A(2) of the CPC.

21. It is well-settled that the prohibition under Order XXIII Rule 3A of the CPC is applicable only between the parties to the original suit, and that too with respect to agreements that are unlawful. In the



present case, the Plaintiffs were not parties to CS(OS) No.3403/1991 filed by Defendant No.1, which was disposed of in terms of settlement dated 23.09.1993. The compromise decree was passed on 25.11.1993 and subsequently registered. The Plaintiffs do not claim that the compromise itself was unlawful. Since the Plaintiffs were not parties to the original agreement, it suffices to claim that such decree cannot bind their rights.

22. A compromise decree passed on the basis of an agreement between parties is envisaged under Order XXIII Rule 3 of the CPC. Such a decree is founded on the agreement between the parties to the suit, without adjudication on merits by the Court. Essentially, it remains a contract between the parties with the Court's seal of approval. Since the Plaintiffs were not parties to this agreement, they are not bound by it. Therefore, the prohibition against maintaining a fresh suit under Order XXIII Rule 3A of the CPC is not attracted. Further, the Plaintiffs have not filed an appeal under Section 96(3) of the CPC; hence, this provision is also not applicable.

23. The second substantial argument raised pertains to the Protocol dated 23.10.1987 and MFS dated 15.09.1988. It was contended that these documents are unregistered and, therefore, do not create any right, title, or interest in immovable property, being hit by Section 17 of the Registration Act. Upon careful examination, it is evident that the MFS merely acknowledges a prior oral family arrangement and does not create rights for the first time. Reliance is placed on the judgments of the Supreme Court in *Roshan Singh & Ors v. Zile*



*Singh & Ors.*<sup>2</sup> and *Kale & Ors v. Deputy Director of Consolidation & Ors.*<sup>3</sup>, which held that family arrangements recording previously existing rights do not require registration.

24. It is noteworthy that courts in India have consistently leaned in favour of upholding family arrangements to preserve harmony among family members. The Supreme Court in *Mohammad Yusuf & Ors v. Rajkumar & Ors.*<sup>4</sup>, has conclusively held that a consent decree or MFS does not require registration. The same principle was reiterated in *Khushi Ram and Others v. Nawal Singh and Others*<sup>5</sup>.

25. The learned Single Judge has, therefore, correctly held that the MFS dated 15.09.1988 did not require registration. Once the members of the family had arrived at a binding family arrangement envisaging equal shares among the four children of late Sardar Bahadur Singh and late Smt. Raminder Sarup Singh, late Smt. Raminder Sarup Singh, could not unilaterally cancel the documents dated 23.10.1987 and 15.09.1988.

26. With regard to limitation, the suit filed by the Plaintiffs in 1994 was instituted immediately after the decree passed in favour of the Appellant on 25.11.1993. The cause of action in favour of the Plaintiffs arose upon the passing of the compromise decree dated 25.11.1993, giving rise to an immediate cause to seek declaratory relief. Consequently, the suit cannot be held to be barred by limitation.

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<sup>2</sup> AIR 1988 SC 881

<sup>3</sup> 1976 (3) SCC 119

<sup>4</sup> (2020) 10 SCC 264

<sup>5</sup> 2021 SCC OnLine SC 128



27. The next contention relates to Issue No.5, concerning the air-conditioning plant and furniture. Any failure of the learned Single Judge to decide this issue does not affect the merits of the case. Once the parties were declared owners of 1/4<sup>th</sup> share each in the suit property, the AC plant and furniture would naturally be divided accordingly, in line with the Will of late Sardar Saroop Singh dated 04.06.1981.

28. Further, the suit filed by the Plaintiffs is not barred under Section 34 of the SRA. The Plaintiffs, in their suit, have prayed for a decree of declaration and also a permanent injunction. They are owners to the extent of 3/4<sup>th</sup> share in the suit property. The decree passed on 25.11.1993 in CS(OS) No.3403/1991 is not binding upon them. While the Defendant No.2 contends that the suit is based on unregistered documents and is, therefore, barred under Section 34 of the SRA, it is clear that Section 34 of the SRA does not render a declaration based on an unregistered document non-maintainable.

29. The last argument raised by the learned senior counsel for the Appellant/Defendant No.2 concerning Section 31 of the FERA also lacks substance. Section 31 of the FERA relates to remittance of foreign exchange in or out of the country. In the present case, there was no remittance of foreign exchange. In any case, this issue has already been addressed in an earlier judgment passed by this Court in *Ajay Narain vs Aarti Singh & Ors*<sup>6</sup>.

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<sup>6</sup> 2025:DHC:9387-DB



2025:DHC:11740-DB



30. In view of the foregoing discussion and for the reasons recorded hereinabove, this Court finds no infirmity in the Impugned Judgment passed by the learned Single Judge.

31. The Appeal is devoid of merit and is, accordingly, dismissed. The Impugned Judgment dated 11.01.2018 passed by the learned Single Judge in CS(OS) No.973/1994 is affirmed.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**

**DECEMBER 19, 2025**

*s.godara/pal*