



2025:DHC:7246-DB



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment reserved on: 28.07.2025

Judgment pronounced on: 25.08.2025

+

FAO(OS) 44/2022 & CM APPL. 30562/2025

S K MITTAL

.....Appellant

Through: Mr. Abhimanyu Mahajan, Mr. Saurabh Seth, Ms. Neelampreet Kaur, Ms. Anubha Goel, Mr. Mayank Joshi, Mr. Abhiroop Rathore, Advs.

versus

NCT OF DELHI & ORS.

.....Respondents

Through: Mr. O.P. Gupta, Adv. for R-2 & 3

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 Appellant under Section 384 of the Indian Succession Act, 1925 read with Section 10 of Delhi High Court Act, 1966, calling in question the correctness of the Judgment dated 04.05.2022 [hereinafter referred to as '**Impugned Order**'] passed by the Learned Single Judge in Test Case no.73 of 2021 captioned *S.K. Mittal vs. NCT of Delhi & Ors.*, while dismissing his application for a Letter of Administration in respect of the estate of his younger brother, Late Sh. Rajan Mittal, who passed away intestate on 18.06.2021.



2. Late Sh. Rajan Mittal was married to Smt. Reshu Mittal on 15.02.1997 and had two sons, namely, Sh. Shrey Mittal (DOB 16.12.1997) and Sh. Tushaal Mittal (DOB 02.03.2000).

3. Subsequently, marital discord began between them and on 06.03.2018, a Settlement Deed was arrived at between Late Sh. Rajan Mittal and his wife, Smt. Reshu Mittal, resolving their marital discord, while also agreeing to apply for a Decree of Divorce by Mutual Consent. This aforesaid Settlement Deed was also signed by Sh. Shrey Mittal and Sh. Tushaal Mittal.

4. It is to be noted here that the primary intention of the Settlement Deed was with regard to resolving their matrimonial dispute. However, for the purpose of the decision of the present Appeal, Clauses 6, 7(j) and 7(k) of the Settlement Deed are relevant for the decision of the present case, which reads as under:

“6. That now in order to obtain the Decree of Divorce by Mutual Consent the First Party has agreed to execute a Gift Deed in respect of the entire First Floor and Second Floor having land share of 45% beneath these floors and hereinafter referred to as the Gift Property (excluding the Ground Floor, the right to construct basement beneath Ground Floor, terrace or roof rights including the right to construct a Third Floor having land share of 55% beneath these floors, hereinafter referred to as the Said Residual Property) of Property No. B-6/49, Safdarjung Enclave, New Delhi 110029 in favor of the Second Party No. 1 in respect of full & final settlement of all the disputes between the First Party and Second Party collectively (Second Party No. 1, 2 & 3).

7. That now all the parties have agreed to sign the present Settlement Deed on the following terms & Conditions:

.....

j. That the Second Party No. 2 and the Second Party No. 3 agree that the present settlement is full and final settlement for all their claims arising out of birth against the First Party towards any ancestral property, movable or immovable (past, present and future) etc.



k. That the Second Party No. 1 agrees that the present settlement is full and final settlement for all the claims of the Second Party No.2 and the Second Party No.3 arising against the First Party towards any ancestral property, movable or immovable (past, present and future) etc.”

5. Pursuant to the Settlement Deed, a petition under Section 13B of the Hindu Marriage Act, 1955, was filed, which was disposed of by the Family Court on 23.05.2018 dissolving their marriage by a Decree of Divorce by Mutual Consent. The Settlement Deed was produced in the proceedings before the Family Court, however, it never formed a part of the Decree of Divorce.

6. The Appellant (Sh. S. K. Mittal) claims that Sh. Shrey Mittal and Sh. Tushaal Mittal have waived and relinquished all their rights and claims over any and all the properties of the deceased (past, present, and future) by signing the Settlement Deed. Hence, only the Appellant is entitled to the Letter of Administration.

7. Learned Single Judge has primarily dismissed the Petition on the following grounds:

- (i) Sh. Shrey Mittal and Sh. Tushaal Mittal were only *pro forma* parties to the agreement;
- (ii) They did not receive any consideration under the said settlement;
- (iii) A bare renunciation of an expectation to inherit cannot bind the expectant heir unless he or she receives consideration for the renunciation;
- (iv) On the date of signing of the Settlement Deed, Sh.



Shrey Mittal and Sh. Tushaal Mittal had no right of inheritance in respect of his self-acquired properties during the lifetime of their father;

(v) Clauses 7(j) and 7(k), as extracted above, at most amount to relinquishment and waiver of rights in the ancestral properties, but would not affect the right of the Respondent Nos.2 and 3, i.e., Sh. Shrey Mittal and Sh. Tushaal Mittal, in the self-acquired assets of their deceased father; and

(vi) The instrument in question amounts to a transfer of the rights in an immovable property which can be transferred by an instrument recognized in law. An instrument which requires relinquishment of an immovable property worth Rs. 100 or more can be done only through a registered deed.

8. Learned counsel representing the Appellant has submitted that Sh. Shrey Mittal and Sh. Tushaal Mittal were parties to the Settlement Deed, being Second Party No.2 and 3 respectively. He further submits that the Settlement Deed was in the nature of a memorandum of family settlement, which does not require registration in view of the judgment passed by the Supreme Court in *Elumalai alias Venkatesan and Anr. vs. M. Kamala and Ors*¹ and *Ravinder Kaur Grewal and Ors. vs. Manjit Kaur and Ors*².

9. It is submitted that the Respondents, Sh. Shrey Mittal and Sh.

¹ (2023) 13 SCC 27

² (2020) 9 SCC 706



Tushaal Mittal, are estopped from claiming a share in the property left behind by Late Sh. Rajan Mittal, in view of the *Rule of Estoppel*. In support thereof, he relies upon the judgment passed by the Supreme Court in *Kale vs. Deputy Director of Consolidation & Others*³.

10. It is further contended that the Appellant has not been granted an opportunity to lead evidence, and the judgment passed by the learned Single Judge is not sustainable.

11. *Per contra*, learned counsel representing the Respondents submits that the various properties left behind by Late Sh. Rajan Mittal were self-acquired properties and the Settlement Deed was primarily for the purpose of settling marital discord between Late Sh. Rajan Mittal and his wife Smt. Reshu Mittal. Sh. Shrey Mittal and Sh. Tushaal Mittal were only *pro forma* parties. Moreover, Sh. Shrey Mittal and Sh. Tushaal Mittal did not receive any consideration. Hence, there was no valid contract.

12. Learned counsel for the parties have not made any other submissions.

13. Heard learned counsel representing the parties at length and, with their able assistance, perused the paper book and the documents filed by the parties.

14. This Court has analyzed the arguments of learned counsel representing the parties. Firstly, it is evident from reading of Clauses 7(j) and 7(k) of the Settlement Deed that the Respondents relinquished entitlement to inherit ancestral property, movable or immovable (past,

³ (1976) 3 SCC 119



present, and future). However, Sh. Shrey Mittal and Sh. Tushaal Mittal have not relinquished their rights with respect to the self-acquired property of their father. It is evident that the claim was relinquished by Sh. Shrey Mittal and Sh. Tushaal Mittal only with respect to the ancestral properties in the hands of their father, because during the lifetime of their father they had no pre-existing rights in the self-acquired property of Late Sh. Rajan Mittal. At the most, they were expected to inherit the property provided their father dies intestate and he leaves behind property which formed part of his estate.

15. It has been recorded by the Learned Single Judge that the property which the Appellant has claimed is a self-acquired property. Moreover, it has come on record that Late Sh. Rajan Mittal sold the remaining part of the property bearing No. B-6/49, Safdarjung Enclave, New Delhi 110029, which he inherited from his father by virtue of a registered will, while excluding all other Class-I heirs of his father.

16. Late Sh. Rajan Mittal, at the time of his death, left behind the following properties (Immovable and movable), given as under:

"Immovable properties:

- A. Flat measuring 288 sq. ft. bearing no. 301, Swastik Bhawan, Ranjit Nagar, New Delhi-110008.
- B. Upper Ground Floor bearing no 112, Mohamad Pur, New Delhi-110066 (area 77 sq. Yd)
- C. Membership right in Housing Society namely Saraswati Kunj, Section 46, Gurugram.

Movable properties:

- A. Saving bank & fixed deposit with HDFC BANK, B-6/03 Safdarjung Enclave, New Delhi-(1129- S/B), (a/c no 5031000142079-S/B)



- B. Fixed deposit a/c no 50300352182012
- C. Saving bank, a/c no 05031050071433 with HDFC BANK Vasant Vihar. (Customer ID 760999)
- D. Saving bank & Fixed Deposit with Kotak Mahindra Bank, Green Park Branch-Fixed deposit a/c no 2413564001. (Customer ID no 32821840)
- E. Saving bank & fixed deposit with ICICI Bank, Green Park Extension- (Customer Id 50794100)
- F. Saving Bank & Fixed Deposit with Bank of India, Safdarjung Enclave Branch- including locker- S/B 603610110001023
- G. Saving Bank & Fixed Deposit with Bank of Baroda, Safdarjung Enclave Branch-including locker- S/B a/c no 71720100001824
- H. Saving Bank & Fixed Deposit with IndusInd Bank, Africa Avenue Branch. (S/B account no 159447096000)
- I. Term Deposit with Sarojini Nagar Post Officer
- J. PPF with Sarojini Nagar Post Office account ID 0390750976
- K. Saving bank account with Sarojini Nagar Post Office. (Account No. 010001180662)
- L. Saving Bank & Fixed Deposit with Punjab National Bank, South Circle- S/B 3862000101044340
- M. LIC policies no 113768658 & 113754751 with LIC of India, branch unit no 310, 86, Janpath, New Delhi
- N. Saving Bank with Bandhan Bank Green Park Branch
- O. Shares & Bond in physical & D Mat form with Bharat Bhushan Equity Traders Pvt Ltd 5-E Rani Jhansi Road, Jhandewalan Extension, New Delhi, Custodian NSDL
- P. Capital Gain Bonds with NHAI (National High way Authority of India)
- Q. Loan to third Parties like Nripendra Shah, Ajay Nuri & Neeraj Aggarwal
- R. Jewellery ware with Nripendra Shah r/o 17 Poorvi Marg, Vasant Vihar, New Delhi 110057."

17. It is evident that the Settlement Deed is not a memorandum of family settlement because primarily, the Settlement Deed was arrived at to settle the dispute between the estranged couple.

18. In the case of **Ravinder Kaur Grewal** (*supra*), the Supreme Court of India has laid down that if a family settlement created or transferred for the first time any right in immovable property, then registration is mandatory before such instrument can be relied upon in



evidence and becomes enforceable.

19. Consequently, this Court is of the opinion that in the present case, there is no relinquishment on the part of the children in the self-acquired property of their father. Even if family settlement is read in a manner to include self-acquired property, then registration was necessary because it would result in transferring for the first time, a right in immovable property in favour of their father, which could only be through an instrument recognized in law.

20. The learned Single Judge has erred in observing that Sh. Shrey Mittal and Sh. Tushaal Mittal were *pro forma* parties. In fact, it is evident that the expression ‘Second Party’ included Smt. Reshu Mittal (wife of Late Sh. Rajan Mittal), as well as Second Party Nos.2 and 3, i.e., Sh. Shrey Mittal and Sh. Tushaal Mittal. Hence, they were not *pro forma* parties to the Settlement Deed, particularly when they appended their respective signatures.

21. At this juncture, a bare perusal of Section 25 of the Indian Contract Act, 1872 [hereinafter referred to as ‘IC Act’], would be appropriate. The same is reproduced hereunder:

“25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.

An agreement made without consideration is void, unless

(1)it is expressed in writing and registered under the law for the time being in force for the registration of 'documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2)it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless.



(3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract

Explanation 1.—

Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—

An Agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations

(a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(c) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given."

22. Section 25 of the IC Act declares that consideration, as defined in Section 2(d) thereof, is a necessary element of a binding contract. An agreement without consideration is void under Section 25 of the



IC Act and cannot be enforced. The present section goes on to state the exceptional cases in which consideration may be dispensed with, and saves them from the general rule. *Firstly*, an agreement on account of natural love and affection is not hit by Section 25 of the IC Act. *Secondly*, where a person does the latter some service and the promisor undertakes to recompense for it, such promise does not need consideration to support it. *Lastly*, where the debt is one which would be enforceable against the defendant but for the law of limitation, a suit can lie on a written promise to pay the barred debt as it is a valid contract.

23. With regards to the exception on account of natural love and affection, stated under Section 25(1) of the IC Act, it is pertinent to refer to judgment of Supreme Court in the case of *CWT vs. Her Highness Vijayaba*⁴, wherein taking the totality of the facts as found by the Tribunal and mentioned in the impugned judgment of the High Court, it was a case of family settlement or family arrangement which is binding on the parties concerned. The assessee agreed to purchase peace for the family, and to pay to her son the amount which fell short of Rs 50,00,000/- (Rupees Fifty Lakhs Only) if her elder son did not pay any portion thereof. It is held that such a consideration is a good consideration which brings about an enforceable agreement between the parties. Section 25 of the IC Act does not hit this.

24. Therefore, the learned Single Judge has erred in observing that Sh. Shrey Mittal and Sh. Tushaal Mittal did not receive any consideration under the said Settlement Deed, hence, the Settlement

⁴ (1979) 2 SCC 213



Deed was not valid. In such agreements, physical passing of consideration is not expected. A settlement to amicably resolve the marital discord between the husband and his wife, in order to bring peace and harmony, cannot be said to be hit by Section 25 of the IC Act, due to lack of consideration. Moreover, Late Sh. Rajan Mittal transferred two floors of property bearing No. B-6/49, Safdarjung Enclave, New Delhi 110029, in favour of Smt. Reshu Mittal, through a Gift Deed dated 28.03.2018. Sh. Shrey Mittal and Sh. Tushaal Mittal were satisfied with aforesaid consideration which passed to their mother.

25. Another reason assigned by the learned Single Judge is with respect to renunciation of an expectation to inherit by the expectant heir. In this respect, the Supreme Court in *Gulam Abbas v. Haji Kayyum Ali*⁵ held as under:-

“...a bare renunciation of expectation to inherit cannot bind the expectant heir’s conduct in future. But, if the expectant heir goes further and receives consideration and so conducts himself as to mislead an owner into not making dispositions of his property inter vivos the expectant heir could be debarred from setting up his right when it does unquestionably vest in him. In other words, the principle of estoppels remains untouched by this statement.”

26. In the present matter, Sh. Shrey Mittal and Sh. Tushaal Mittal were party to the settlement, along with their mother, who received two floors of a residential property *via* the gift deed dated 28.03.2018. Hence, Sh. Shrey Mittal and Sh. Tushaal Mittal cannot claim that they have not received consideration. Similarly, the ground mentioned in paragraph 06 (iv) of this judgment is also erroneous because the

⁵ (1973) 1 SCC 1



renunciation cannot be only with regard to the accrued right, but includes expectation to inherit, particularly when they received consideration.

27. This Court has carefully read the judgment of the Supreme Court in *Elumalai alias Venkatesan (supra)*. It is evident that the Supreme Court was analysing different facts in the case, where the father of the Appellants, after having received valuable consideration from his grandfather (Grandfather of the Appellants), relinquished his rights while allowing his father to deal with the property without the prospect of being haunted by any claim whatsoever. In that context, the Supreme Court applied the *Principle of Estoppel* against the Appellants. However, the same is not applicable in the present matter.

28. In the facts of this case, the opportunity of leading evidence was not necessary, particularly when the Appellant himself claims that Late Sh. Rajan Mittal died intestate leaving behind self-acquired properties.

29. It will be noted here that the Settlement Deed cannot be construed as a family settlement in order to settle the dispute between the parties with respect to the properties of the family. Sh. Shrey and Sh. Tushaal Mittal have not received any property in the settlement. They gave up their right to succeed to the ancestral property where they had pre-existing rights. Such settlement cannot be interpreted to include the self acquired property of their father. In such circumstances, the Appellant cannot claim any equity, particularly when Late Sh. Rajan Mittal did not leave behind any testament.



2025:DHC:7246-DB



30. In any case, it will not be appropriate to give preference to the Appellant over and above the claim of Sh. Shrey Mittal and Sh. Tushaal Mittal, who are Class-I heirs of their father, i.e., Late Sh. Rajan Mittal.

31. In view of the discussions hereinbefore, we affirm the conclusions drawn by the learned Single Judge noted in Paras 6(iii), 6(v) and 6(vi) but disagree with the conclusions with respect to paras 6(i), 6(ii) and 6(iv) and to that extent, while setting aside the said conclusions, are of the view that the present Appeal lacks merit, and thus, dismiss the Appeal by affirming the judgment of learned Single Judge in the above terms.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 25, 2025/sg/sh