

**Narinder Kaur and anr. Vs. Amar Jeet Singh Sethi and anr.**

**Narinder Kaur and anr. Vs. Amar Jeet Singh Sethi and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/698304](http://sooperkanoon.com/698304)

**Court :** Delhi

**Decided On :** Feb-28-2000

**Reported in :** 2000IIIAD(Delhi)599; 2000(54)DRJ53

**Judge :** Vikramajit Sen, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rules 1 and 2

**Appeal No. :** I.A. 8207 of 1997 in S. No. 1765 of 1997

**Appellant :** Narinder Kaur and anr.

**Respondent :** Amar Jeet Singh Sethi and anr.

**Advocate for Def. :** Mr. A.S. Chandhiok, Sr. Advocate, ; Mr. L.K. Bhushan and ;

**Advocate for Pet/Ap. :** A.M. Singhvi, Sr. Advocate and; Mr. Ravi Gupta, Adv

**Judgement :**

ORDER

**Vikramajit Sen, J.**

1. The facts of the present case are not disputed between the parties, who are siblings of each other. The two Plaintiffs are the sisters of the Defendant No. 1. All of them being the children of late Smt. Gobind Kaur and late Lt. Col. H.S. Sethi. The dispute between them pertains to property bearing No. B-7/6, Safdarjang

Enclave, New Delhi. A collaboration Agreement has been executed by Defendant No. 1 with Defendant No. 2 in respect of the development of this property.

2. The original lease of the plot was in the name of late Smt. Gobind Kaur who expired on 16.4.1976. In his Written Statement Defendant No. 1 has stated that she left behind a Will dated 1.10.1974, but whilst this document has been mentioned in the List of Documents filed along with the Written Statement it has not been filed. The reason for this non-filing is that it is misplaced. Shri A.S. Chandhiok, Learned Senior counsel for Defendant No. 1, in the course of arguments, has stated that no reliance was being placed on this will because of its non availability. This document will not engage my attention any further but I am constrained, however, to observe that the mystery behind this missing Will would lead me atleast to one conclusion, it is that the said Defendant intended to unfairly gain some mileage from this otherwise non-existent document.

3. A series of Relinquishment Deeds have been executed in this case. Their execution is admitted, but their legal efficacy and applicability is hotly contested. On 15.5.1982 Lt. Col. H.S. Sethi and Plaintiff No. 2 executed a Relinquishment Deed in favor of Defendant No. 1. This deed duly recorded that the legal heirs of late Smt. Gobind Kaur were her late husband Lt. Col. H.S. Sethi and the siblings before the Court. By this Deed the Executants had relinquished their share in favor of Shri Amar Jeet Singh Sethi, Defendant No. 1. This was followed by another Relinquishment Deed dated 25.8.1984 executed by Plaintiff No. 1 in favor of Defendant No. 1. At this stage I would only mention the basic legal fallacy in the document is that a Relinquishment perforce cannot be in favor of any particular cosharer ; if it is to operate in favor of a particular party it amounts to a transfer and must be effected either by Sale Deed or by a Gift Deed, depending entirely on whether there was any consideration for such a transfer.

4. The Plaintiffs case is that a Family Settlement was arrived at between August 25, 1984 and 18th October, 1984 when the third Relinquishment Deed was executed. The last document was executed by Defendant No. 1 in favor of his father, that is, late Lt. Col. H.S. Sethi. In this Deed there is also a recital that the Plaintiffs would also execute Relinquishment Deeds in favor of their father. The

fourth Relinquishment Deed was subsequently executed by Plaintiff No. 2 in favor of her father on 30.7.1985. As was expected in the third Relinquishment Deed, Plaintiff No. 1 did not execute any Relinquishment Deed in favor of her father but the averments in the plaint are to the effect that she had intention in the plaint are to the effect that she had intention to do so. Late Lt.Col. H.S. Sethi admittedly died intestate on 12.8.1995. The Plaintiffs assert that in these circumstances they along with their brother Defendant No. 1, being the Class I legal heirs of their father, succeeded to his estate (read the property in suit namely B-7/6, Safdurjang Enclave, New Delhi) in equal shares, that is, 1/3rd each. Defendant No. 1, however, asserts that on the execution of the second Relinquishment Deed he became the exclusive owner of the suit property. It is his case that he was compelled to execute Deed dated 25.8.1984 whereby he had relinquished all his rights in the property in favor of his father. Since this Deed was executed without his free consent it is nonest and in any event it was not legally possible for him to relinquish his shares in favor of his father, who had no subsisting share in the property on 25.8.1984, and that there is an inherent contradiction in this Deed itself inasmuch it speaks of the acts of Defendants No. 1 having 1/4th Share only. It is from this skein of Relinquishment Deeds that the Court is expected to extricate itself and finally decide on whether to grant or not to grant temporary injunction. An ex parte ad interim injunction directing maintenance of status quo has already been granted on 28.8.1997.

5. Having given my thoughtful consideration to the arguments addressed on behalf of the Plaintiffs by their learned Senior Counsel Dr. A.M. Singhvi and on behalf of Defendant No. 1 by his learned Senior Counsel Shri A.S. Chandhiok, I am of the opinion that the ex-parte ad interim injunction deserves to be confirmed and the application should be allowed. I have already indicated above that it is a legal misnomer, unfortunately frequently followed, that a Relinquishment can be effected in favor of a particular person. To this extent Mr. Chandhiok's arguments must be upheld. What is sauce for the goose is also the sauce for the gander, so the idiom proclaims. If the Relinquishment Deed dated 25.8.1984 whereby Defendant No. 1 had given up his rights in favor of his father is rightly assailable, this contradiction also pervades the other two earlier Relinquishment Deeds whereby Defendant No. 1 had become the exclusive owner of the suit property.

They must all be considered or rejected together. For reasons contained below I will consider all of them rather than reject them.

6. Mr. A.S.Chandhiok, learned Senior counsel for Defendant No. 1 vehemently argued that the averments pertaining to the Family Settlement are bereft of any details and must be rejected on this ground. The statements made in the plaint, however, on a holistic reading, and if this is done the Family Arrangement is not of ethereal nature. It is plausible that between the execution of the third and fourth Relinquishment Deeds an oral Family Settlement Deed take place and, therefore, the fourth Relinquishment Deed was executed. The version that the third Relinquishment Deed was executed on the behest of late Shri Jai Singh Sethi (since deceased, conveniently) is far less possible. The statement pertaining to pressure brought on Defendant No. 1 by late Shri Jai Singh Sethi and his wife Smt. Amrit Kaur (since deceased, conveniently) is as illusory as the Will which is stated to have been executed by late Smt. Gobind Kaur in favor of Defendant No. 1. At this stage of the proceedings a final verdict on either of the stands cannot be taken.

7. Learned counsel for Defendant No. 1 has also strenuously argued that since no prayer has been made for declaring the 4th Relinquishment Deed invalid or improbable, an unsurmountable legal hurdle exists in the path of the Plaintiffs. This argument is also self destructive inasmuch as Defendant No. 1 has not made a similar prayer in respect of the third Relinquishment Deed whereby he had relinquished his shares in favor of his father. Inasmuch as the stand of sole and exclusive ownership of the property runs counter to the third document it would be fair to expect that some legal action would have been initiated for declaring it as having been cancelled. This has not been done. Reliance has been placed by the Plaintiffs on the last Relinquishment Deed and I see no impediment in their way in so doing. At this stage it would be relevant to mention that on the filing of the Written Statement it has been unfolded that a Conveyance Deed has now been executed in favor of Defendant No. 1. In earlier hearings it was first submitted on behalf of this Defendant that the mutation and the execution of the Lease Deed in favor of Defendant No. 1 was done with the knowledge of the Plaintiffs. Subsequently, on being asked to file an affidavit to this effect, Defendant No. 1 has

significantly resoled from this stand. The position that emerges, therefore, prima facie is that the mutation as well as the Conveyance Deed was surreptitiously obtained by Defendant No. 1. In view of the existence of the third Relinquishment Deed it is incumbent on this Defendant to substantially discharge the burden of proving that the Plaintiffs had either acknowledged or acquiesced in his sole ownership. This is also wholly missing. If they were unaware of the execution of the Conveyance deed, the Plaintiffs can hardly be faulted for not initiating legal proceedings for the reversal or a cancellation thereof.

8. Mr. A.S. Chandhok, learned Senior counsel appearing for Defendant No. 1 had also sought reliance on the definition of 'gift' and that even if 4th Relinquishment Deed was to be treated as a gift, it had to be accepted. Since there is no acceptance even this fiction cannot be assumed, so his argument can be paraphrased. Dr. A.M. Singhvi, learned Senior counsel appearing on behalf of the Plaintiffs has countered these arguments by relying on the cases of Smt. Shankutla Devi Vs . Smt. Amar Devi, and Mt. Anandi Devi v. Mohan Lal & Ors, AIR 32 All. 444, both of which have been rendered by Division Benches of that Court and on Vannathi Valappil Janaki & Ors. Vs . Puthiya Purayil Paru & Ors., : AIR1986 Ker110 . These decisions undoubtedly and unequivocally state that acceptance can be inferred from the silence of the parties. The 4th Relinquishment Deed was executed on 30.7.1985. Running counter thereto, the execution of a Collaboration Agreement by Defendant No. 1 only with Defendant No. 2 had come to the notice of the Plaintiffs much later. Immediately thereupon the Plaintiffs have approached the Court. therefore, if there was any acquiescence it must be construed to have existed on the part of Defendant No. 1 and not on the Plaintiffs.

9. If all the Relinquishment Deeds are ignored the result would be that the siblings would inherit the property in 1/3rd share each. If the all the Relinquishment Deeds are given effect to the result also would be same. The only argument is that whereas the sisters and father could have released or relinquished their shares in favor of Defendant No. 1, all being coowners of the property, the first two Relinquishment Deeds, inasmuch they do not relinquish or release or extinguish the shares of the Executants but instead have the effect of transferring the shares of the Executants in favor of Defendant No. 1, they would necessarily have to be

engrossed on stamp paper either as a transfer or as a gift. Since this is not so these documents cannot be read in evidence. In their absence, Defendant No. 1 cannot be heard to say that he was the exclusive owner of the suit property. The argument of learned counsel for Defendant No. 1 that a gift requires specific acceptance would also work against giving effect to the first two Relinquishment deeds. Keeping in view the closeness in time of the execution of these Relinquishment Deeds it would be fairly assumed by the Court that Defendant No. 1 did not accept the gifts and, therefore, relinquished all his shares in favor of his father. Relinquishment Deed executed by Defendant No. 1 suffered from the legal lacunas that it sought to create an interest in the property in favor of persons who had no interest. This is what has been laid down in *Kuppuswami Chettiar Vs . A.S.P.A. Arumugam Chettiar and anr. : [1967]1SCR275* is that an unsurmountable obstacle is the question which needs to be addressed. The answer, at this stage of the suit is to be found in the decision of the Supreme Court in *Kale & Ors. Vs . Deputy Director of Consolidation &Ors.; : [1976]3SCR202* . What has to be constantly borne in mind where the parties before the Court are members of a family the approach which is to be adopted by the Courts is to give effect to such family arrangements rather than shoot it down on legalese and forensic technicalities.

10. The Supreme Court in *Kale & Ors. case (supra)* relied on the following paragraph on the treatise *Kerr on Fraud* :

'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 what their rights actually are, or of the points on which their rights actually depend'.

11. The Supreme Court also referred to *Halsbury's Laws of England, Vol. 17, Third Edition*. The ratio is contained in para 10 of the judgment which reads as under :

'In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions :

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family :

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence :

(3) The family arrangement may be even oral in which case no registration is necessary :

(4) It is wellsettled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and thereforee does not fall within the mischief of Section 17(2) of the Registration Act and is, thereforee, not compulsorily registerable:

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favor of such a person and acknowledges him to be the sole owner. then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same.:

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement'.

12. In conclusion I am satisfied that a prima facie case exists in favor of the Plaintiffs for confirming the ex parte adinterim injunction already granted. The balance of convenience is undoubtedly in favor of the Plaintiffs. Defendant No. 1 has entered upon a Collaboration Agreement with Defendant No. 2, which Agreement if implemented, would have the effect of totally transforming the character of the immovable property. Most importantly it would have the effect of creating their party interests therein which would unalterably affect the equities of the case. It is expedient to put a halt straightway. Since immovable property is in dispute, as generally recognised and specifically acknowledged in the Specific Relief Act, irreparable injury is likely to result to the Plaintiffs if the injunction application is not allowed. In these circumstances the application is accepted. Accordingly till the final outcome of the suit the Defendants, their servants, agents, employees, representatives and/or anybody claiming through them or on their behalf are restrained from in any manner whatsoever creating any lien, encumbering, creating any third party rights, disposing off and/or parting with the whole or any part of the property and premises known as No. B7/6, Safdarjung Enclave, New Delhi. The Defendants, their servants, agents, employees, representatives and/or anybody claiming through them or on their behalf are further restrained from raising any construction and carrying out any addition and alteration in the suit premises being No. B7/6, Safdarjung Enclave, New Delhi.

13. I.A. stands disposed of.