

**(2013) 11 DEL CK 0199**

**In the Delhi High Court**

**Case No :** CS (OS) No. 721 of 2005 and IA No's. 3101 and 9357 of 2011

Manu Khanna

APPELLANT

Vs

Dr. V.P. Sharma

RESPONDENT

**Date of Decision :** 22-11-2013

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 14 Rule 5, Order 39 Rule 1, Order 39 Rule 2, Order 6 Rule 17  
Criminal Procedure Code, 1973 (CrPC) — Section 125, 324, 482  
Guardians and Wards Act, 1890 — Section 10, 7  
Hindu Marriage Act, 1955 — Section 13(B)(2)  
Penal Code, 1860 (IPC) — Section 323, 324, 341, 406, 427

**Citation :** (2013) 11 DEL CK 0199

**Hon'ble Judges :** S. Muralidhar, J

**Bench :** Single Bench

**Advocate :** Poonam Khanna, mother and Party in Person, for the Appellant;

**Final Decision :** Dismissed

## **Judgement**

S. Muralidhar, J.—Mr. Manu Khanna, son of Dr. Poonam Khanna and the Defendant, Dr. V.P. Sharma, has filed the present suit for declaration, partition and mandatory injunction in respect of the "terrace and above" rights of the property at C-18, Shivalik, New Delhi. The Plaintiff is stated to be a mentally challenged person. He has, therefore, filed the present suit through his mother, Dr. Poonam Khanna. The plaint states the Plaintiffs mother purchased the basement and the "terrace and above" rights of the property at C-18, Shivalik, New Delhi with her self-earned income after selling her flat in Vasant Kunj, which she had purchased with her earned income. It is stated that the Defendant Dr. V.P. Sharma purchased the ground floor of C-18, Shivalik, New Delhi with the funds contributed by Dr. Poonam Khanna and his father Mr. Roop Ram. It is stated that the Defendant converted the funds received by him for that purpose into a non-resident Indian ("NRI") gift and subsequently purchased the ground floor of C-18, Shivalik by a sale deed dated 10th October 1994. According to the

Plaintiff, this fact has been admitted by the Defendant in CS (OS) No. 493 of 2001 filed by him in the civil court at Tis Hazari. It is stated that the Plaintiff along with his mother are in physical possession of the entire property at C-18, Shivalik, including the portion belonging to the Defendant since 10th October 1994.

2. It is stated that by means of an exchange-cum-partition deed dated 8th March 2001, Dr. Poonam Khanna exchanged her terrace and above rights of the ground floor with the ground floor of C-18, Shivalik of the Defendant. Simultaneously a general power of attorney ("GPA") and Will were also executed and registered. It is stated that in terms of the said exchange-cum-partition deed, Dr. Poonam Khanna is now the owner of ground floor and basement of C-18, Shivalik and the Defendant is owner of the roof and above of C-18, Shivalik.

3. It is stated that there was another settlement deed dated 2nd April 2003 between Dr. Poonam Khanna and the Defendant, in terms of which out of the sale proceeds of C-18, Shivalik, Dr. Poonam Khanna and Dr. V.P. Sharma were to get 55% and 45% respectively. It is further stated that in the 45% share of Dr. V.P. Sharma, the Plaintiff, Mr. Manu Khanna, had a further right because the Defendant purchased the ground floor from the funds contributed by the Plaintiffs mother as well as his grandfather.

4. In para 13 of the plaint, it is stated that the Defendant was planning to leave India and was in the process of selling the terrace rights without acknowledging the rights to the Plaintiff. It is stated that the Plaintiff was a mentally challenged person, with a chronological age of 23 years at the time of filing of the suit in 2005 and a mental age of less than 7 years. The Plaintiff was expected to remain as such throughout his life. It is submitted that the Defendant, being his father cannot avoid his legal obligations towards the Plaintiff. Despite a legal notice dated 18th September 2004, the Defendant did not accede to the request. The Defendant is stated to have subjected the Plaintiff and his mother to physical cruelty. It is stated that a number of criminal cases filed by the Plaintiffs mother were pending against the Defendant. In the above circumstances, the present suit has been filed seeking the following reliefs:

(a) a decree of permanent injunction restraining the Defendant, his associates, agents or anybody from selling the terrace and above rights of C-18, Shivalik as per exchange-cum-partition deed dated 8th March 2001 in any manner whatsoever;

(b) a decree declaring the undivided share of the Plaintiff in the part of property, i.e., terrace and above of C-18, Shivalik, the owner of which is the Defendant Dr. V.P. Sharma as per exchange-cum-partition deed dated 8th March 2001;

(c) Any other relief or order that the Court deems fit and proper with costs.

5. While directing summons to be issued in the suit and notice in the application under Order XXXIX Rules 1 and 2 of the CPC 1908 ("CPC") on 23rd May 2005,

an interim injunction was granted by the Court restraining the Defendant from raising any construction or selling the terrace floor or parting with or creating any third party interest therein.

6. On 7th March 2006, the plaint was directed to be amended to correct certain typographical errors. On 24th July 2006, the Plaintiff was directed to sue as an indigent person. On 3rd January 2007, the following issues were framed by the Court:

(i) Whether the suit is not properly valued for purposes of court fees and jurisdiction? OPD

(ii) Whether the Defendant purchased ground floor of property bearing municipal No. C-18, Shivalik, New Delhi with the funds made available by Shri Roop Ram, father of the Defendant and ground father of the Plaintiff. If yes, to what effect? OPP

(iii) If issue No. (ii) is decide in favour of the Plaintiff, to what share is the Plaintiff entitled to in property bearing No. C-18, Shivalik, New Delhi? OPP

(iv) Whether the Plaintiff through his guardian is estopped from filing the present suit in view of the deed of settlement dated 2nd April 2003? OPD

(v) Whether the suit has been filed by Dr. Poonam Khanna in the name of her minor son Manu Khanna out of malice as stated in para 1 of the preliminary objections of the written statement? If yes, to what effect? OPD

(vi) Whether the Plaintiff is entitled to the relief of injunction as prayed for? OPP

(vii) To what relief is the Plaintiff entitled to?

7. On the same date, i.e., 3rd January 2007, the Court passed an order in IA No. 4129 of 2005 as under:

1. The suit seeks declaration and partition.

2. Plaintiff, Manu Khanna, unfortunately is a mentally challenged child. His mother has sued as his guardian. Defendant is his father.

3. Admitted facts are that Defendant purchased ground floor of property bearing municipal No. C-18, Shivalik, New Delhi.

However, Plaintiff states that the funds for said purchase have been from Plaintiffs grandfather, i.e., Shri Roop Ram.

4. Plaintiffs mother had admittedly purchased the basement as also the terrace rights in the said property.

5. Mother of the Plaintiff and the Defendant executed a deed dated 2nd March 2001 whereunder an exchange took place. Under the exchange, Defendant gave ground floor to mother of the Plaintiff. Mother of the Plaintiff gave the terrace rights to father of the Plaintiff, i.e., Defendant.

6. Probably, parties could not buy peace with the execution of the said document dated 2nd March 2001. Another deed dated 2nd April 2003 was executed. The said document envisaged that the property will be sold and 45% share would be that of the Defendant and the remaining would be of the mother of the Plaintiff.

7. Parties are at loggerheads with each other. Plaintiff through his mother resiles from the deed dated 2nd March 2001 and 2nd April 2003.

8. I may note that defence is based on the deed dated 2nd April 2003 in respect thereof, an issue has been framed today.

9. Question which arises for consideration is, whether the ex parte injunction obtained by the Plaintiff on 23rd May 2005 should be confirmed or not. The said injunction restrains the Defendant from transferring, alienating, disposing or raising any constructions on the terrace floor.

10. Whereas the Plaintiff and his mother are safely cocooned in the ground floor of the house, the Defendant is left without a shelter.

11. Learned counsel for the Defendant states that if the Defendant is permitted to construct the first floor, Defendant would not please any special equity in his favour should the suit succeeds. Further, counsel states that the Defendant would not transfer or alienate the first floor without obtaining the leave of the Court.

12. IA No. 4129 of 2005 is accordingly disposed of permitting the Defendant to raise the construction on the terrace of the first floor. Defendant would not plead any special equity in his favour if ultimately the suit succeeds. Further, the Defendant would not transfer, alienate or part possession with of the first floor without obtaining the leave of the Court.

13. No costs.

8. The Court inter alia noted that "the Plaintiff through his mother resiles from the deeds dated 2nd March 2001 and 2nd April 2003". By a subsequent order dated 31st May 2007, the Court dismissed IA No. 6982 of 2007 filed by the Plaintiff under Order VII Rule 14 CPC bringing on record certain additional documents to prove the Plaintiffs bonafide requirement. By the same order, the Court also dismissed IA No. 6984 of 2007 seeking clubbing of the present suit with CS (OS) No. 290 of 2007 filed by the Defendant for possession.

9. Aggrieved by the order dated 3rd January 2007 permitting the Defendant to raise construction on the terrace of the first floor, the Plaintiff filed an appeal [FAO (OS) No. 66 of 2007] which was disposed of by the Division Bench ("DB") by its order dated 7th May 2007. The DB observed that the said construction would definitely change the nature and character of the suit property. Accordingly, the status quo was directed to be maintained by the parties. The remaining part of the order dated 3rd January 2007 was affirmed. It was directed that the evidence should be recorded on a day-to-day basis and the suit itself was expedited.

10. Thereafter, the Plaintiff filed IA No. 9106 of 2007 under Order VI Rule 17 CPC stating that the Plaintiff inadvertently and unintentionally sought relief in respect of the roof above the ground floor whereas it is the ground floor of the suit property in respect of which the Plaintiff was seeking relief. By an order dated 14th August 2007, the Court dismissed IA No. 9106 of 2007 inter alia observing as under:

14. The nature and character of the suit is now sought to be changed by seeking relief against the ground floor of the property which was never the case made out in the plaint. The Plaintiff cannot be permitted to approbate and reprobate. In fact, the Plaintiff is doing this through his guardian, his mother, who is appearing in person and is seeking to backtrack out of the different settlements. The effect of the same would be examined in the trial of the suit.

17. It is not permissible for the Plaintiff to change complete scope and nature of the suit which is what the Plaintiff seeks to do. The Plaintiff while relying on the exchange-cum-partition deed dated 2nd March 2001 throughout the plaint now seeks to give a go by to the same and change the relief from one claimed on the basis of the said document to a different relief in respect of the ground floor and basement of the property which is no more with the Defendant, as per the said deed.

18. The endeavour of the Plaintiff or rather the mother of the Plaintiff also appears to be not to see an end to the suit and to somehow evade the directions of the Division Bench of a day-to-day trial of the matter. This clearly falls within the parameters of a party acting malafide. The Plaintiff and his mother occupy the ground floor with no portion with the Defendant.

19. In view of the aforesaid, I do not find any merit in the application and the same is dismissed.

11. Review Petition No. 371 of 2007 seeking review of the order dated 14th August 2007 was dismissed by the Court on 10th October 2007. IA No. 12512 of 2007 was filed by the Plaintiff under Order I Rule 10 CPC stating that certain documents produced by the bank showed that the mother of the Plaintiff had contributed to the acquisitions of the property and therefore she sought to be impleaded as a necessary and proper party. This application was dismissed by a detailed order dated 2nd November 2007 inter alia holding as under:

I am unable to accept the contention advanced on behalf of the Plaintiff. The suit has been filed by the Plaintiff alleging that he has a share in the ancestral property. The property is alleged to have been acquired out of the corpus of ancestral funds. The mother would have known of her contributions, if any. The Plaintiff has even earlier tried to change the nature and character of the suit and that is why the amendment application was dismissed.

The presence of the mother of the Plaintiff through whom the suit has been filed as a party is not necessary to adjudicate the claim of the Plaintiff about his share

in the suit property on the ground that it is ancestral as there is no share claimed by the mother of the Plaintiff.

It appears that the present dispute is really a proxy battle by the mother of the Plaintiff and having obtained interim orders from the Division Bench, the real spirit of the Order of the Division Bench directing early trial in the suit is sought to be defeated by filing application after application to somehow delay the trial in the suit.

In my considered view, such an endeavour has to be nipped in the bud as enough leeway has already been granted in the present matter because the Plaintiff is represented through his mother in person though she appears to be well-versed in the provisions of law. Normally, I would have restrained myself from imposing costs on a person like the Plaintiff, but the present battle is between the mother of the Plaintiff and the Defendant and the Plaintiff cannot be permitted, through his mother, to scuttle the trial in this fashion.

The application is dismissed with costs of Rs. 3,000.

12. The mother of the Plaintiff, Dr. Poonam Khanna, examined herself as PW-1. She tendered an amended affidavit of evidence on 24th October 2007. Objections were raised to the tendering of the amended affidavit on the ground that it was beyond the pleadings. The Joint Registrar ("JR") directed the matter to be placed before the Court. Meanwhile, the Plaintiff filed IA No. 13851 of 2007 under Order XIV Rule 5 CPC praying that an additional issue should be framed as to "whether the mother of the Plaintiff has also contributed funds to the Defendant/Karta for the purchase of the ground floor of the suit property at C-18, Shivalik in his name?" The said application was dismissed by an order dated 4th December 2007 with costs of Rs. 3,000. Another application, IA No. 13852 of 2007, praying waiver of the costs imposed by an "order dated 2nd November 2007 was also dismissed.

13. As regards the grievance of the Defendant that the affidavit of evidence tendered by the Plaintiffs mother was beyond the pleadings, the Court in its order dated 4th December 2007 observed that "only such part of the affidavit can be read which is consistent with the pleading and if the affidavit of examination-in-chief goes beyond what is stated in the plaint or refers to aspects on which the amendment has been disallowed, such aspects cannot be read in evidence."

14. FAO (OS) No. 25 of 2008 filed by the Plaintiff against the orders dated 2nd November 2007 and 4th December 2007 passed by the learned Single Judge was disposed of by the DB by an order dated 18th January 2008 stating that it would be open for the parties, including the Plaintiff, to lead evidence with regard to Issue No. 2 concerning the funds contributed for the purchase of the ground floor to the extent it is pleaded in para 4 of the plaint. However, the DB affirmed the order of the learned Single Judge declining the prayer for impleadment of the mother of the Plaintiff as a party to the suit.

15. The Plaintiffs evidence was closed on 12th December 2008. The Defendant tendered his affidavit of examination-in-chief. IA No. 3419 of 2010 filed by the Defendant for producing additional documents was dismissed by the Court on 19th July 2010 with costs of Rs. 10,000. The Defendant examined himself as DW-1. He was cross-examined till 5th February 2011 and his evidence was closed. FAO(OS) No. 556 of 2010 filed by the Defendant against the order dated 19th July 2010 was dismissed by the DB by an order dated 6th May 2011.

16. On behalf of the Plaintiff, Dr. Poonam Khanna first submitted that the Plaintiffs special status has been judicially acknowledged by an order dated 18th December 2002 passed by the Guardian Judge in Original Petition No. 169 of 2002 under the Guardians and Wards Act, 1890. By the said order, the Plaintiff was allowed to continue to stay with the mother but also have access to the Defendant. The Defendant was allowed to take the Plaintiff from the house of the mother every Sunday at 10 am and return him on the same day by 5 pm. Dr. Khanna submitted that the marriage between her and the Defendant was dissolved by a decree of divorce by mutual consent passed on 3rd May 2003. However, she submitted that the said divorce decree was relevant only for the question of dissolution of marriage. Therefore, the Defendant could not be allowed to use the said decree to seek relief which was beyond the operation of the said decree. She referred to the decision in State of Karnataka and Another Vs. All India Manufacturers Organization and Others, . She submitted that the Defendant remarried and had no children by the second marriage. The Plaintiff was therefore, the only child of his mother and the Defendant. By an order dated 5th December 2008 in Criminal Appeal No. 1991 of 2008 (Ex. DW1/X-9), the Supreme Court had directed the Defendant to pay interim maintenance @ Rs. 7,500 per month to the Plaintiff.

17. The main submission of Dr. Poonam Khanna was on Issue No. 2 as to who had contributed to the purchase of the ground floor of C-18, Shivalik, New Delhi. The case of the Defendant is that he separately purchased the ground floor for Rs. 7 lakhs by an agreement to sell by using a gift of Rs. 3.5 lakhs given to him by an NRI. According to him, the rest of the money was arranged by him from his own sources. Dr. Khanna submitted that the Defendant had not placed any NRI gift deed or any document to show his source of funds. She further submitted that the SBI Account No. 5854 (Ex. PW-1/28 and Ex. PW1/20) was a joint account in the name of Dr. Poonam Khanna and the Defendant and therefore no cheque issued from the said account could be said to be the sole contribution of the Defendant. A sum of Rs. 1.7 lakhs shown in the account, stated to have been contributed by an NRI, was in fact the contribution of the Plaintiffs mother.

18. Dr. Khanna referred to an admission made by the Defendant in CS (OS) No. 493 of 2001 (Ex. PW-1/8) that he had purchased the ground floor of the property at C-18, Shivalik and that the funds were made available to him by his father Mr. Roop Ram, the grandfather of the Plaintiff. According to Dr. Khanna, the above

statement was reaffirmed by the Defendant in the subsequent Suit No. 510 of 2001 (renumbered as Suit No. 250 of 2002) seeking possession of the ground floor of C-18 Shivalik, New Delhi. She also referred to the averments made by the Defendant in the reply filed by him to Original Petition No. 169 of 20002 (Ex. DW1/X-2) where in para 5 of the reply on merits he stated that "C-18, Shivalik is partly owned by Plaintiff and partly by Defendant though majority of the funds for the purchase of this house were provided by father of the Defendant." She pointed out that this was also taken note in para 3 of the order dated 18th December 2002 passed by the Guardian Judge (PW-1/24). She referred to Civil Suit No. 493 of 2001 (Ex. PW-1/8) filed by the Defendant for permanent injunction restraining Dr. Poonam Khanna from creating scenes, hurdles, nuisance etc. in the property at C-18, Shivalik, Near Malviya Nagar, New Delhi-110 017 in which in para 5 it was stated that the Plaintiff "has the legal right in his parents property as all the funds came from his grandfather.". She referred to the complaint made by the Defendant to the Deputy Commissioner of Police (South), Police Station Hauz Khas, New Delhi (Ex. PW-1/10) on 4th December 2001 inter alia alleging that Dr. Poonam Khanna was posing imminent danger to his life, person and property and of his son. In this complaint the Defendant admitted that his son had right in the property at C-18, Shivalik, New Delhi.

19. Dr. Poonam Khanna submitted that the ante litem admissions by the Defendant were not denied by him and were, therefore, binding on him. She relied on the decisions in Bishwanath Prasad and Others Vs. Dwarka Prasad and Others, , Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, , Pushpa Devi Vs. Commissioner of Income Tax, New Delhi, , Nathoo Lal Vs. Durga Prasad, , Satish Mohan Bindal Vs. The State of U.P., and Raman Pillai Krishna Pillai and others Vs. Kumaran Parameswaran and others, .

20. Dr. Poonam Khanna submitted that money given by the Defendant's father Mr. Roop Ram was out of his self earned income being employed as an Additional Secretary in the Ministry of Agriculture. According to her, out of total Rs. 7 lakhs paid for the purchase of the ground floor of C-18, Shivalik, Rs. 5.2 lakhs was contributed by Mr. Roop Ram. This was admittedly converted into two blank NRI cheques of Rs. 3.5 lakhs and Rs. 1.7 lakh respectively by the Defendant by unfair means. Further, it was the Defendant who himself filled his name as well as that of the Plaintiff's mother in the blank cheque and later claimed that the cheques were a gift given by NRI whereas the money contributed for purchase of the ground floor actually belonged to the Plaintiff's mother and was given in the best interests of the Plaintiff. She further submitted that the deficit of Rs. 1.8 lakhs was contributed by Dr. Poonam Khanna by selling her ornaments/istridhan. Dr. Khanna submitted that the money received from the gold smith by way of two cheques of Rs. 92,300 and Rs. 98,500 respectively was deposited in the joint Savings Bank Account No. 5854 from where the total sum of Rs. 7 lakhs was paid for purchase of the ground floor of C-18, Shivalik, New Delhi in the name of the Defendant.

21. Countering the above submissions, it is submitted by the Defendant who initially appeared through counsel and later in person that Mr. Roop Ram had given an affidavit stating that he had not contributed any money whatsoever for the purchase of C-18, Shivalik, New Delhi. Further, in reply by Dr. Poonam Khanna in Civil Suit No. 290 of 2007 there was no averment to the effect that the Defendant's father had contributed any sum. In the present plaint also there was no averment to the said effect. It is submitted that even if it was presumed that the Defendant had made any contribution it was only in 2011, when he and Dr. Poonam Khanna were in the process of divorce by mutual consent, that Mr. Roop Ram contributed money towards purchase of shop at No. N-15, Malviya Nagar since Dr. Poonam Khanna was adamant that she needed a clinic to continue her profession and would consent to divorce only if the said shop was purchased in her name.

22. The thrust of the Defendant's submission was on the exchange-cum-settlement deed dated 8th March 2001 executed between Dr. Poonam Khanna and the Defendant prior to the filing of the application for divorce by way of mutual consent on 4th May 2001. In terms of this document, Dr. Poonam Khanna became the owner of the entire basement, ground floor of the property at C-18, Shivalik and the Defendant became the owner of the terrace above the ground floor. Dr. Poonam Khanna, however, declined to appear at the second motion in the petition for divorce by mutual consent.

23. There was a criminal case filed in which a settlement was proposed in the court of the learned Metropolitan Magistrate ("MM") on 27th May 2002 which was accepted by the Defendant on 4th June 2002. By means of the said settlement, the entire property at C-18, Shivalik was to be sold off and the sale proceeds were to be shared equally. The Defendant was to forego his lien over the shop in N-15, Malviya Nagar as well as a DDA flat in Khirki, Malviya Nagar. By the settlement deed dated 2nd April 2003, this was further modified and Dr. Poonam Khanna was entitled to 55% share and the Defendant was entitled to 45% share of the proceeds from the sale of C-18, Shivalik.

24. Relying on the decision in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , the Defendant submitted that Dr. Poonam Khanna could not resile from the exchange-cum-partition deed dated 8th March 2001, the settlement proposed by her and filed in the court of the learned MM on 4th June 2002 and the Settlement Deed dated 2nd April 2003. It is further submitted that the above settlement has been judicially noticed in: (i) Criminal Revision No. 621 of 2006 filed by the Plaintiff on 4th July 2007 (ii) CrI. M.C. No. 3337 of 2007 filed by the Defendant seeking quashing of the criminal case (iii) the written statement dated 27th May 2008 filed by Dr. Poonam Khanna in CS (OS) No. 290 of 2007 (iv) the case under Prevention of Domestic Violence against Women Act, 2005 ("PDVW Act") filed by Dr. Poonam Khanna on 21st February 2008 (v) CM (M) No. 526 of 2008 filed by the Plaintiff on 11th February 2010 (vi) Criminal M.C. No. 2602 of 2010 filed by the Plaintiff on 30th January 2012 (vii) Criminal

Appeal No. 1625 of 2009 filed by the Plaintiff before the Supreme Court on 17th March 2011 (viii) SLP (Crl.) No. 814 of 2012 filed by the Plaintiff in the Supreme Court on 13th February 2012.

25. The above submissions have been considered. It is seen that the marriage between Dr. Poonam Khanna and the Defendant took place on 18th January 1979 and the Plaintiff was born on 26th November 1980. Due to differences and disputes between the parents of the Plaintiff, an exchange-cum-partition deed dated 8th March 2001 was entered into between the parents. This is marked as Ex. PW-1/3. In this agreement, the Defendant is described as First Party and Dr. Poonam Khanna as Second Party. The first Preamble of the exchange-cum-partition deed states that "the first and second party both are the owners of property at C-18, land measuring 200 sq. yds., consisting of basement and ground floor, situated at Shivalik, Near Malviya Nagar, New Delhi-110 017." The said document proceeds to state that the portions of the property were exchanged and partitioned mutually and no consideration amount was being paid. Paras 10 and 11 of the said deed read as under:

10. That after the execution of this Agreement the First Party alone shall and the Second Party shall not be entitled to deal with all the matters relating to entire roof/terrace of ground floor and above of property bearing No. C-18, land measuring 200 sq.yds. situated at Shivalik, Near Malviya Nagar, New Delhi-110 017 and exclusively as its owner/lessee and shall be entitled to further let out/sell the said property and the second party shall have no right to evict the first party therefrom under any circumstance.

11. That after the execution of this Agreement the Second Party alone shall and the First Party shall not be entitled to deal with all the matters relating to the Basement and Ground Floor of Property bearing No. C-18, land measuring 200 sq. yds. situated at Shivalik, Near Malviya Nagar, New Delhi-110 017 and exclusive as its owner/lessee and shall be entitled to further let out the said property etc. and the First Party shall have no right to evict the second party therefrom under any circumstance.

26. The exchange-cum-partition deed has been signed by the mother of the Plaintiff and the Defendant. However, at the time of admission/denial of documents, the signatures on the document were admitted and certain corrections made therein were denied.

27. Divorce Petition No. 342 dated 6th May 2001 was filed in the Court of the learned Additional Sessions Judge ("ASJ"). However, Dr. Poonam Khanna did not pursue the matter after the first motion. The petition was dismissed in default on 29th January 2002. Thereafter, the parties entered into a Deed of Settlement dated 2nd April 2003 (Ex. PW-1/5). The Deed of Settlement again contains a preamble clause, which reads as under:

Whereas the parties while living together were professionally qualified as Doctor and from their income and savings from their profession have purchased

immovable property bearing No. C-18, Shivalik, Malviya Nagar, New Delhi-110 017.

28. It also set out the numerous legal proceedings that the parties had initiated against each other:

FIR No. 49 of 2001, P.S. Malviya Nagar u/S. 323, 341, 452, 605 IPC, FIR No. 422 of 2002, u/S. 498A/406 Complaint Case u/S. 341, 323, 452, 506, 427, FIR No. 299 of 2002 u/S. 324, Case for custody of Child in Guardianship Court, Case u/S. 125 Cr.PC for maintenance, Civil Suit no. 249 of 2002, 250 of 2002, for property.

29. The following terms of the Deed of Settlement are relevant:

1. That it has been agreed and mutually decided by and between the parties that the custody of male child Manu will shall remain with Second party. The first party (Dr. V.P. Sharma) shall never claim the custody of the said child nor shall ever claim meeting rights of said child on any grounds. In case the second party decides for remarriage the custody of the son will be handed over to the first party.

2. That it has been agreed and mutually decided between the parties that both the parties who own their respective portion in C-18, Shivalik, Malviya Nagar, New Delhi-110 017, shall procure a suitable buyer to dispose off their property. All the proceeds thus received shall be distributed in the ratio of 45% and 55%. First party will get a share of 45% and the second party shall get a share of 55% of the total amount they will receive after selling.

3. That both the parties will move in the matrimonial court petition u/s 13(B)(2) of HMA for grant of divorce.

4. That it has been agreed and mutually decided between the parties that after doing the exercise as spelt out in para No. 2 as stated herein above the parties shall withdraw their respective cases as filed in various courts.

5. That Dr. Poonam will look after the son Manu for whole of the life, she shall claim any maintenance either for herself or for the son Manu.

6. That the second party will never claim any jewellery or any other moveable property Istridhan in future.

The statement regarding the custody of child and voluntary surrender of meeting frights will be given by the first party in the Guardianship Court of Ms. Neena Bansal Krishna, in the court of Ms. Pinky, MM, Patiala House, and in the Court of ADJ.

That since all the disputes between the parties have been settled as stated above, neither party shall file or involve either party in respect of any suit, complaint and shall not claim any right, title or interest in respect of any property purchased earlier.

This agreement supersedes all the earlier settlement as made between the

parties and this agreement shall be binding upon the parties.

That this agreement has been executed by the parties of their own sweet will and without any pressure/coercion and they have well understood the contents of settlement.

That it is once again made clear that parties have also exchanged their respective documents in respect of the portions, properties, etc. falling in to their shares with each other and however any document(s), paper(s), bills, authorisation of left or lying with any party concerned will return the same to other party and further in future if required both the parties shall execute all the requisite documents, applications, indemnity bond, declarations, NOC, etc, as and when required without hesitation.

In witnesses, whereof, the parties named hereinabove have set hands on the said Agreement at Delhi on the date, month and year written hereinabove in the presence of the following witnesses.

30. On the basis of the above settlement, the mother of the Plaintiff and the Defendant filed another divorce petition (HMA No. 415 of 2003) for divorce by mutual consent u/s 13(B)(2) of the Hindu Marriage Act, 1955. Para 7 of the petition virtually set out the entire terms of the aforementioned settlement. It was supported by both the affidavits of the Defendant and Dr. Poonam Khanna. Thereafter, an order was passed on 3rd May 2003 in the second motion noting that the parties had settled all their disputes and claims as well as "for permanent alimony as well as about the custody of the child as detailed in paragraph No. 6 of the petition." The Court noted that "the Petitioner undertake to abide by the terms and conditions as settled by them." Accordingly, the petition was allowed and the marriage between the parties was dissolved with immediate effect.

31. Neither the Defendant nor Dr. Poonam Khanna has questioned the aforementioned judicial order which puts a judicial stamp on the agreement dated 2nd April 2003. The contention of Dr. Poonam Khanna that the above settlement is not binding on the Plaintiff, i.e., son of the parties, cannot be accepted. Even at the time of entering into the settlement, Dr. Poonam Khanna was recognized as the guardian of the Plaintiff. The situation thereafter continues to be what it was when the settlement was arrived at. The Plaintiff was represented then and continues to be represented by his mother, Dr. Poonam Khanna, as the natural guardian. It is not as if Dr. Poonam Khanna has subsequently discovered some new fact that she was not aware of when she entered into the settlement.

32. Subsequent proceedings show that the settlement between the mother of the Plaintiff and the Defendant was referred to and relied upon. As already noted by the Court, Dr. Poonam Khanna subsequently had a change of mind and was not prepared to abide by the said settlement. By an order dated 13th April 2006, the learned MM dismissed the application filed by the Defendant for dropping the

proceedings against him u/s 125 Cr.P.C. The learned ASJ passed an order dated 10th May 2006 upholding the order of the learned MM. On 26th June 2006, an order was passed by the learned MM awarding the Plaintiff interim maintenance @ Rs. 5,000 per month. This order was upheld by an order dated 30th October 2006 by the learned ASJ. On 9th July 2007, the High Court dismissed the revision petition filed by the Plaintiff through his mother on the ground that the maintenance fixed was very low. Aggrieved by the above order, the Plaintiff filed Crl. M.A. No. 1919 of 2008 before the Supreme Court. The Supreme Court recorded the statement of the Defendant herein on 5th December 2008 that he has offered to pay Rs. 7,500 per month to the Plaintiff herein. The Court was of the view that the said payment will be adequate and appropriate as interim maintenance.

33. In the entire proceedings there was no attempt made to restructure the terms of settlement arrived at between the parties on 2nd April 2003. Thereafter, Crl. M.A. No. 3337 of 2007 was filed by Dr. V.P. Sharma seeking quashing of the FIR against him. The above petition was entirely based on the settlement dated 2nd April 2003. In its order dated 23rd January 2009, the Court noted that acting on the said settlement, Dr. Poonam Khanna withdrew the maintenance petition u/s 125 Cr.P.C. Likewise, she withdrew the petition under Sections 7 and 10 of the Guardian & Wards Act and admitted her signature in the divorce proceedings and in the settlement dated 2nd April 2003.

34. The Defendant, in adherence to the compromise deed, filed an application before the learned MM in FIR No. 299 of 2004 registered in Police Station Malviya Nagar (which was a complaint against Dr. Poonam Khanna) for an offence u/s 324 Cr.PC seeking permission to compound the offence. However, Dr. Poonam Khanna objected to it stating that the terms and conditions of the compromise have not been adhered to. She also failed to withdraw her criminal complaint registered by her against her husband. It appears that the present suit was also filed on behalf of the Plaintiff by Dr. Poonam Khanna.

35. It was noticed in para 13 of the order passed by this Court on 23rd January 2009 in Crl. M.C. No. 3337 of 2007, as under:

13. Thus, it is clear that even after arriving at an amicable settlement in terms of compromise deed dated 2nd April 2003, Respondent No. 2 was not in peace and continued to prosecute the criminal cases filed by her against the Petitioner, even civil litigation was also initiated by Respondent No. 2 against the Petitioner. A Civil Suit No. 138 of 2008 was filed by Respondent No. 2 after the settlement of 2nd April 2003 and similar another Civil Suit No. 721 of 2005 was filed by her for declaration of rights of the disabled son in the Malviya Nagar residential property. It is a settled law that once parties reconcile their disputes and execute a document containing the terms and conditions of the reconciliation which is partly acted upon, a party cannot withdraw from the compromise and refuse to perform its part of the obligation because it would tantamount to misuse of process of law.

36. Consequently, the FIRs registered against the Defendant, i.e., 49 of 2002, 422 of 2002 and 299 of 2002 were quashed by the Court inter alia for the following reasons:

18. Under these circumstances, when dispute was amicably settled, it is in the interest of justice as well as parties that criminal litigation inter se them is brought to an end. It would bring more amicable and peaceful relationship between the parties which would be far more beneficial to the interest of the child who is mentally retarded and needs protection and care in amicable and peaceful atmosphere. Respondent No. 2 has already obtained an injunction order against the Petitioner, thereby restraining him not to visit within the radius of 100 meters of the property. With an end to all the litigations inter se the parties, a congenial platform would be built for the parties to initiate efforts for sale of the house, sale proceeds of which are to be divided in the ratio of 45:55 between the Petitioner and Respondent No. 2. In the backdrop of chequered history of litigation Respondent No. 2 cannot be allowed to continue with the cases with a hostile attitude; might be with a view to grab whole of the property.

19. It is the Petitioner who has been rendered homeless in this entire litigation even when he has shown his bona fides in executing his part of the compromise. Hence, under the circumstances of this case, where parties have been litigating with each other over a long period to the detriment of the interest of a mentally retarded child and dispute now seems to be more of property dispute, it is in the interest of justice to bring this entire litigation to an end and to ensure that the relevant clause of the agreement which has become bone of contention; property is sold and sale proceeds are distributed as per respective shares agreed between the parties; that is computed with, this petition is accordingly allowed.

20. FIR No. 49 of 2002 registered at Police Station, Malviya Nagar under Sections 323/341/506 IPC, another FIR No. 422 of 2002 under Sections 498A/406 IPC, complaint case under Sections 323/341/506 IPC, FIR No. 299 of 2002 and respective proceedings conducted therein are hereby quashed.

Attested copy of the order be sent to the State as well as the concerned trial courts accordingly for information and compliance.

37. Aggrieved by the above order, Criminal Appeal No. 1625 of 2009 was filed by Dr. Poonam Khanna. On 17th March 2011, the following order was passed by the Supreme Court:

1. We have heard the parties appearing in person very carefully.

2. The primary grievance of the Appellant i.e. wife is that despite the comprehensive deed of settlement dated 2nd April 2003, the Respondent had continued to pursue the litigations that were pending and has in fact filed some additional cases as well. We put it to the Respondent as to whether he would be filing to withdraw all the cases which had been initiated by him. He categorically stated that he would do so but when a similar query was put to the Appellant

she, at the initial stage, said that she would not withdraw them but when told that we were inclined to dismiss the appeal, she said that she would withdraw the cases that she had filed but would continue to pursue some of the applications that had been filed on behalf of the child and would continue to seek additional maintenance.

3. In the circumstances, we are not inclined to interfere in this matter. The appeal is dismissed.

38. Another consequence of the settlement was that an order dated 29th July 2010 was passed by the learned ASJ allowing the revision petition by the Defendant and setting aside the order dated 23rd January 2010 passed by the learned MM granting interim maintenance of Rs. 5,000 per month. Crl. M.C. No. 2602 of 2010 was dismissed by the Court on 31st January 2012. The Court in that process took note of the fact that the settlement has been arrived at between the parties. Paras 22 to 25 of the said order read as under:

22. I note that the Petitioner proposed a settlement deed in the Court of Smt. R.S. Nag on 27th May 2002 which envisaged that the parties will seek divorce, Petitioner will not claim any maintenance and Respondent will forgo, his lien over the DDA flat as also a shop in property No. N-15, Malviya Nagar, and property No. C-18, Shivalik, shall be sold off and sale proceeds shall be divided equally between the parties.

23. Another settlement was executed on 2nd April 2003 which was ultimately registered. The only difference between vis-a-vis previous settlement was that Respondent reduced his share in the property C-18, Shivalik from 50 per cent to 45 percent. On 3rd May 2003 the divorce obtained by mutual consent in terms of settlement dated 2nd April 2003 and Petitioner withdrew her case in the guardianship court and petition u/s 125 Cr.P.C. on behalf of his son. The joint petition for mutual consent divorce, statement on oath as well as final order expressly stipulating that the Petitioner shall not claim any maintenance through rest of the life.

24. Thereafter, the Petitioner filed another application under the Protection of Women from Domestic Violence Act, 2005 claiming maintenance and same was dismissed by learned Trial Court as well as Sessions Court as non-maintenance in the background of settlement dated 2nd April 2003.

25. It is pertinent to mention here that on the basis of the settlement dated 2nd March 2003, this Court quashed four criminal cases in Criminal M.C. No. 3337 of 2007 petition filed u/s 482 Cr.P.C. by Respondent. The Petitioner preferred to challenge the said judgment in the Supreme Court, whereupon the Petitioner's appeal was dismissed.

39. It is, therefore, seen that the fact of the settlement having been arrived at between the parties has been recorded in several judicial orders. The parties have been bound by the terms of the settlement. The settlement records the

position of the respective parties, and their acceptance of the factual position that prior to the settlement C-18, Shivalik was in fact jointly purchased by the parties. This Court, therefore, cannot permit Dr. Poonam Khanna by herself or acting as guardian of the Plaintiff, at this stage to resile from and set up a case contrary to the said agreement entered into between the parties.

40. In her cross-examination, Dr. Khanna was asked whether the exchange-cum-partition agreement dated 8th March 2001 was acted upon. Her answer was as under:

Ans. It was acted upon in the form that GPA and Will was executed according to that deed but on 11th December 2001 the Defendant resiled from that deed by filing a suit for possession of the ground floor and in that plaint the Defendant stated on affidavit that he has cancelled the GPA and Will and subsequently in a subsequent settlement deed dated 2nd April 2003 both the Defendants as well as myself signed a clause written in the subsequent deed dated 2nd April 2003 that the subsequent deed dated 2nd April 2003 supersedes all the previous deed so as for today only the deed dated 2nd April 2003 exists. The Plaintiff Manu Khanna is not a party in this deed.

41. On the settlement dated 2nd April 2003, the following questions were put to Dr. Poonam Khanna and answered as shown hereunder:

Q. Is it correct that a consent decree of divorce was passed between you and the Defendant under the terms and conditions of settlement dated 2nd April 2003?

Ans.: The decree was not with mutual consent. I gave my consent subject to fulfilment of certain condition/promise made by the Defendant.

Q. Please tell as to whether the deed dated 2nd April 2003 was ever acted upon?

Ans: It was partly acted upon.

Q. Can you tell as to what obligations have been discharged under the deed dated 2nd April 2003?

Ans.: I have acted upon term No. 1 and term No. 3 of the aforesaid deed.

Q.: I put it you that on the basis of terms and conditions contained in the deed dated 2nd April 2003, three cases pending between you and the Defendant have been settled?

Ans.: Only three cases were settled in 2003

Q.: Have you given any notice to Defendant to comply with the terms and conditions of the aforesaid settlement deed?

Q.: Have you filed any suit or case against the Defendant for not following the terms and conditions of the aforesaid settlement deed?

Ans: No. Volunteered. Plaintiff is not a party to this settlement deed.

Q.: Is it correct that the welfare of the Plaintiff was also taken into account while arriving at the settlement deed dated 2nd April 2003?

Ans.: The Defendant always wanted to get rid of the disable child in all these settlement deeds and that is why he always surrendered his custody and meeting rights so that he can enjoy his luxurious life with the second wife and no amount was given for the maintenance of the child by the Defendant.

42. It appears to the Court that Dr. Poonam Khanna is obviously seeking to resile from the aforementioned agreement. At the same time, it must be remembered that divorce by way of mutual consent has been granted. The deed dated 2nd April 2003 and the divorce decree by mutual consent cannot be read separately. Dr. Khanna is bound by the settlement deed dated 2nd April 2003. It is not legally permissible to allow one party to the settlement deed dated 2nd April 2003 to resile from it on the basis of such settlement, particularly since the parties have, on that basis, unalterably changed their respective positions.

43. The Court does not consider it appropriate to reopen the whole question as to who paid for the purchase of C-18, Shivalik, Malviya Nagar, New Delhi. In examining that question the Court might not only be re-writing the Settlement Agreement dated 2nd April 2003 but also reversing the steps taken pursuant thereto which resulted in judicial orders including those of the Supreme Court. It will be an abuse of the process and a waste of the Court's precious time to enter into this pointless exercise. Be that as it may, the Court finds the evidence placed on record to be insufficient to conclude that the funds for the purchase of the said property were not contributed to by the Defendant and, in any event, that part of the funds were contributed to by the father of the Defendant.

44. The affidavit of the father of the Defendant stating that he has not contributed anything to the purchase of the property at C-18, Shivalik has gone unchallenged. Whatever may be the submissions made in those proceedings, it appears that at a stage, prior to the settlement agreement dated 2nd April 2003. Dr. Poonam Khanna signed the settlement agreement on 2nd April 2003 accepting the statements made thereunder and participated in the steps taken on that basis. She should not be permitted now to go back on the statements made prior to the settlement. Given the long history of litigation between the parties, it is important for the Court to honour the settlement between the parties on 2nd April 2013 and to bring to an end the disputes between them. The Courts are expected to accept statements made on oath by parties. It may be noted at this stage that the order dated 30th January 2012 of the High Court in Crl. M.C. No. 2602 of 2010 was affirmed by the Supreme Court which dismissed the SLP against the said order. Dr. Poonam Khanna's case under PWDVW Act was dismissed on 21st February 2008.

45. Issue No. 2 is answered by holding that the Plaintiff has been unable to prove that Defendant purchased the ground floor of C-18, Shivalik with the funds made available by his father Mr. Roop Ram. Since Issue No. 2 has been decided

against the Plaintiff, the question of determining the share of the Plaintiff in the property at C-18, Shivalik, Malviya Nagar, New Delhi does not arise. In the above circumstances, Issue No. 4 is answered in favour of the Defendant and against the Plaintiff.

46. Issue No. 6 is answered against the Plaintiff by holding that the Plaintiff is not entitled to relief for injunction or any other alternative relief not pressed. Issue No. 1 is answered against the Defendant as the burden was on him to show that the suit was not properly valued and he failed to discharge such burden.

47. Issue No. 5 is whether the suit has been filed out of malice as stated in para 1 of the preliminary objections in the written statement. The circumstances, in which the present suit has been filed is significant for the issue. As noticed earlier, after steps were taken by both the parties to comply with the respective terms of the statement, Dr. Poonam Khanna appears to have had second thoughts. She was supposed to have given up her claim to the roof and terrace above the first floor. Nevertheless, she filed the present suit and dragged the Defendant into vexatious litigation. Numerous applications were filed by her from time to time. The orders passed by the Court dismissing their applications have also been adverted to. In the circumstances, the Court is of the view that the present suit has been filed by the Plaintiff without any legal basis and to overcome the settlement deed dated 2nd April 2003 which is binding on the parties. This issue is answered in favour of the Defendant against the Plaintiff. The suit is dismissed with costs of Rs. 20,000 which will be paid by the Plaintiff to the Defendant within eight weeks.