

**(2001) 03 DEL CK 0109**  
**In the Delhi High Court**  
**Case No : FAO (OS) No. 168 of 1999**

|                                 |    |            |
|---------------------------------|----|------------|
| Col. R.S. Ahluwalia and Another | Vs | APPELLANT  |
| Capt. P.S. Ahluwalia and Others |    | RESPONDENT |

**Date of Decision :** 23-03-2001

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

**Citation :** (2001) 03 DEL CK 0109

**Hon'ble Judges :** B.N. Chaturvedi, J;Arun Kumar, J

**Bench :** Division Bench

**Advocate :** Mr. S. Sukumaran and Mr. Girish Aggarwal, for the Appellant; Mr. Sandeep Sethi and Mr. Sanjay Jain, for the Respondent

## Judgement

ARUN KUMAR, J.—This appeal is directed against an order of the learned Single Judge dated 11th May, 1999 disposing of plaintiff's application (IA 4542/99) under Order XXXIX Rules 1 and 2 CPC for interim relief. By the impugned order the learned Single Judge dismissed the said application and hence this appeal by the plaintiff.

2.The plaintiff filed the present suit for partition and rendition of accounts etc. with respect to property No. D-266, defense Colony, New Delhi. plaintiff and defendants 1 and 3 are real brothers being sons of late Lt. Col. C.S. Ahluwalia while defendant No. 2 is the widow of Lt. Col. C.S. Ahluwalia and is the mother of plaintiff and defendants 1 and 3. The plot measuring 325 sq. yards on which the property in question is constructed was purchased by Lt. Col. C.S. Ahluwalia in the fifties from the defense authorities. According to the case set up by the plaintiff, the source of the funds for acquisition of the plot was ancestral and included sale proceeds of family ornaments. Lt. Col. C.S. Ahluwalia constructed a building on the said plot. He died in the year 1978. plaintiff contends that after the death of Lt. Col. C.S. Ahluwalia, he became Karta of the HUF being the eldest son and male member of the family. He has filed the present suit for partition of the suit property and rendition of accounts with respect to the income derived

there from. Admittedly the property is being managed by respondent No. 2, the mother of the parties. She is Realizing the rental income from the property. The plaintiff claims that it is his right to manage the property as Karta of the HUF.

3. According to respondent No. 2, she has been managing the property all along after the death of Lt. Col. C.S. Ahluwalia. She has been letting out the property and Realizing the rent from the tenants. She relies on a family settlement arrived at between the parties on 4th October, 1997 under which the enjoyment of the property and its management including realisation of rent has been totally left to her during her life time. After her death, the property is to be divided into three equal portions. The property has three floors. One floor each has been allotted to the three brothers. The family arrangement also deals with adjustments between the brothers on account of different valuations of the three portions. The entire family arrangement dated 4th October, 1997 is in the hand writing of the plaintiff/appellant and is signed by him as well as by the mother, respondent No. 2 and another brother. The appellant does not dispute the family arrangement as well as the fact that it is in his own hand writing. In pursuance of the family arrangement, a lawyer was instructed to draft a formal document by way of memorandum of settlement. The draft memorandum of settlement prepared by the lawyer was circulated between the parties. The plaintiff made certain observations regarding the draft which are annexed to his letter dated 28th February, 1998. In the observations the plaintiff/appellant has no challenged the right of the mother to manage the property or to realise the income from the property. In fact in para 30 of the plaint, the appellant has himself pleaded the family arrangement dated 4th October, 1997.

4. During the course of hearing, the appellant who was personally present in court, specifically stated that he does not object to the mother, i.e., respondent No. 2 Realizing the rental income from the property during her life time. The appellant was only concerned with the right to manage the property as a Karta. As a matter of fact presently this is his only grievance. When the appellant concedes that the mother, i.e., respondent No. 2 may continue to realise the rental income of the property in question during her life time, there appears to be hardly any reason to interfere with the impugned order of the learned Single Judge. The learned Single Judge, keeping in view the fact that since the death of Lt. Col. C.S. Ahluwalia in the year 1978, his widow i.e. respondent No. 2 who is mother of the parties has been managing the property, dismissed the application of the appellant/plaintiff for interim relief. In our view, the learned Single Judge rightly rejected the prayer of the plaintiff/appellant for right to manage the property as Karta. The following facts disentitle the plaintiff/appellant to any interim relief:

1) The family settlement is an admitted document which is in fact in the hand writing of the appellant and is signed by him. As per the said settlement, the right to manage the property and realise its income during her life time is left to the mother i.e. respondent No. 2.

2) Right from the year 1978 i.e. since the death of the father of the plaintiff/appellant and husband of respondent No. 2, respondent No. 2 has been managing the property all through and there is no justification for disturbing the said arrangement at this stage.

3) The plaintiff/appellant is at this stage only seeking the right to manage the property as a Karta. The averment of the appellant that the suit property is an HUF property is itself a matter of controversy in the suit because the respondents/defendants have denied the same. Secondly, when the mother i.e. respondent No. 2 has been given the right to realise its income during her life time, we do not see any role for the plaintiff as a Karta of the alleged HUF.

4) the family settlement drafted by the lawyer which is on record and which is an admitted document subject, of course, to the objection thereto by the appellant forming part of his letter dated 28th February, 1998, contains a recital that the settlement was as per the Will of the father. Though the alleged Will of the father is not available on record yet the learned counsel for the respondent has drawn our attention to a letter from the office of the Adjutant General Branch, Army Headquarters, New Delhi dated 23rd May, 1978 which mentions about the Will of late Lt. Col.C.S. Ahluwalia in favor of his wife, i.e., respondent No. 2 herein with respect to suit property.

5. In our view the above reasons are strong enough to persuade us not to interfere with the judgment of the learned Single Judge. The appellant should honour the family arrangement of which he himself is the author and which he accepts and relies upon in his plaint. There is no reason to disturb the arrangement regarding management of the property which has been continuing since the death of Lt. Col. C.S. Ahluwalia in the year 1978.

6. During the course of hearing, the appellant expressed a concern that the first floor of property which has fallen to his share in the family settlement is presently let out to a tenant. According to the settlement, after the death of respondent No. 2, the appellant is entitled to get possession of the said first floor portion of the suit property. The appellant apprehends that if some long term encumbrance is created with respect to the said portion by respondent No. 2 or a long lease is granted with respect to the suit property to a tenant, he may be deprived of the possession of the portion of the property falling to his share for a long time. To allay this apprehension of the appellant, the learned counsel for the respondents fairly stated that respondent No. 2 will not create a lease with respect to suit property in future for a period of more than eleven months at a time. He has filed an affidavit of respondent No. 2 stating that only the first floor of suit property is presently let out to a tenant, namely, Mrs. Ravi Saroop at a monthly rent of Rs. 17,000/-. The present lease is for a period of eleven months and is expiring on 31st May, 2001. Respondent No. 2 will remain bound by the statement made by her counsel in court that she will not let out any portion of the suit property for a period of more than eleven months at a time. We further direct that she will not create any encumbrance on the suit property by way of

loan or mortgage etc. If she accepts any advance rent or security with respect to the portion let out by her, it will be the responsibility of respondent No. 2 or her estate to liquidate the same.

7. This appeal is disposed of with these observations. There will be no order as to costs.