

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

**CS (OS) No. 1228 of 2008**

Reserved on: October 24, 2013

Decision on: November 8, 2013

**CS (OS) 1228 of 2008 & IA Nos. 7555 of 2008, 2376 of 2009**

**MANJEET KAUR & ORS.**

..... Plaintiffs

Through: Ms. Richa Kapoor & Ms. Karuna  
Chatwal, Advocates.

versus

**SUKHDEV SINGH & ANR.**

..... Defendants

Through: Mr. Gaurav Sarin, Ms. Charul Sareen  
& Ms. Veera Angrish, Advocates for  
Defendant No.2.

**WITH**

**CS (OS) 1230 of 2008 & IA Nos. 7557 of 2008, 2378 of 2009,  
9886 of 2010**

**MANJEET KAUR & ORS.**

..... Plaintiffs

Through: Ms. Richa Kapoor & Ms. Karuna  
Chatwal, Advocates.

Versus

**MANJIT SINGH & ANR.**

..... Defendants

Through: Mr. Gaurav Sarin, Ms. Charul Sareen  
& Ms. Veera Angrish, Advocates for  
Defendant No.2.

**WITH**

**CS (OS) 1420 of 2008 & IA Nos. 8730 of 2008, 2377 of 2009,  
9893 of 2010**

MANJEET KAUR & ORS ..... Plaintiffs  
Through: Ms. Richa Kapoor & Ms. Karuna  
Chatwal, Advocates.

versus

SUKHDEV SINGH & ANR. .... Defendants  
Through: Mr. Gaurav Sarin, Ms. Charul Sareen  
& Ms. Veera Angrish, Advocates for  
Defendant No.2.

**WITH**

**CS (OS) 1421 of 2008 & IA Nos. 8731 of 2008, 2474 of 2009,  
9887 of 2010**

MANJEET KAUR & ORS. .... Plaintiffs  
Through: Ms. Richa Kapoor & Ms. Karuna  
Chatwal, Advocates.

versus

SUKHDEV SINGH & ANR. .... Defendants  
Through: Mr. Gaurav Sarin, Ms. Charul Sareen  
& Ms. Veera Angrish, Advocates for  
Defendant No.2.

**WITH**

**CS (OS) 1433 of 2008 & IA Nos. 8746 of 2008, 2473 of 2009,  
9907 of 2010**

MANJEET KAUR & ORS.

..... Plaintiffs

Through: Ms. Richa Kapoor & Ms. Karuna  
Chatwal, Advocates.

Versus

MANJIT SINGH & ANR.

..... Defendants

Through: Mr. Gaurav Sarin, Ms. Charul Sareen  
& Ms. Veera Angrish, Advocates for  
Defendant No.2.

**AND**

**CS (OS) 1434 of 2008 & IA Nos. 8747 of 2008, 2472 of 2009,  
9914 of 2010**

MANJEET KAUR & OTHERS

..... Plaintiffs

Through: Ms. Richa Kapoor & Ms. Karuna  
Chatwal, Advocates.

versus

MANJIT SINGH & ANR.

..... Defendants

Through: Mr. Gaurav Sarin, Ms. Charul Sareen  
& Ms. Veera Angrish, Advocates for  
Defendant No.2.

**CORAM: JUSTICE S. MURALIDHAR**

**JUDGMENT**

**8.11.2013**

1. These six suits arise out of a similar set of facts. The facts in the  
lead suit i.e. CS (OS) No. 1228 of 2008 are, therefore, discussed in

some detail. It may be mentioned that the Plaintiffs in all these suits are the same. Plaintiff No. 1 is Smt. Manjeet Kaur who expired during the pendency of the suit on 18<sup>th</sup> April 2010 and is represented by her legal representatives ('LRs'). The applications for bringing on record the LRs of Plaintiff No.1 were allowed by the Court on 16<sup>th</sup> May 2013. Plaintiff No.2 is Smt. Surinder Kaur Srichawla. She is the divorced wife of Shri Ongkar Singh, the brother of Smt. Manjeet Kaur. Both Plaintiff No.1 Smt. Manjeet Kaur and late Shri Ongkar Singh, along with 9 other siblings were the children of late Shri Seth Narain Singh Chawla (father) and late Smt. Harjinder Kaur (mother). Plaintiff No.3 is Shri Amornthep Srichawla and Plaintiffs 4 and 5 are Ms. Orasa Srichawla and Ms. Orapin Srichawla. Plaintiffs 3, 4 and 5 are the children of late Shri Ongkar Singh and Plaintiff No.2 Smt. Surinder Kaur Srichawla.

2. Defendant No.1 in Suit CS (OS) No. 1228 of 2008 is Shri Sukhdev Singh, one of the sons of late Shri Nirankar Singh Chawla and Smt. Harjinder Kaur. Defendant No.2 is Shri Purshotam Singh Chawla who is the son of late Shri Seth Narain Singh Chawla and late Smt. Harjinder Kaur. The prayers in all these suits are for declarations in respect of deeds of relinquishment dated 31<sup>st</sup> May 2005 executed by Defendant No.1 and his brother Shri Manjit Singh in favour of Defendant No.2 Shri Purshotam Singh Chawla in respect of the following three properties:

- (i) Property No. 28, Pusa Road (Ajmal Khan Road), New Delhi.
- (ii) Property No. 2104, Gurudwara Road, Karol Bagh, New Delhi.

(iii) Property No. 6/44, WEA Ajmal Khan Road, Karol Bagh, New Delhi.

3. The points that arise for consideration in the suits have been summarised in an order dated 8<sup>th</sup> February 2010 passed by the Court which reads as under:

1. These batch of matters are seeking a declaration in respect of property bearing No.28, Pusa Road (Ajmal Khan Road), New Delhi, property bearing no.2104, Gurudwara Road, Karol Bagh, New Delhi and property no.6/44, W.E.A., Ajmal Khan Road, Karol Bagh, New Delhi. There are five plaintiffs in the suits. The plaintiff No.1 is Manjeet Kaur and the plaintiff No.2 to 5 are Sh.Surinder Kaur Srichawla, Mr. Amornthep Srichawla, Ms.Orasa Srichawla and Ms.Orapin Srichawla.

2. The plaintiff Nos.2 to 5 are stated to be the legal heirs of one Late Sh.Onkar Singh who was one of the sons of the deceased Narain Singh who was survived by the widow, eight sons and three daughters.

3. The suit is for seeking a declaration of cancellation of relinquishment deed/release deed dated 31.5.2005 purported to have been executed by the defendant no.1 in favour of defendant no.2 and in other suits right of preemption under Section 22 of the Hindu Succession Act, 1956 has been claimed.

4. This court is taking the suit No.1228/2008 as a sample and lead case to pass the order. The plaint is not signed or supported by the affidavit of plaintiff no.1 Smt.Manjeet Kaur. So far as the plaintiff Nos.2, 3 and 5 are concerned, they are purported to have filed the suit through plaintiff no.4 Ms.Orasa Srichawla in the capacity of attorney. However, a perusal of the power

of attorney shows that prima facie the said power of attorney purported to have been executed by Plaintiff Nos.2, 3 and 5 does not authorize the plaintiff no.4 to file the above mentioned suit on their behalf. It only authorises the plaintiff no.4 to protect the interest of the said plaintiff to the extent of their share in respect of the suit properties. Therefore, in my view prima facie the plaint is not validly instituted, so far as the plaintiff nos.1 to 3 and 5 are concerned.

5. The learned Senior counsel for the plaintiff seeks some time to satisfy this Court regarding the maintainability of the suit to that extent.

6. It is further seen that the plaintiffs in the plaint have made a prayer for cancellation of relinquishment deed/release deed purported to have been executed by defendant no.1 in favour of defendant no.2 on 31.5.2005. The plaintiffs have valued the suit for the purpose of jurisdiction at Rs.25 lacs although only a fixed court fee of Rs.19.50 paise has been paid. Prima facie in my view since the plaintiffs are claiming cancellation of a relinquishment deed/release deed purported to have been executed by another co-sharer in favour of third co-sharer the question of the plaintiff being in possession of the suit property and payment of fixed court fees would not arise. The plaintiff has to pay at least the ad velorem court fees on the valuation which has been put by the plaintiff in the suit.

7. The learned Senior counsel for the plaintiff seeks time to address arguments on this aspect and payment of deficient court fees also.

8. List for arguments on 27.8.2010.

9. The plaintiff no.1 Manjit Kaur is also directed to be present in Court on the next date.

10. Mr. Vohra, learned Senior Counsel for the plaintiff has stated that Smt. Manjeet Kaur is a very old lady and is not keeping good health. The presence of plaintiff no.1 is required on account of the fact that she is purported to have executed the sale deed duly registered with the Sub-Registrar with regard to her share in property bearing No.28, Pusa Road, New Delhi in favour of defendant no.2 in CS (OS) Nos.1229/2008, 1231-33/2008, 1428/2008 and later on resiled from the same.”

4. On 18<sup>th</sup> May 2013, while allowing the application for substitution of the LR's of the Plaintiffs, the question whether the suit was not maintainable on account of Plaintiff No.1 not having signed the plaint was considered. The Court observed in the said order as under:

“As far as the objection taken on behalf of the Defendant No.2 that suit was not maintainable because of Plaintiff No.1 having not signed the plaint is concerned, I find no merit in the same. Just because out of five Plaintiffs one did not sign the plaint when it was filed in the Court it cannot be said that the suit was not maintainable more particularly when the record shows that she had executed vakalatnama in favour of her Advocate and she had signed pleadings in other connected suits. Even otherwise, in my view, non-signing of the plaint by the deceased Manjeet Kaur was a curable defect and she could have been permitted to sign the plaint, which would have cured the defect. For this view I find support from a judgment of this Court in *‘Sarabjit Singh v. All India Fine Arts & Crafts’ ILR 1989 Delhi 585*. However, before the deceased Plaintiff No.1 could come to the Court she died. Now her legal heirs have shown their desire to prosecute the suit further.”

5. As regards the objections raised by Defendant No.2 that Plaintiff

No.1 had during her lifetime sold her share in the suit property in favour of YTC Housing Pvt. Ltd. and that she was left with no interest in the suit property, the Court in the same order stated that the said issue was not “being considered at this stage and would be duly dealt with at an appropriate stage during the trial”. As regards the non-payment of the requisite court fee by the Plaintiffs it was held that the matter would be taken up on 31<sup>st</sup> July 2013.

6. The above objection as to court fee has been taken by Defendant No.2 in IA No. 2376 of 2009 under Order VII Rule 11 CPC.

7. To recapitulate the brief facts, the father of Plaintiff No.1 and her ten siblings, late Shri Seth Narain Singh Chawla died intestate on 2<sup>nd</sup> March 1974. As regards the property No. 28, Pusa Road (Ajmal Khan Road), New Delhi, Suit No. 294 of 1972 was file during his lifetime. The said suit was decreed on 19<sup>th</sup> May 1978. A sale deed was executed by the Registry of this Court in respect of the said property in favour of each of the ten LRs of late Shri Seth Narain Singh Chawla i.e. his wife Smt. Harjinder Kaur and his 11 children i.e. Manjeet Kaur (Plaintiff No.1), Shri Ongkar Singh (husband of Plaintiff No.2) and father of Plaintiffs 3 to 5, Shri Jagtar Singh, Shri Pritpal Singh, Shri Nirankar Singh (father of Defendant No.1 Shri Sukhdev Singh) and his brother Shri Manjit Singh, Shri Daya Singh, Smt. Kuljeet Kaur, Defendant No.2, Shri Gurdeep Singh and Smt. Sukhbir Kaur. As a result Smt. Harjinder Kaur and each of the 11



children got their 1/12<sup>th</sup> share in property No. 28, Pusa Road (Ajmal Khan Road), New Delhi.

8. Smt. Vinder Kaur, the wife of Shri Nirankar Singh, and her two sons Shri Sukhdev Singh and Shri Manjeet Singh filed CS (OS) No. 1196 of 1988 in this Court seeking partition, declaration and permanent injunction in respect of the property No. 6/44, WEA Ajmal Khan Road, Karol Bagh, New Delhi, property No. 28, Pusa Road (Ajmal Khan Road), New Delhi and property No. 2104, Gurudwara Road, Karol Bagh, New Delhi. A preliminary decree of partition was passed on 8<sup>th</sup> May 2007 in the said suit with the consent of the parties and their respective shares were determined in terms of the chart submitted to the Court. What is significant as far as the aforementioned suit is concerned is that Plaintiffs 2 to 5 herein as well as Defendants 1 and 2 were parties to the aforementioned suit. Prior to the preliminary decree being passed in the aforementioned suit, Shri Manjit Singh and Shri Sukhdev Singh by a relinquishment deed dated 31<sup>st</sup> May 2005 relinquished their share in all the properties in favour of their uncle Shri Prachotam Srichawla (Defendant No.2). Thereafter on 6<sup>th</sup> August 2005, they filed IA No. 6402 of 2005 seeking to withdraw CS (OS) No. 1196 of 1988. As already mentioned, Plaintiffs 2 to 5 were party to the aforementioned suit as LR's of Defendant No.3 in the said suit and, therefore, they were Defendants 3(b) to 3(e). On 1<sup>st</sup> September 2005, a submission was made on behalf of the LR's of Defendant No.3 that they should be transposed as Plaintiffs.

9. Thereafter on 11<sup>th</sup> May 2007, with the consent of the parties including Plaintiffs 2 to 5, the preliminary decree was passed in terms of the family tree annexed with IA No. 3197 of 2007. A Valuer was appointed by the Court for determining the value of each property.

10. On 25<sup>th</sup> April 2008, the following order was passed in IA No. 6402 of 2005 filed by the Plaintiffs in the said suit:

“25.04.2008

Present: Ms. Geeta Luthra with Ms. Aanchal Mullick for the Plaintiffs.

Mr. Amit Mahajan for Defendant No.9B.

Mr. Gaurav Sarin & Ms. Charul Sarin for Defendants 1A, 2, 3A, 4 to 8 & 9A, C and D.

Mr. O.N. Vohra, Senior Advocate with Mr. L.B.Rai for LR's of Defendant No. 1 and 3/Applicants in IA No. 7961 of 2007.

**IA No. 6402 of 2005 in CS (OS) No. 1196 of 1988**

This is an application by the Plaintiffs for withdrawal of the suit. Counsel for the Plaintiffs submits that they have entered into an agreement with Defendant No.8-Sri Purshottam Chawla and they have agreed for the rights in favour of Defendant No.8 and have executed deeds of relinquishment and thus they wish to unconditionally withdraw the suit against the Defendants.

This application was opposed by the legal heirs of Defendant No.3 and the matter has been listed in Court from time to time. This Court had passed a preliminary decree on 11<sup>th</sup> May 2007. Subsequently the legal heirs of Defendant No.3 moved two applications being IA 8889 of 2007 and 7961 of 2007. Today, Mr. O.N.

Vohra, learned Senior counsel appearing for the LR's of Defendants 1 and 3, on instructions from Mr. L.B. Rai, Advocate, submit that in view of the understanding arrived at between the parties, they have no objection if IA 6402 of 2005 is allowed and the Plaintiff be permitted to withdraw his suit. Counsel also submit that IA 7961 of 2007 and 3197 of 2007 be also allowed.

The suit is accordingly dismissed, leaving the parties to bear their own costs. The injunctions granted stand vacated."

11. The present suit was thereafter filed by Smt. Manjeet Kaur as Plaintiff No.1 along with Plaintiffs 2 to 5 for a declaration that the relinquishment deeds dated 31<sup>st</sup> May 2005 executed by Defendant No.1 and his brother Shri Manjit Singh in favour of Defendant No.2 enure for the benefit of the entire body of co-shares surviving and willing to accept at the time of making the deeds of relinquishment i.e. 31<sup>st</sup> May 2005 excluding Defendant No.1 and his brother who according to the Plaintiffs were estopped from making any claim.

12. It is significant that the plaint itself was not signed by Plaintiff No.1 although admittedly she was alive at the time of filing of the suit on 28<sup>th</sup> May 2008. She also did not swear to any affidavit in support of the plaint. Prior to her death on 18<sup>th</sup> May 2010, Plaintiff No.1 Smt. Manjeet Kaur executed a sale deed dated 29<sup>th</sup> July 2009 selling her 1/12<sup>th</sup> share in the property No. 28, Pusa Road (Ajmal Khan Road), New Delhi to YTC Housing Pvt. Ltd. The said sale deed was witnessed by Shri Darshan Singh one of her LR's who has been

brought on record in the present suit. A copy of the registered sale deed has been placed on record. Clause 5 of the sale deed states that the vendor admitted that neither she nor her legal heirs and successors would have any right, title and interest in the said share in the said property and would not claim any right in future and have been left with no right, title and interest of any nature whatsoever in the said share in the said property and that the vendee i.e. YTC Housing Private Limited has become the absolute owner of the 1/12<sup>th</sup> share in the said property. Further an indemnity bond was executed on the same date by Smt. Manjeet Kaur in favour of the vendee, a copy of which has also been placed on record. She executed an affidavit on the same date agreeing to withdraw the cases filed by her in this Court. It may be noted that in all Smt. Manjeet Kaur had filed about 21 cases in this Court and 6 of them are being dealt with by the present order.

13. On 5<sup>th</sup> April 2011, Defendant No.2 filed an affidavit bringing on record the aforementioned sale deed dated 29<sup>th</sup> July 2009 as well as a registered sale deed dated 7<sup>th</sup> April 2010 executed by Manjeet Kaur in favour of Olympus System Private Limited selling her 1/12<sup>th</sup> undivided share in the property at 2104, Gurudwara Road, Karol Bagh, New Delhi. Consequently, prior to her death, Smt. Manjeet Kaur, Plaintiff No.1 gave up her 1/12<sup>th</sup> share in two of the properties i.e. 28, Pusa Road (Ajmal Khan Road), New Delhi and 2104, Gurudwara Road, Karol Bagh, New Delhi.

14. There are two lines of arguments advanced by Ms. Richa Kapoor, learned counsel for the Plaintiffs in resisting the application filed by Defendant No.2 (IA No. 2376 of 2008 under Order VII Rule 11 CPC) seeking rejection of the plaint. The first is that there cannot be a relinquishment by Defendant No.1 in favour of any one particular person, in this case Defendant No.2. Referring to the dictionary meaning of the word 'relinquishment' as found in the Black's Law Dictionary, she submitted that the relinquishment by Defendant No.1 and his brother was only to the extent that they gave up their rights in the suit properties and the legal effect thereof would be that the relinquishment would not be to the benefit of all other surviving legal heirs. However, apart from the dictionary meaning of the word 'relinquishment', she did not place on record any decision which would support such a contention.

15. The second contention advanced was that since the Plaintiffs were in constructive possession of the suit property as co-owners, the Plaintiffs were to pay a fixed court fee under Article 17(3) of the Second Schedule to the Court Fees Act, 1850 ('CFA'). Therefore the question of payment of *ad valorem* court fee under Section 7(iv)(c) of CFA did not arise. Reliance is placed on the decisions in ***Suhil Singh @ Sardool Singh v. Randhir Singh AIR 2010 SC 2807***, ***M.P. State Electricity Board v. Smt. Kamla Sharma AIR 2004 MP 57 (58)***, ***Janardhan Rai v. Rajinder Pathak AIR 2006 (NOC) 1004 Patna*** and ***Neelavathi v. N. Natrajan AIR 1980 SC 691***. She also argued that a pre-emptive right to purchase the undivided share of Defendant No.1

enures to the Plaintiff in terms of Section 22 of the Hindu Succession Act, 1956 ('HSA'). According to her, late Shri Ongkar Singh had this pre-emptive right and Plaintiffs 2 to 5 inherited such pre-emptive rights. In support of this contention, she relied upon the decisions in ***Kusum Kumaria v. S.P. Kumaria and Anr.*** (dated 27<sup>th</sup> February 2006 passed by a Single Judge of this Court in CS (OS) No. 2307 of 2001) and ***Kanta Rani v. Rama Rani AIR 1988 SC 726.***

16. Countering the above submissions, Mr. Gaurav Sarin, learned counsel for the Defendants, pointed out that as far as Plaintiff No.1 is concerned, she had even during the pendency of the suit sold her 1/12<sup>th</sup> share in two of the suit properties and, therefore, there was no question of their continuing to seek any relief in respect of the said two properties. Secondly, he submitted that once the 1/12<sup>th</sup> share in 28, Pusa Road (Ajmal Khan Road), New Delhi of each of the LRs of late Shri Seth Narain Singh Chawla was identified there is no question of that property being part of any joint family property which requires to be partitioned. He submitted that none of the parties were in possession of the suit properties as all of them, except the Plaintiff No.1 and Shri Sukhdev Singh and Shri Manjit Singh, were in India. It was not anybody's case that either one of them was found in constructive possession of the suit properties. The question, therefore, of the payment of fixed court fee did not arise. Relying on the decision in ***N.V. Srinivasa Murthy v. Mariyamma (2005) 5 SCC 548***, he submitted that a cleverly drafted plaint would not enable the plaintiff to overcome the hurdle of having to pay the appropriate court fee. He,

however, submitted that even before the plaint is rejected, the Court fee should be directed to be paid and only then the plaint should be rejected. He also relied on the decisions in *Bharat Sanchar Nigam Ltd. v. All India Bharat Sanchar Nigam Executives' Association* 130 (2006) DLT 195 and *Dhanpat Rai v. Shaish Kumar* 156 (2009) DLT 694. Further, in support of his submission that a relinquishment deed in favour of a particular person is not *per se* impermissible or illegal he relied on the decisions in *Thamma Venkata Subbamma v. Thamma Ratamma* (1987) 3 SCC 294, *Randhanyakamma & Anr v. K.S. Prakash (Dead) by LRs* (2008) 15 SCC 673, *Lt. Col. Gaj Yadav v. Satish Chander Yadav* (1999) 82 DLT 1, *Narinder Kaur v. Amar Jeet Singh Sethi* (2000) 54 DRJ 53, *Hari Ram Gupta v. Madan Lal Gupta* 153 (2008) DLT 155, *Jain Das Jain v. Sudha Rani Jain*, [dated 16<sup>th</sup> September 2011 in RFA No. 58/2011], *Prem Prakash v. Champa Devi*, [dated 26<sup>th</sup> July 2012 in CS (OS) No. 2153/1989], *Satya Pal Gupta v. Sudhir Kumar Gupta*, [dated 1<sup>st</sup> July 2013 in CS (OS) 1399/2011].

17. Both parties addressed the issue of *res judicata*. It was pointed out by Mr. Sarin, learned counsel for the Defendants that Plaintiffs 2 to 5 were party to CS (OS) No. 1196 of 1988 and clearly did not object to the withdrawal of the suit by Shri Sukhdev Singh and Shri Manjit Singh which in turn was based on the relinquishment deeds dated 31<sup>st</sup> May 2005. Since Plaintiffs 2 to 5 herein, who were Defendants 3(b) to 3(e) in the said suit did not press for transposition as Plaintiffs, it must be taken that they accepted the relinquishment deeds and the

consequences thereof and, therefore, now cannot challenge the said relinquishment deeds.

18. As far as the above plea is concerned, the reply of Ms. Richa Kapoor, learned counsel for the Plaintiffs was that Plaintiff No.1 was not a party to the aforementioned suit and, therefore, the question of her claims being barred under *res judicata* does not arise. As far as Plaintiffs 2 to 5 are concerned, she submitted that the order dated 25<sup>th</sup> April 2005 should be seen as an order dismissing the suit as withdrawn and nothing more. There was no implied acceptance by Plaintiffs 2 to 5 of the validity of the relinquishment deed or its true interpretation. According to her, Plaintiffs 2 to 5 were not, by virtue of the aforementioned order dated 25<sup>th</sup> April 2005, prevented from seeking an appropriate interpretation of the relinquishment deeds.

19. The Court proposes to deal with the two issues that arise for consideration. One, concerning the proper valuation of the suit for the purposes of the Court fee and two, the question of *res judicata*.

20. Although the relief sought in the suits is in the form of a declaration that the relinquishment deeds enured to the benefit of all the legal heirs of late Shri Seth Narain Singh Chawla, in effect the grant of the relief would mean that the relinquishment deeds would cease to have any effect. In other words, despite the relinquishment deeds clearly conveying the rights of Defendant No.1 and his brother in favour of Defendant No.2, the Court would have to declare that the



relinquishment deeds are some kind of a relinquishment *in rem*. This would require the Court to read into the relinquishment deeds something that they do not contain.

21. The Court is unable to find any legal basis for the aforementioned submission. The mere reliance on the definition of the word 'relinquishment' or 'abandonment' in the Black's Law Dictionary cannot provide the legal basis for such a claim. The Black's Law Dictionary (6<sup>th</sup> Edition) defines 'relinquishment' to mean "A forsaking, abandoning, renouncing, or giving over a right." But by no stretch of imagination can the definition itself provide the legal basis for contending that there cannot be a relinquishment of a right in favour of a person. None of the decisions placed before the court hold that relinquishment made in favour of a particular person is *per se* impermissible in law, much less illegal.

22. Also it must be noted that the relinquishment deeds are registered documents. There is no prayer for their cancellation. The Plaintiffs are perhaps aware that if they did seek such a cancellation, they would have to pay *ad valorem* court fee on the full value of the prayer. In that sense, the plaint has been cleverly drafted to overcome the requirement of paying the requisite court fee. In ***N.V. Srinivasa Murthy*** in similar circumstances in para 3 it was observed as under:

"3. With the assistance and on the comments and counter-comments of the parties, we have carefully gone through the contents of the plaint. We find that the plaint has been very cleverly drafted with a view to

get over the bar of limitation and payment of ad valorem court fee. According to us, the plaint was rightly held to be liable to rejection if not on the alleged ground of non-disclosure of any cause of action but on the ground covered by clause (d) of Rule 11 of Order 7 of the Code of Civil Procedure namely that “the suit appears from the statement in the plaint to be clearly barred by law.”

23. Admittedly, none of the parties were ever in possession of any of the suit properties. There have been tenants in the suit properties even during the life time of late Seth Narain Singh Chawla. Barring Plaintiff No.1, Sukhdev Singh and Manjit Singh, none of the parties have resided in India at any point in time.

24. If none of the co-owners were in possession of the suit properties, the question of one of them being in constructive possession on behalf of all of them does not arise. The bald averment in para 8 of the plaint that “the properties being jointly owned and possessed, this suit for declaration simplicitor is competent as regards property Nos. 2 to 4 above” is clearly a weak attempt of overcoming the requirement in law. The Court is satisfied, therefore, that the suit has not been properly valued for the purposes of court fee and jurisdiction.

25. Even on the plea of *res judicata*, the suit should fail as regards the Plaintiffs 2 to 5 are concerned. The order dated 25<sup>th</sup> April 2008 clearly records that the Plaintiffs in CS (OS) No. 1196 of 1988 were seeking to withdraw the suit on the basis of the relinquishment deeds dated 31<sup>st</sup> May 2005. If it was a simplicitor dismissal of the suit as CS (OS) No. 1228 of 2008 batch

withdrawn then there would be no need for the Court to record the submissions of the counsel for the Plaintiffs in that suit. Clearly, therefore, as the reason for withdrawal is set out in the order itself, it indicates that not only was the said statement made in the presence of learned counsel for the other parties but also that the Plaintiffs 2 to 5 herein did not raise any objection. This is apparent from a reading of the order itself. The second factor that is clear is that Plaintiffs 2 to 5, who were Defendants in the aforementioned suit, gave up their plea for transposition as Plaintiffs. Clearly, therefore, Plaintiffs 2 to 5 did not wish to further pursue any remedy in relation to their shares in the suit properties which form the subject matter of the partitioned suit. Having acquiesced the order dated 25<sup>th</sup> April 2008, and not having challenged the said order and with the earlier suit being in relation to these properties, Plaintiffs 2 to 5 cannot be permitted to re-agitate the very same issue in the present case. Therefore, as regards Plaintiffs 2 to 5, clearly the present suits would be barred on the principle of *res judicata*.

26. As regards Plaintiff No.1, it is indeed surprising as to why she did not sign the plaints. She executed two registered sale deeds giving up 1/12<sup>th</sup> share in at least two of the suit properties i.e. 28, Pusa Road (Ajmal Khan Road), New Delhi and 2104, Gurudwara Road, Karol Bagh, New Delhi thereby abandoning her right, title and interest in the said two suit properties. This would be an additional factor operating against her in seeking the reliefs as prayed for. The plaints do not disclose any cause of action for grant of the relief of declaration in

relation to the deeds of relinquishment dated 31<sup>st</sup> May 2005. In any event, that relief also cannot be granted in law.

27. While the Court could have granted some time to the Plaintiffs to make good the deficit court fee, since the Court even otherwise finds that the plaint is liable to be rejected under Order VII Rule 11 CPC, no useful purpose would be served in keeping the suits pending for the purposes of permitting the Plaintiffs to pay the proper court fee since in any event even after payment of such deficit court fee, the plaints would be liable to be rejected.

28. Consequently, the applications under Order VII Rule 11 are allowed and the plaints in all these suits are rejected. Consequently, the suits are dismissed and all interim orders stand vacated. The applications are disposed of.

**S. MURALIDHAR, J.**

**NOVEMBER 8, 2013**

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