

Vimla Monga Vs. Ramlubhai

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Court : Delhi

Decided On : Mar-31-2014

Judge : A. K. Pathak

Appellant : Vimla Monga

Respondent : Ramlubhai

Advocate for Pet/Ap. : Mr. Raj Panjwani, Ms. Sonia Singhani, Mr. Sunil Malhotra, Mr. Amit Sanduja

Judgement :

\$-R-1 & R-2 * IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

26. h March, 2014 Decided on:

31. t March, 2014 + CS(OS) 1059/1979 VIMLA MONGA Plaintiff Through: Mr. Raj Panjwani , Sr. Adv. with Ms. Sonia Singhani, Adv. versus RAMLUBHAI Defendant Through: Mr. Sunil Malhotra and Mr. Amit Sanduja, Adv. AND TEST. CAS. 47/1990 SH. KISHSORI LAL MONGA Through: Petitioner Mr. Sunil Malhotra and Mr. Amit Sanduja, Adv. versus STATE Respondent Through: Mr. Raj Panjwani , Sr. Adv. with Ms. Sonia Singhani, Adv. Coram: HONBLE MR. JUSTICE A.K. PATHAK A.K. PATHAK, J.

1. By this judgment aforementioned suit as well as testamentary petition are disposed of together since the disputes involved therein are between the members

of same family, inasmuch as, property involved therein is same, that is, House No.A-315, Defence Colony, New Delhi - 110003.

2. Plaintiff is daughter-in-law of defendant no.1. Defendant no.1 is wife of Late Shri Ajodhia Nath Monga. She died during the pendency of suit on 8th April, 1983. Defendant no.2 is brother-in-law (husbands brother) of plaintiff.

3. The pedigree table of the family, as emerges from the record, is as under:- Late Ajodhia Nath Monga and Late Mrs. Ramlubhai (Defendant No.1) Late Janki Nath Monga Kishori Lal Monga and (Defendant No.2) Mrs. Vimla Monga (Plaintiff) Mrs. K.L. Monga Kamal 4. Manu and Raman Aman Suman Plaintiff has alleged in the plaint that Late Shri Ajodhia Nath Monga and his two sons, namely, Late Shri J.N. Monga (husband of the plaintiff) and defendant No.2 were members of Hindu Undivided Family (HUF). Prepartition of the country they were living and carrying on business together in Lahore. Shri Ajodhia Nath Monga was the Karta of HUF. Plaintiff was married to Late Shri J.N. Monga on 23rd April, 1947 at Lahore. Thereafter, she also became member of the joint family. Plaintiff gave her assets also in the HUF pool. After partition of the country members of HUF finally settled in Delhi. They occupied Flat No.15, Khan Market, New Delhi on rent from 1951 onwards. Thereafter, the said flat was purchased in the year 1961. On 24th January, 1961, Shri Ajodhia Nath Monga wrote a letter to Settlement Commission, Jam Nagar House, New Delhi that claim of his sons may also be adjusted towards the cost of Khan Market flat. In the year 1961 flat at Khan Market was sold by Shri Ajodhia Nath Monga to his mother-in-law, namely, Smt. Malin Devi for Rs. 32,000/- . Defence Colony house was purchased by the HUF in the name of defendant No.1 on 6th March, 1961 for Rs.35,000/-. HUF was also carrying on business in the name of Auto Bakery from Defence Colony, New Delhi and was also having share in the Standard Screw Factory.

5. After the death of Shri J.N. Monga, the parties to the HUF held discussion and agreed to a family settlement and executed an agreement on 24th June, 1974, in relation to Auto Bakery business, Standard Screw Factory business and House No.A-315, Defence Colony, New Delhi. The agreement was signed by the Karta- Shri Ajodhia Nath Monga, defendant no.1, defendant no.2 and the plaintiff.

6. Plaintiff has alleged that the family arrangement is binding on the parties, inasmuch as, parties did act upon the same after its execution. In respect of Auto Bakery business, a partnership deed was executed on 3rd March, 1975, in terms of the family arrangement. Joint family owned and possessed considerable properties as detailed in the Schedule A attached to the plaint. Plaintiff was having more than 1/3rd share in all the properties. After the death of Shri Ajodhia Nath Monga defendants started threatening to dispossess the plaintiff from Defence Colony house and also from Auto Bakery business which business was being run by her. They also denied her share in the Standard Screw Factory. Plaintiff was in joint possession of Defence Colony house. She was in possession of the Auto Bakery business as she was managing and running the same. Thus, it has been prayed that joint family properties, as detailed in Schedule A, be partitioned by metes and bounds and plaintiff be put in actual physical possession of the properties coming to her share. CS (OS) 1059/1979 She further prayed that defendants be Page 4 of 39 directed to render full, accurate and detailed accounts of all the dealings of the Standard Screw Factory and all other business concerns of the HUF. It is further prayed that by way of perpetual injunction defendants be restrained from disturbing the plaintiffs possession from the suit properties; Defendants be restrained from transferring, disposing of or parting with possession of any of the assets and properties as detailed in Schedule A.

7. Initially defendants filed a composite written statement. However, after the death of defendant no.1, defendant No.2 had filed the amended written statement in the year 1992. Certain preliminary objections have been taken. It has been alleged that suit is bad for mis-joinder of causes of action. Plaintiff could not club the relief of rendition of accounts of partnership concerns with the relief of partition of joint family property. Suit is bad for non-joinder of necessary parties. All the persons, who would have share in the suit properties ought to have been impleaded. Partners of partnership firm were also necessary parties. It is alleged that agreement dated 24th June, 1974, is inadmissible in evidence for want of stamp duty and registration. On merits, relationship between the parties, as detailed in the plaint, has not been disputed. It was denied that there was a joint family or HUF comprising of Shri Ajodhia Nath Monga, his wife and his two sons. As per the defendants, Late Shri Ajodhia Nath Monga had been running the business in

Lahore and later in New Delhi, in his individual capacity. Neither his wife nor any of his two sons were the members of HUF. It is alleged that no woman could have become member of HUF. Late Shri Ajodhia Nath Monga, Late Shri J.N. Monga and defendant no.2 owned their individual properties in Pakistan. They received individual claims in respect of the properties left behind by them in Pakistan. Late Shri Ajodhia Nath Monga did not inherit anything from his father. All his assets and properties were self acquired properties. Even after partition, Shri Ajodhia Nath Monga, Shri J.N. Monga and defendant no.2 had been doing their individual business. It is, however, admitted that parties were living together in one house in Lahore and, thereafter, at Delhi. It is alleged that the same by itself, was not sufficient to constitute HUF. It was denied that plaintiff had brought substantial cash and jewellery in her marriage and had pooled the same in HUF. It was not denied that Shri Ajodhia Nath Monga, Shri J.N. Monga and defendant no.2 were living in Khan Market flat on rent from 1951 onwards. It was not denied that later on the said flat was allotted by the Rehabilitation Authority to Late Shri Ajodhia Nath Monga. However, it is denied that claims of Shri J.N.Monga and defendant no.2 were also adjusted against the cost of the said flat. Late Shri Ajodhia Nath Monga had made payment from his own claim. As per the defendants, claim of Shri J.N.Monga was adjusted towards the dues of the rent of Metropol Hotel at Simla which he was running in partnership with some other persons. It is not denied that the Khan Market flat was sold by Shri Ajodhia Nath Monga to Smt. Malin Devi, mother of defendant no.1 in 1961. However, it is alleged that Defence Colony house was purchased by the defendant no.1 from her own funds. It was denied that Defence Colony house was purchased by HUF in the name of defendant no.1. It is alleged that defendant no.1 belonged to a very affluent family and had her own funds and had purchased the house from her own funds and also by selling some of her jewellery. Defendant no.1 allowed the plaintiff and defendant no.2 to live in the said house, accordingly, status of plaintiff and defendant no.2 was nothing more than that of a licensee. Auto Bakery business was run in partnership by Shri A.N.Monga, plaintiff and defendant no.2. It was denied that HUF had any share in the Standard Screw Factory. It is alleged that this factory was demolished by the demolition squad in the year 1976. It is categorically stated that Defence Colony house was personal property of

defendant no.1. Execution of agreement dated 24th June, 1974, has not been disputed. However, it is stated that the said agreement was executed immediately after the death of Shri J.N. Monga at the behest of son-in-law of the plaintiff for some ulterior motive as he wanted to create some disputes in the family. Agreement is without any consideration and did not amount to a gift or transfer of properties. Mere recital in the agreement that the parties are members of the HUF is not sufficient to create any HUF; moreso when no such HUF was in existence. The agreement does not confer any right in favour of plaintiff. Defendants have further alleged that partnership dated 3rd March, 1975, came to an end on the death of Shri Ajodhia Nath Monga but the parties continued to run the business from Shop No.31, Defence Colony Market, New Delhi, which was taken on rent by Shri Ajodhia Nath Monga. The tenancy rights were inherited by the defendant No.2 pursuant to a registered Will. It is alleged that plaintiff had share in the properties which was much less than 1/3rd share as claimed by her. Vide Will dated 3rd April, 1976 defendnat no.1 bequeathed Defence Colony property to the defendant no.2. It is prayed that suit be dismissed with costs.

8. Plaintiff filed replication whereby she has denied the averments as contained in the written statement. She has reiterated the averments made in the plaint. As per the plaintiff document dated 24th June, 1974, is a family arrangement and has to be enforced. The terms were recorded in writing as a memorandum of what had been agreed upon between the parties. The said document merely recorded the statements of signatories, inasmuch as, referred Shri Ajodhia Nath Monga as Karta of joint family consisting of his wife and two sons. As per the agreement, Shri Ajodhia Nath Monga and his sons had been carrying on business jointly by pooling all the assets belonging to members of the family; they had been living together in Lahore even before partition and that the Defence Colony house was a Joint Hindu Family property. It is denied that the agreement is inadmissible in evidence for want of stamp duty and registration. Plaintiff has stated that she has based her claim on the basis of Joint Hindu Undivided Family as also under the Hindu Succession Act, 1956, which confers right in her favour, in respect of the suit properties.

9. On the pleadings of the parties following issues were framed on 8th April, 1983:1. Whether the suit is bad for mis-joinder of causes of action?.
2. Whether suit is bad for non-joinder of parties?.
3. Whether the suit has been properly valued for purposes of jurisdiction and court-fees and proper court fee has been paid?.
4. Whether Shri Ajodhia Nath Monga with his wife and two sons constituted a joint Hindu family and he was its Karta?.
5. Whether the family arrangement dated 24th June, 1974 is not admissible in evidence and binding on the parties, if not, to what effect?.
6. Whether Shri Ajodhia Nath Monga executed a valid Will dated 3rd April, 1976, if so to what effect?.
7. Whether the property at A-315, Defence Colony, New Delhi is the joint family property as alleged, if no to what effect?.
8. Whether the property at A-315, Defence Colony, New Delhi was the self acquired property of defendant No.1?.
9. Whether the business of Auto Bakery is the joint family business or a partnership business, if so what are the rights of the parties?.
10. Whether the share in the business of Standard Screw Factory is joint family property, if so to what effect?.
11. Whether Shri Ajodhia Nath Monga and his wife gifted their share in Standard Screw Factory to defendant No.2, if so when and to what effect?.
12. Whether plaintiff is entitled to a share in the suit properties, if so what is her share and the share of defendant No.2?.
13. Whether the defendant is liable to render accounts with respect to suit properties, if so for what period?.

14. If a Local Commissioner is appointed to partition the property by metes and bound or for rendition of accounts, what directions if any are to be given to him?.

15. Relief.

10. On 23rd February, 1995, following additional issue was framed in view of the amended written statement filed by defendant no.2:8A Is it proved that deceased Smt. Ram Lubhai (defendant No.1) executed her last Will on 3.4.1976 as a free and capable testator in sound and disposing state of mind bequeathing House No.A-315, Defence Colony, New Delhi to defendant No.2, Kishori Lal Monga?.

11. After the death of defendant No.1 on 27th November, 1982, defendant No.2 has propounded the Will dated 3rd April, 1976, of defendant no.1 and has filed probate petition under Section 276 of Indian Succession Act, 1925, seeking probate of the said Will. It is alleged that defendant no.1 was a resident of Delhi at the time of her death. She executed a registered Will dated 3rd April, 1976, whereby she bequeathed the properties described therein, more particularly immovable property bearing House No.A-315, Defence Colony, New Delhi to her husband Shri Ajodhia Nath Monga, who unfortunately pre-deceased her on 7th February, 1979, during his life time, with the further stipulation that after his death Defence Colony house shall vest in defendant no.2. It is further stated that defendant no.1 did not appoint any Executor under the said Will. Petitioner has prayed that probate of the Will of defendant no.1 be granted in his favour.

12. Plaintiff has opposed the grant of probate. Plaintiff has alleged in the reply that Bhai Nanak Chand was a wealthy and affluent person having vast and extensive immovable properties including jagir. He had six sons and one daughter, namely, Bhai Manohar Lal, Jai Kishan Das, Amar Nath, Chuni Lal, Panna Lal, Ajodhia Nath Monga (husband of defendant no.1) and Mahinder Kaur respectively. He died in the year 1921 at the age of 72 years. He constituted a Hindu Joint Family with ancestral properties. After the death of Bhai Nanak Chand, all the brothers divided the properties in the year 1926 amongst themselves. Late Shri Ajodhia Nath Monga was a law graduate. In the partition he got two big houses. Late Ajodhia Nath Monga was blessed with two sons, namely, Janki Nath (husband of plaintiff) and Kishori Lal (defendant no.2). Shri Ajodhia Nath Monga left his legal profession

and started business in partnership with his elder brother Panna Lal in the name and style Standard Restaurant. Shri Ajodhia Nath Monga used and invested the Hindu Joint Family funds in the said business. Later on, Standard Restaurant was opened at Mussoorie also. Shri Ajodhia Nath Monga purchased cotton ginning factory at Qasur near Lahore in the name of Shri J.N. Monga and the said factory was managed by Shri J.N. Monga. On 23rd April, 1947, plaintiff got married with Shri J.N. Monga. One plot, lot of cash and jewellery was given to plaintiff in her marriage, which she gave to the Karta of the family, namely, Shri Ajodhia Nath Monga. After the partition, Shri Ajodhia Nath Monga with his family, that is, Sh. J.N.Monga, defendant no.1 and defendant no.2 came to Delhi on 24th November, 1947. They lived together in Mussoorie and thereafter at Delhi. Shri Ajodhia Nath Monga started a canteen at Constitution House in partnership with Panna Lal, Prem Nath and Amolek Ram Suri and invested joint family funds in the said business. Plaintiffs husband used to run and manage the said canteen as Ajodhia Nath Monga took another contract at Ludhiana. All of them lived at Constitution House for about five years. Thereafter, they shifted to Khan Market flat. In the year 1952, Shri Ajodhia Nath Monga started Standard Restaurant from Regal Building, New Delhi in partnership with M/s Capri Limited. He invested joint family funds in the said business. Plaintiffs husband used to look after the Standard Restaurant. Shri Ajodhia Nath Monga sold the Standard Restaurant and opened a shop at Kashmere Gate by the name of Auto Bakery which used to be run by plaintiffs husband. However, the said business did not succeed, therefore, he shifted to Kanpur but the business did not succeed there also and was closed ultimately. Thereafter, plaintiffs husband started Auto Bakery at Defence Colony sometime in the year 1961 by investing Joint Family funds. Other business ventures also used to be run by utilising the joint family funds. Initially, Khan Market flat was taken on rent but was subsequently purchased in the year 1961. Vide letter dated 24th January, 1961, Shri Ajodhia Nath Monga requested the Settlement Commissioner to adjust the claims of his sons towards the cost of Khan Market flat. Subsequently, Khan Market flat was sold by Shri Ajodhia Nath Monga to his mother-in-law, Malin Devi for Rs.32,000/- and possession thereof was given to her on 9th March, 1961. On 6th March, 1961, Defence Colony house was purchased in the name of defendant no.1 for Rs.35,000/-. After the death of her husband,

family sat together and agreed to a family arrangement which was reduced in writing on 25th June, 1974. The said family arrangement was acted upon and a partnership deed was executed on 3rd March, 1975, in respect of Auto Bakery wherein plaintiff was inducted as one of the partners.

13. It was denied that Will dated 3rd April, 1976, was a legal and valid Will of defendant no.1. It was stated that defendant no.1 was not the owner of the house No.A-315, Defence Colony, New Delhi and had no power or authority to make a Will in respect of the said property. It is prayed that probate petition be dismissed.

14. Following issues were framed in the probate petition on 23rd February, 1995:-
15.

1. Is it proved by the petitioner that Ram Lubhai Monga, on 3.4.1976, executed her last Will as a free and capable testator in a sound and disposing state of mind?.

2. Relief. In the suit plaintiff has examined herself as PW1; whereas defendant No.2 has examined himself as DW-1. Probate petition has been filed by the defendant no.2 and he has examined himself as PW1. Attesting witness to the Will, namely, Shri Ashok Kumar Chabra has been examined as PW2. Plaintiff, who has been shown as relative no.2 in Probate Case, did not step in the witness box in view of the order dated 21st February, 2011, passed in Test Case whereby it is held that evidence of respondent/objector - Smt. Vimla Monga, as recorded in CS (OS) 1059/1979, shall be read as her evidence in the testamentary case with a rider that the petitioner shall be at liberty to summon the respondent/objector for evidence as and when on any material aspect (to be disclosed in writing) the petitioner desires to further cross-examine the respondent/objector, that is, Mrs. Vimla Monga. It may further be noted that defendant no.2 during his cross-examination in the suit has categorically stated that he had no objection if his testimony by way of cross examination recorded in Test Case 47/1990 is read in the suit as well; meaning thereby that evidence recorded in suit has to be read in the testamentary case and vice-versa.

16. I have heard the learned senior counsel/counsel for the parties, perused the written submission of the parties as well as records and my issue-wise findings are

as under :Issue No.1 17. Defendant has failed to point out as to how the suit is bad for mis-joinder of causes of action. During the course of hearing it has been admitted by both the parties that disputes in respect of Auto Bakery and Standard Screw Factory stands settled between the parties during the pendency of suit and only dispute remains to be adjudicated is about the immovable property bearing number A-315, Defence Colony, New Delhi. Accordingly, it is held that suit is not bad for mis-joinder of causes of action. Issue No.2 18. This issue was framed on the objections taken by the defendants in their written statement. Onus to prove this issue was on the defendants. No argument has been advanced by the defendant no.2 to point out as to how the suit is bad for non-joinder of necessary parties. As regards disputes in respect of business of Standard Screw Factory and Auto Bakery are concerned, parties have stated that the same have already been settled during the pendency of suit and only dispute remains to be adjudicated in this case is in respect of the immovable property bearing No.A-315, Defence Colony, New Delhi. Thus, partners of the aforesaid business concerns are not required for adjudication of the disputes between the parties. As per the plaintiff, all the parties were living in Joint Hindu Family comprising of Late Shri Ajodhia Nath Monga, his wife-Mrs. Ramlubhai (defendant no.1) and his two sons, namely, J.N. Nonga (husband of plaintiff) and K.L. Monga (defendant no.2). Suit has been filed by the plaintiff, that is, widow of predeceased son for partition of immovable property after the death of Shri Ajodhia Nath Monga and she has impleaded the widow of Late Shri Ajodhia Nath Monga and the surviving son, that is, Shri K.L. Monga, as defendants. Plaintiff and defendant no.2 are head of their branch of family, that is, their children.

19. Learned senior counsel for the plaintiff has contended that since head of each branch entitled to share have been duly impleaded, therefore, suit is not bad for non-joinder of necessary parties. Reliance has been placed on Bishambar Das and others vs. Kanshi Prashad and others AIR1932 Lahore 641, Thakar Singh vs. Sant Singh and others AIR1933 Lahore 465, Subba Rao vs. Subba Rao and others AIR1936 Madras and Bhikulal and others vs. Kisanlal and others AIR1959 Bombay 260. I find force in this contention of the learned senior counsel. Since head of each branch entitled to a share in the suit property has been impleaded, suit cannot be said to be bad for non-joinder of necessary parties. This issue is

answered accordingly. Issue No.3 20. This issue was also framed in view of the objections taken in the written statement. However, this issue has not been pressed during the course of hearing and is answered in favour of the plaintiff. Issue Nos. 9, 10, 11 and 13 21. During the course of hearing these issues have not been pressed more particularly in view of the fact that disputes regarding Auto Bakery and Standard Screw Factory have already been settled between the parties during the pendency of suit. Issue Nos. 6 22. This issue need not to be redressed in view of the settlement arrived at between the parties in respect of Auto Bakery and Standard Screw Factory business. A perusal of Will Ex.PW1/C makes it clear that it is in respect of the share of Late Shri Ajodhia Nath Monga in the partnership firm Auto Bakery and Standard Screw Factory as also with regard to cash in the banks. In the present suit no claim has been made in respect of the cash, which may be lying in the account of Late Shri Ajodhia Nath Monga, at the time of his death. This issue is answered accordingly. Issue Nos. 4, 5, 7, 8 and 12 23. These issues are taken up together since findings returned on one issue would have material bearing on the other. From the evidence adduced by the parties it is clear that Shri Ajodhia Nath Monga along with his wife and two sons, namely, J.N. Monga (husband of the plaintiff) and K.L. Monga (defendant no.2) were living together in a joint family in Lahore. Prior thereto Shri Ajodhia Nath Monga along with his family was living with his father and brothers. While they were living in Lahore Shri Ajodhia Nath Monga along with his family branched out. They had been carrying on business together. After the partition Shri Ajodhia Nath Monga along with his family first shifted to Mussoorie and then to Delhi. It is admitted by the defendant no.2, in his cross-examination, that all throughout they were living together under the same roof. They had been carrying on business in partnership. It is also established from the statements of PW1 and DW1 that they were using common kitchen. In the year 1951, Flat No.15, Khan Market, New Delhi was taken on rent. Subsequently, said flat was purchased in the year 1961 by Ajodhia Nath Monga from the claims received from the Settlement Commissioner. No documentary evidence has been led by the defendant no.2 to show that his father-Ajodhia Nath Monga and brother-J.N. Monga were running the business separately and independently either pre-partition or post-partition. It has also not been proved that defendant No.2 was having independent income from his own

business. Defendant no.2 has not lead any evidence to show that in the year 1961, when Khan Market flat was purchased, they were having separate bank accounts. Defendant No.2 has also failed to produce any documentary evidence to show that Ajodhia Nath Monga, J.N. Monga and defendant no.2 were having separate and independent income and were maintaining separate bank accounts. As regards Khan Market flat is concerned, the same was purchased out of the claims received from Settlement Commissioner in respect of the properties left behind in Pakistan. It was sold by Late Shri Ajodhia Nath Monga to his mother-in-law Smt. Malin Devi, that is, mother of defendant no.2 for Rs.32,000/- in the month of March, 1961. On 6th March, 1961, Defence Colony house was purchased for Rs.35,000/- which period is proximate to the sale of Khan Market flat. circumstances support The above the version of plaintiff that house No.A-315, Defence Colony, New Delhi was purchased by Late Shri Ajodhia Nath Monga from the joint family funds.

24. Defendants have claimed that Defence Colony house was purchased by the defendant no.1 from her own personal funds. It is contended that defendant no.1 belonged to a rich and affluent family and was given sufficient jewellery at the time of her marriage. Besides this she also used to receive cash and gifts on important occasions. Defendant no.1 sold her jewellery and invested sale proceeds besides cash which she was having, to purchase the Defence Colony house. There is only a bald assertion in this regard. No documentary evidence has been adduced to show that defendant no.1 had sold the jewellery, if so, to whom and for how much amount. No evidence has been led to show that defendant no.1 was maintaining a bank account and the sale consideration was paid from the said account. The answers given by the defendant no.2, in his cross-examination, also create a suspicion about this plea. Defendant no.2 has admitted in his cross- examination that Smt. Ramlubhai (defendant No.1) was a house wife and had not been carrying any business or work. He further admitted that defendant no.1 was an illiterate lady. He further stated that he had no knowledge that defendant no.1 was having any bank account. He also feigned ignorance about the fact as to whether his mother was an income tax assessee or not. He also claimed ignorance about the fact that his mother was assessed to wealth tax or not. He stated that he was not aware as to how much karat gold his mother was having in the year 1960.

Defendant no.2 was asked as to how he acquired the knowledge that defendant no.2 had paid sale consideration by selling her jewellery. He first stated that he was told about this fact by his mother but immediately thereafter he changed his statement and stated that he had not talked with his mother in this regard but his father told him that the property in question had been purchased from the sale of his mothers jewellery. CS (OS) 1059/1979 examination, makes the plea of defendants that Defence Colony house was purchased by defendant no.1 from her own funds, highly suspicious. Defendants have failed to prove that Defence Colony house was purchased by the defendant no.1 from her own personal funds.

25. Plaintiff has categorically deposed that Defence Colony house was purchased by Late Shri Ajodhia Nath Monga in the name of defendant No.1 from the joint family funds. Khan Market flat was purchased out of the claims received from the Settlement Commissioner, which fact has even been admitted by the defendant no.2. However, he has explained that Shri Ajodhia Nath Monga got only his claim adjusted against the said property and not of Late Shri J.N. Monga and defendant no.2. However, no documentary evidence in this regard has been led. As against this, in the family arrangement Ex.P-2, it has been specifically mentioned that Defence Colony house had been purchased from the joint family funds. Ex.P-2 has been signed by the plaintiff, defendant no.1, defendant no.2 as well by late Shri Ajodhia Nath Monga. Defendant no.2 has admitted his signatures on this document and the statements contained therein have to be preferred as against the bald oral assertions of the parties. It is trite law that documentary evidence has to be preferred against the bald oral statement.

26. Accordingly, I am of the view that Defence Colony house was purchased by Late Shri Ajodhia Nath Monga in the name of defendant no.1 from the joint family funds and the same is not the self acquired property of defendant no.1.

27. Family arrangement dated 24th June, 1976 reads as under:

This agreement entered into on this day the 24th of June, 1974 at Delhi between (1) Mr.A.N.Monga (2) Mrs.A.N.Monga (3) Mr.K.L.Monga, and (4) Mrs.Vimla Monga, all residing at No.A-315, Defence Colony, New Delhi-24. WHEREAS Mr.A.N.Monga is the Manager of a Joint Family consisting of himself and his two

sons, the late Mr.J.N.Monga and Mr.K.L.Monga. AND WHEREAS Mr.A.N.Monga and his sons have been carrying on business in a joint manner pooling all assets belonging to all the members of the family from the time they had been living at Lahore even before partition. AND WHEREAS Mr.J.N.Monga suddenly expired on 17th June, 1974 at Delhi. AND WHEREAS Mrs.Vimla Monga is the Legal and Lawful wife of late Mr.J.N.Monga and she now represents the interests of late J.N.Monga in the joint family. AND WHEREAS the family of Mr.A.N.Monga has been doing business owning properties and has been in partnership and the said business property and shares in other partnership being in the name of one or either or all of the members of the family both the deceased and the living. AND WHEREAS consequent to the death of Mr.J.N.Monga it has been mutually agreed upon to the satisfaction of all the parties to this agreement in the manner setforth hereunder: I. AUTO BAKERY In the Partnership Firm under the name and style of Auto Bakery a new partnership will be drawn and the following will be the partners with the following specified shares:

1. Mr.A.N.Monga 34% Share

2. Mr.K.L.Monga 16% -do-

3. Mr.Raman Monga 17% -do-

4. Mrs.Vimla Monga 16% -do-

5. Miss Manu Monga 17% -do- Mr.A.N.Monga will receive a remuneration of Rs.500 per month and an additional Rs.500/- per month towards the maintenance expense of his car. Mr.Raman Monga and Miss Manu Monga will be paid a remuneration of Rs.500 each per month for their attending to the daily management and affairs of the Auto Bakery and for helping Mr.A.N.Monga in the running of the Auto Bakery firm. Any amounts drawn for the personal use and expenses of the partners will be debited to the respective drawing accounts. No partner shall be entitled to any extra benefit or advantage other than those that have been and will be specifically mentioned in the deed of partnership and they would not be entitled to debit the partnership firm for expenses not connected for running of the bakery. If Miss Manu Monga gets married, her share will stand

merged with the share of Mrs.Vimla Monga and Mrs.Vimla Monga from that date would be entitled to the remuneration of Rs.500/per month which has been hitherto being paid and enjoyed by her daughter, Miss Manu Monga. The entire net income of the partnership shall be divided only according to the specified shares in the partnership deed. II. STANDARD SCREW FACTORY Mr. K.L.Monga would represent the interests of Mr.A.N.Monga and Mrs.A.N.Monga in the partnership which subsists between Mr.and Mrs.A.N.Monga and others. It is agreed and understood between the signatories to this agreement that Mr.and Mrs.A.N.Monga would be entitled to 40% of the net income from the Standard Screw Factory and Mr.K.L.Monga would be entitled to 30% of the net income from the Standard Screw Factory and Mrs.Vimla Monga would be entitled to 30% of the net income from the Standard Screw Factory. After the demise of both Mr.A.N.Monga and Mrs.A.N.Monga, their shares in the Standard Screw Factory would vest in Mr.K.L.Monga and Mrs.Vimla Monga in equal shares and proportions. III. HOUSE BEARING NO.A-315, DEFENCE COLONY The signatories to this agreement will continue to live in the house bearing No.A-315, Defence Colony in the same portion under their use and occupation. In the event of the house being sold during the life time of any one of the signatories to this agreement the net income available after payment of all taxes including capital gains etc. would stand divided between Mr.A.N.Monga and Mrs. A.N.Monga on the one side and Mr.K.L.Monga on the one side and Mrs.Vimla Monga on the other side in the proportion of 1/3 :

1. 3 :

1. 3. After the demise of both Mr.A.N.Monga and Mrs.A.N.Monga, the house bearing No.A-315 Defence Colony will be shared by Mr.K.L.Monga and Mrs.Vimla Monga in equal proportion viz., 50% each. Mr.K.L.Monga will have the option after the demise of Mr.A.N.Monga and Mrs.A.N.Monga to choose either the ground floor portion or the upstairs portion for his 50% share in the house subject to the following conditions. The person choosing the ground floor flat will be entitled to all the lawns in the front and the back and the person choosing first floor flat will be entitled to the exclusive possession of the open terrace area and the access to the upstairs flat would be through the staircase in the front side which would then be

separated by building a wall near the staircase leading to the outside gate. All expenses in regard to the maintenance of the house like white-washing, payment of taxes, repairs etc., will be borne jointly by Mr.A.N.Monga, Mr.K.L.Monga and Mrs.Vimla Monga excepting what the individual member of the families might install in the house to suit their needs and conveniences e.q., if a member of the family wants to fit up an expensive bath-tub in his or her toilet it would be to the debit of their individual account, but common amenities like installation of a booster pump and the repairs to the house etc. will be borne commonly. IV. UNSPECIFIED GENERAL ASSETS What ever assets moveable and immovable which are available after the demise of Mr.A.N.Monga and Mrs.A.N.Monga will be divided between Mr.K.L.Monga and Mrs.Vimla Monga in equal proportion. The parties to this agreement agree and declare that they are signatories to this agreement voluntarily and unequivocally declare that all and either of them would be prepared to execute any deed or document registered or unregistered affirming the contents of this agreement and its implementation thereof. The parties have signed this deed on this 24th day of June, 1974.

28. A perusal of aforesaid family arrangement makes it clear that parties had agreed that in the event of sale of Defence Colony property the sale proceeds, after payment of all taxes, was liable to be divided between defendant nos. 1, 2 and plaintiff in the ratio of 1/3rd each. It has been further stipulated that in case the sale does not take place during life time of Shri Ajodhia Nath Monga and defendant no.1, Defence Colony house will be shared by the plaintiff and defendant No.2 in the ratio of 50% each with a further stipulation that defendant no.2 will have first option either to choose ground floor portion or upstairs portion.

29. Learned counsel for the defendant no.2 has vehemently contended that the family arrangement cannot be read in evidence as it is unstamped and unregistered document. Reliance has been placed on Narendra Kante vs. Anuradha Kante and Ors. 2010 (2) SCC77 Bankey Bihari vs. Surya Narain 2004 (11) SCC393 and Jagdish Kumar Sachdeva vs. Subhash Chander Sachdeva 2011 (V) AD (Delhi) 463. Per contra, learned senior counsel for the plaintiff has vehemently contended that after the death of Shri J.N. Monga family members orally discussed about the partition of assets of family which later on was recorded

in writing vide Ex.P-2, thus, no registration under Section 17 of the Registration Act, 1908 (hereinafter referred to as the Act) was required and the same can be read in evidence. Reliance has been placed on Kale and others vs. Deputy Director of Consolidation and others AIR 1976 SC807 It has been further contended that the family arrangement was bonafide and arrived at between the members of the family to resolve the family disputes once for all by fair and equitable allotment of assets between the respective branches of the family, thus, was liable to be enforced for establishing or ensuring amity and goodwill amongst the persons bearing relationship with one another. It is further contended that if the Court finds that a family arrangement has been entered into between the family members bonafidely and the terms thereof are fair in the circumstances of a particular case, Courts will more readily give assent to such an arrangement than to avoid it. Reliance has been placed on Hari Shankar Singhania & Ors. Vs. Gaur Hari Singhania & Ors. AIR 2006 SC2488 Ram Charan Das vs. Girja Nandini and others AIR 1966 SC323 30. Plaintiff has deposed that after the death of her husband all the family members sat together and agreed to a family arrangement and executed a document containing the family arrangement on 25th June, 1974. Learned senior counsel for the plaintiff has contended that after the death of Shri J.N.Monga discussions took place, between the plaintiff, Shri Ajodhia Nath Monga, defendant No.1 and defendant No.2 with regard to the modalities of partition of assets of the family and the manner in which the assets were to be divided and only thereafter arrangement reached between the parties was recorded in writing. The words it has been mutually agreed upon, as contained in para 1 of Ex.P-2, indicates that parties had first orally agreed on the terms prior to the execution of Ex.P-2. The oral family arrangement, which was arrived at between the parties, was subsequently drafted, prepared and signed, thus, it required no compulsory registration under Section 17 of the Act.

31. In Kale (Supra), Supreme Court has held that family arrangement may be even oral, in which case no registration is necessary; Registration would be necessary only if the terms are reduced to writing but there 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 the immovable properties and therefore does not fall within the mischief of S. 17(2) of the Registration Act nor is it compulsorily registrable. It has been further held that a document, which was no more than a memorandum of what was agreed to, did not require registration. While holding so their Lordships also indicated that even if a family arrangement, which required registration and was not registered, it would operate as a complete estoppel against the parties, which had taken advantage thereof. In para 9 of the judgment Supreme Court has held thus:

Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise "Kerr on Fraud" at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus; "The principles which apply to the case of ordinary compromise between strangers, do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to that their rights actually are, or of the points on which their rights actually depend."

The object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of

the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administering of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successions so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The Courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the Courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In Halsbury's Laws of England, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made: "A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving-its honour. The agreement may be implied from a long course. Of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied. Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which

would be fatal to the validity of similar transactions between strangers are not objections- to the binding effect of family arrangements".

32. In Hari Shankar (Supra), in the context of enforceability of a family arrangement, Supreme Court has observed thus:

Another fact that assumes importance at this stage is that, a family settlement is treated differently from any other formal commercial settlement as such settlement in the eyes of law ensures peace and goodwill among the family members. Such family settlements generally meet with approval of the Courts. Such settlements are governed by a special equity principle where the terms are fair and bona fide, taking into account the well being of a family. The concept of 'family arrangement or settlement' and the present one in hand, in our opinion, should be treated differently. Technicalities of limitation etc should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family. Also it can be seen from decided cases of this Court that, any such arrangement would be upheld if family settlements were entered into ally disputes existing or apprehended and even any dispute or difference apart, if it was entered into bona fide to maintain peace or to bring about harmony in the family. Even a semblance of a claim or some other ground, as say affection, may suffice as observed by this Court in the case of Ram Charan v. Girija Nandini AIR 1966 SC323

33. In Ram Charan Das (Supra), Supreme Court has held thus :

Courts give effect to a family settlement upon the broad and general round that its object is to settle existing or future disputes general regarding property amongst members of a family. The word family in this context is not to be given a narrow meaning. In Ramgouda Annagouda's case, of the three parties, to the settlement of a dispute concerning the property of a deceased person one was his widow, another her brother, and the third her son-in-law. The two latter were not heirs of the deceased, yet bearing in mind their relationship to the widow the settlement of the dispute was regarded as the settlement of a family dispute. The consideration for such a settlement is the expectation that it will result in amity and goodwill amongst persons bearing relationship to one another. That consideration having

passed by each of the disputants, the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter.

34. What can be culled out from the above judgments is that all kinds of family arrangement or family settlement need not necessarily require compulsory registration. In case, an oral family arrangement has been arrived at it can be later on reduced in writing for the purpose of record and in such an eventuality the same does not require compulsory registration under Section 17 of the Act. Courts have to make an endeavour to uphold a family arrangement instead of disturbing the same on technical and trivial grounds. In case court finds that family arrangement suffers from a legal lacuna or a formal defect, the rule of estoppel is applied to shut out the plea of the person, who being a party to the family arrangement, seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. Endeavour has to be made to give effect to a family arrangement and/or family settlement in order to establish or ensuring amity and goodwill amongst the persons bearing relationship with one another.

35. From the overall reading of the statement of PW1. It is clear that after the death of Shri J.N. Monga, family discussed the mode and manner of dividing the assets of family and after a consensus arrived at family arrangement was reduced into writing and was signed by all the parties. Execution of agreement has not been denied by the defendant no.2. Accordingly, I am of the view that non registration of Ex.P-2 would not come in the way as the same did not require compulsory registration under Section 17 of the Act, in the facts and circumstances of this case, as discussed above.

36. If the matter is looked from yet another angle then also family arrangement has to be given effect to as the defendants are estopped from challenging the same. The family settlement was partially acted upon. Plaintiff in her affidavit has stated that parties did act upon the family arrangement Ex.P-2 in respect of Auto Bakery business as a partnership deed was executed on 3rd March, 1975, after the execution of Ex.P-2. As per Ex.P-2, Shri Ajodhia Nath Monga was to get 34 % share; defendant No.2 and his son was to get 33% share; whereas plaintiff and

her daughter was to get 33% share. As per the partnership deed of Auto Bakery executed thereafter Shri Ajodhia Nath Monga, plaintiff and defendant No.2 were given 1/3rd share each in the partnership business, which was in line with the family arrangement. Instead of defendant No.2 and his sons defendant No.2 became partner and got 1/3rd share. In place of plaintiff and her daughter plaintiff joined partnership and got 1/3rd share. Ratio of share of each branch of family remained the same, as was stipulated in Ex.P-2. Defendant no.2 had been enjoying his share in the Auto Bakery business. Defendant no.2 has admitted in his cross-examination that Mrs.Vimla Monga was looking after business of M/s Auto Bakery. He further admitted that in the year 1978, Shri A.N.Monga and Smt.Ramlubhai retired from the partnership of Standard Screw Factory and transferred the share in his favour. He used to look after the production of the said factory. As regards Defence Colony property is concerned, the equal share was given to each branch of the family. This further indicates that terms of family arrangement were fair to all the parties, inasmuch as, efforts were made to divide the properties to all the branches in equal proportion. The family arrangement was entered into after the death of husband of the plaintiff and the properties were distributed amongst three branches of the family, that is, Shri A.N.Monga and his wife one branch, family of the deceased son as second branch and the other son as a third branch. Family arrangement appears to have been arrived at to settle the existing or/and future disputes regarding properties amongst members of the family, for this reason also, efforts have been made to give effect to the family settlement as Ex.P-2.

37. Judgments relied upon by the defendant No.2 are in the context of different facts and are of no help to the defendant no.2.

38. In view of the above discussions, it is held that suit property bearing No.A-315, Defence Colony, New Delhi - 110003 is not a self acquired property of defendant no.1 and, in fact, was purchased in the name of defendant no.1 by Late Shri Ajodhia Nath Monga from the joint family funds. Ex.P-2 is a family arrangement between the parties with regard to distribution of assets owned by the family and is enforceable. Suit property has not been sold during the life time of Shri Ajodhia Nath Monga and his wife (defendant no.1), thus, plaintiff and defendant no.2 are

entitled to 50% share each in the suit property.

39. The above issues are answered accordingly. Issue No.8A and Issue No.1 of Probate Case 40. The above issues need not to be redressed, in view of the findings returned on Issue Nos. 4, 5, 7, 8 and 12. While answering the said issues it has been held that property bearing No.A-315, Defence Colony, New Delhi was not a self acquired property of defendant no.1. Thus, defendant no.1 was not competent to execute the Will in respect of the said property. Issue No.14 No finding on this issue is required to be given in this judgment for the purpose of passing a preliminary decree. This issue is answered accordingly. Relief 41. In view of the findings returned on Issue No.4, 5, 7, 8 and 12 a preliminary decree of partition is passed in respect of the property bearing No.A-315, Defence Colony House, New Delhi thereby holding that plaintiff and defendants have 50% share each in the said property. Test Case is dismissed. No order as to cost. Decree sheet be drawn. A.K. PATHAK, J.

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