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**(2011) 09 DEL CK 0455**

**In the Delhi High Court**

**Case No :** Letters Patent Appeal No. 554 of 2011

Rajender Mohan Rana and Others

APPELLANT

Vs

Prem Prakash Chaudhary and Others

RESPONDENT

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**Date of Decision :** 01-09-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3  
Delhi Land Reforms Act, 1954 — Section 2(1), 31, 33, 34, 442

**Citation :** (2011) 8 AD 153 : (2011) 184 DLT 454

**Hon'ble Judges :** Dipak Misra, C.J.;Sanjiv Khanna, J

**Bench :** Division Bench

**Advocate :** N.S. Dalal, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Sanjiv Khanna, J.—In the present intra-Court appeal under clause X of the letters patent, the challenge is to the order dated 8th February, 2010 allowing W.P.(C) 101/2008 filed by Prem Prakash Chaudhary and Ors. the Respondents herein.

2. Rajinder Mohan Rana and Surinder Mohan Rana, the two Appellants herein and Prem Prakash Chaudhary and Shri Man Mohan Singh are brothers being sons of late Siri Lal, who expired on 8 October, 1984. Siri Lal was owner or bhumidhar of agricultural land measuring 33 Bighas and 3 Biswas situated in village Ghwara, Delhi. After death of Siri Lal, they became joint bhumidhars of the aforesaid land. The aforesaid mutations were carried out in the revenue records on 20th March, 1985. However, before the said date there was a family settlement on 26th December, 1984 between the four of them whereby they agreed to divide the land into four parts and each of the brothers got possession of their respective portions of the land. In 1988, Prem Prakash Chaudhary and Man Mohan Singh filed a civil suit against Rajinder Mohan Rana and Surinder Mohan Rana seeking restrain against them from selling, dispossessing or otherwise interfering in the land which had fallen in the share of the Respondent Nos. 1 & 2 herein in pursuance to the family settlement dated 26th December, 1984. During the

pendency of the said suit, the parties arrived at an amicable settlement before the appointed Panchas and an award dated 14th May, 1989 was signed by the four brothers. Thereafter, an application under Order 23 Rule 3 of the CPC was filed before the Civil Court, in which they admitted that the agricultural land was divided/partitioned amongst them. The Civil Court on 3rd August, 1989 recorded statements of the parties in support of the compromise and dismissed the suit as compromised.

3. The Respondent Nos. 1 and 2 approached the Tehsildar, Najafgarh for mutation of their respective portions of land. Vide order dated 9th June, 1995, mutation was allowed in terms of the compromise application. Tehsildar has observed that since the Civil Court had passed a decree on the basis of the compromise, the Revenue Officer was not required to go into the intricacies/merits of the order, but was required to implement the judgment and decree.

4. There is merit in the contention of the Appellant that this reasoning given by Tehsildar is not sustainable. Firstly, the civil suit was dismissed on the basis of compromise and, secondly, the Tehsildar did not examine the effect of Section 85 of Delhi Land Reforms Act, 1954 (for short, Reforms Act) and the judgment of the Supreme Court in Hatti Vs. Sunder Singh, .

5. However, this, we do not feel is a good enough ground to remit the matter as it is apparent and not disputed that the parties had enter into a family settlement and compromise dated 26th December, 1984 and thereafter had entered into an amicable settlement before Panchas and the award dated 14th May, 1989 was signed by all the four brothers and thereafter, an application under Order 23 Rule 3 of the CPC was filed before the Civil Court (We are not proceeding on the basis of the decree/order of the Civil Court). The said application is an admission by the Appellants that they had entered into a settlement. It is not disputed before us that the aforesaid application for settlement was filed. The Appellants have not disputed or denied the settlement and partition of land inter se the four brothers but a legal contention relying upon Section 55 of the Reforms Act is raised. For the sake of completeness, it is recorded that the Appellants preferred an appeal against the order of mutation before the Additional Collector, but without success. Aggrieved, the Appellants preferred a second appeal before the Financial Commissioner, which was allowed vide order dated 27th August, 1996. It may be also noted that the Respondent Nos. 1 and 2 during pendency of the appeal before the Additional Collector vide sale deeds executed on 9th August, 1995 and 1st May, 1996 had transferred their land to the Respondent Nos. 3 to 7 herein.

6. The contention raised before us by the Appellants is that the family settlement, award and the admissions made by them are of No. consequence and are illegal as Section 55 of the Reforms Act postulates partition solely and only by the mode and manner stipulated therein and not by any other mode. Section 55 of the Reforms Act reads:

Holding of a Bhumidhar partible.-(1) A Bhumidhar may sue for partition of his holding.

(2) To every such suit the Gaon Sabha concerned shall be made party.

7. It is not possible to agree with the contention of the Appellants that Section 55 of the Reforms Act prescribes the only mode and manner of partition of land between joint bhumidhars. Section 55 of the Reforms Act prescribes one of the ways in which the joint bhumidhars can partition the land i.e., by going for legal proceedings for partition of land. Section 55 does not bar or prohibit joint bhumidhars from entering into a settlement or compromise between themselves for partition of the land. Such an embargo is not stipulated expressly and should not be impliedly read into Section 55. Express stipulation is certainly missing. Section 55 uses the word "may sue" which indicates a discretionary element that a joint bhumidhar may approach the Court of Revenue Assistant for partition. Normally, the word "may" means discretion and is not mandatory. In the present case we do not see any reason why the word "may" in Section 55, should be read as "must" or "shall". Courts do not interpret the word "may" as "shall" unless such interpretation is necessary and required to void absurdity, inconvenient consequence or is mandated by the intent of the legislature which is collected from other parts of the statute. While examining the third aspect, the courts examine the purpose, object, design and scope of the statute.

8. The Supreme Court in *The Official Liquidator Vs. Dharti Dhan (P) Ltd.*, has held as under:

7. ...It follows that the order to be passed must be discretionary and the power to pass it must, therefore, be directory and not mandatory. In other words, the word "may", used before "stay" in Section 442 of the Act really means "may" and not "must" or "shall" in such a context. In fact, it is not quite accurate to say that the word "may", by itself, acquires the meaning of "must" or "shall" sometimes. This word, however, always signifies a conferment of power. That power may, having regard to the context in which it occurs, and the requirements contemplated for its exercise, have annexed to it an obligation which compels its exercise in a certain way on facts and circumstances from which the obligation to exercise it in that way arises. In other words, it is the context which can attach the obligation to the power compelling its exercise in a certain way. The context, both legal and factual, may impart to the power that obligatoriness.

8. Thus, the question to be determined in such cases always is whether the power conferred by the use of the word "may" has, annexed to it, an obligation that, on the fulfilment of certain legally prescribed conditions, to be shown by evidence, a particular kind of order must be made. If the statute leaves No. room for discretion the power has to be exercised in the manner indicated by the other legal provisions which provide the legal context. Even then the facts must establish that the legal conditions are fulfilled. A power is exercised even when the court rejects an application to exercise it in the particular way in which the

applicant desires it to be exercised. Where the power is wide enough to cover both an acceptance and a refusal of an application for its exercise, depending upon facts, it is directory or discretionary. It is not the conferment of a power which the word "may" indicates that annexes any obligation to its exercise but the legal and factual context of it. This as we understand it, was the principle laid down in the case cited before us: *Frederic Guilder Julius v. Right Rev. Lord Bishop of Oxford: Re v. Thomas Thellusson Carter*.(5 AC 214).

10. The principle laid down above has been followed consistently by this Court whenever it has been contended that the word "may" carries with it the obligation to exercise a power in a particular manner or direction. In such a case, it is always the purpose of the power which has to be examined in order to determine the scope of the discretion conferred upon the donee of the power. If the conditions in which the power is to be exercised in particular cases are also specified by a statute then, on the fulfilment of those conditions, the power conferred becomes annexed with a duty to exercise it in that manner. This is the principle we deduce from the cases of this Court cited before us: *Bhaiya Punjalal Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad, State of Uttar Pradesh Vs. Jogendra Singh, , Sardar Govindrao and Others Vs. State of Madhya Pradesh, , Shri A.C. Aggarwal, Sub-divisional Magistrate, Delhi and Another Vs. Mst. Ram Kali, etc., and Shri Prakash Chand Agarwal and Others Vs. Hindustan Steel Ltd.,*

9. To elucidate the words "may" and "shall", and interpret them, the Supreme Court in *Dinesh Chandra Pandey Vs. High Court of Madhya Pradesh and Another*, has held as under:

15. The courts have taken a view that where the expression "shall" has been used it would not necessarily mean that it is mandatory. It will always depend upon the facts of a given case, the conjunctive reading of the relevant provisions along with other provisions of the Rules, the purpose sought to be achieved and the object behind implementation of such a provision. This Court in *Sarla Goel v. Kishan Chand*, took the view that where the word "may" shall be read as "shall" would depend upon the intention of the legislature and it is not to be taken that once the word "may" is used, it per se would be directory. In other words, it is not merely the use of a particular expression that would render a provision directory or mandatory. It would have to be interpreted in the light of the settled principles, and while ensuring that intent of the Rule is not frustrated.

10. To reiterate the words "may" and "shall" are distinct in meaning. While one confers a discretionary power, the latter one pelts out mandatory directions. These words are not synonymous but may be used interchangeably if the context requires such interpretation. The Supreme Court in *Mohan Singh and Others Vs. International Airport Authority of India and Others*, held as below:

26. Thus, this Court, keeping in view the objects of the Act, had considered whether the language in a particular section, clause or sentence is directory or mandatory. The word "shall", though prima facie gives impression of being of

mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provides for any contingency for non-compliance; if the word "shall" is construed as having mandatory character, the mischief that would ensue by such construction; whether the public convenience would be subserved or public inconvenience or the general inconvenience that may ensue if it is held mandatory and all other relevant circumstances are required to be taken into consideration in construing whether the provision would be mandatory or directory. If an object of the enactment is defeated by holding the same directory, it should be construed as mandatory whereas if by holding it mandatory serious general inconvenience will be created to innocent persons of general public without much furthering the object of enactment, the same should be construed as directory but all the same, it would not mean that the language used would be ignored altogether. Effect must be given to all the provisions harmoniously to suppress public mischief and to promote public justice.

11. There are good reasons to hold why impliedly such prohibition should not be read whilst interpreting Section 55 of the Reforms Act. Resort to Court process, to resolve disputes, is normally treated as last resort and not the first or best option. Joint bhumidhari can be and is normally between relatives and sometimes between close friends. It is difficult to visualize joint bhumidhari in other cases, and such cases will be rare. Joint bhumidhars can always enter into a mutual understanding and compromise to mutually partition the land. Amicable resolution of disputes and differences is encouraged and recognized by law. It is not forbidden. The courts while interpreting provisions of law tend to support settlement and mutual agreements. Unless a specific provision of law is breached and violated, a settlement agreement is not prohibited. The effort of Court is to minimize litigation and not to multiply it. Bringing relatives or friends to court when they have settled their differences can hardly be inferred from the said section or other provisions.

12. Family settlements are one of the recognized and acceptable methods of affecting partition between family members. Settlement or partition deeds have been long recognized as mode and manner in which joint ownership or rights can be dealt with or partitioned/divided. If the contention of the Appellants is accepted, it will mean that family settlements between relatives relating to bhumidhari rights are void and illegal. There is nothing in Section 55 of the Reforms Act or other provisions which indicate the legislative intent to declare such settlements as void or illegal and not acceptable. It is not possible to hold that Section 55 of the Reforms Act is the only manner to effect partition amongst/ between joint bhumidhars. The Supreme Court in Hari Shankar Singhania and Others Vs. Gaur Hari Singhania and Others, has highlighted the importance and significance of family settlements. Support and leaning in judicial

pronouncements in favour of family settlements is apparent. It has been held:

42. Another fact that assumes importance at this stage is that, a family settlement is treated differently from any other formal commercial settlement as such settlement in the eye of the law ensures peace and goodwill among the family members. Such family settlements generally meet with approval of the courts. Such settlements are governed by a special equity principle where the terms are fair and bona fide, taking into account the well-being of a family.

43. The concept of "family arrangement or settlement" and the present one in hand, in our opinion, should be treated differently. Technicalities of limitation, etc. should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family. Also it can be seen from decided cases of this Court that, any such arrangement would be upheld if family settlements were entered into to allay disputes existing or apprehended and even any dispute or difference apart, if it was entered into bona fide to maintain peace or to bring about harmony in the family. Even a semblance of a claim or some other ground, as say affection, may suffice as observed by this Court in *Ram Charan Das Vs. Girjanandini Devi and Others*,

44. In *Lala Khunni Lal v. Kunwar Gobind Krishna Narain* (ILR (1911) 33 All 356 (PC)) the Privy Council examined that it is the duty of the courts to uphold and give full effect to a family arrangement.

45. In *Sahu Madho Das and Others Vs. Mukand Ram and Another*, placing reliance on *Clifton v. Cockburn* ( (1829) All ER Rep 181) and *Williams v. Williams*((1866) LR 2 Ch 294) this Court held that a family arrangement can, as a matter of law, be implied from a long course of dealings between the parties. It was held that: (SCR p. 43)

[S]o strongly do the courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all, that we have No. hesitation in taking the next step (fraud apart) and upholding an arrangement...

46. The real question in this case as framed by the Court was whether the Appellant-Plaintiff assented to the family arrangement. The Court examined that "the family arrangement was one composite whole in which the several dispositions formed parts of the same transaction".

47. In *Ram Charan Das Vs. Girjanandini Devi and Others*, this Court observed as follows: (SCR pp. 850 G-851 B)

Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family.... The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another.

48. In *Maturi Pullaiah and Another Vs. Maturi Narasimham and Others*,

[T]hough conflict of legal claims in praesenti or in future is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it.

49. Further, in *Krishna Beharilal Vs. Gulabchand and Others*, this Court reiterated the approach of the courts to lean strongly in favour of family arrangements to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes which might ruin them all. This approach was again re-emphasised in *S. Shanmugam Pillai and Others Vs. K. Shanmugam Pillai and Others*, where it was declared that this Court will be reluctant to disturb a family arrangement.

50. In *Kale and Others Vs. Deputy Director of Consolidation and Others*, his Court examined the effect and value of family arrangements entered into between the parties with a view to resolving disputes for all. This Court observed that: (SCC pp. 125-26, para 9)

By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made.... The object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. ... The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement.... The law in England on this point is almost the same.

(Emphasis supplied)

51. The valuable treatise *Kerr on Fraud* at p. 364 explains the position of law:

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.

Halsbury's Laws of England, Vol. 17, 3rd Edn. at pp. 215-16.

52. In K.K. Modi Vs. K.N. Modi and Others, it was held that the true intent and purport of the arbitration agreement must be examined (para 21). Further, the Court examined that: (SCC pp. 594-95, para 52)

[A] family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 to 1995 the memorandum of understanding has been substantially acted upon and hence the parties must be held to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be viewed a little differently from ordinary contracts and their internal mechanism for working out the settlement should not be lightly disturbed.

(Emphasis supplied)

53. Therefore, in our opinion, technical considerations should give way to peace and harmony in the enforcement of family arrangements or settlements.

13. Learned Counsel for the Appellant submitted that the Reforms Act is a complete code and reference was also made to Sections 33 and 57(1)(b) of the Reforms Act. The aforesaid provisions stipulate that where as a result of transfer, the transferor is left with less than eight standard acres of land, certain consequences will flow. The aforesaid provisions are to prevent fragmentation of holdings into uneconomical sizes. Learned single Judge in this context has rightly observed as under: -

19. Section 33 deals with situation where as a result of transfer, the transferor shall be left with less than 8 standard acres of land. However, in partition there is No. transfer or transferor or transferee. Each of the co-owners is the owner of each and every parcel of the property and it cannot be said that any part of the property is transferred by one co-owner to the other. If any precedent is needed for the said proposition, reference may be made to Ram Charan Das Vs. Girjanandini Devi and Others, I therefore do not see as to how Section 33 would apply. The purport of Section 33 is to prevent fragmentation of holdings to uneconomical sizes. There is nothing preventing continuance of holdings less than minimum prescribed or transfer where holding is in any case less than that prescribed. Practical experience shows that transfers resulting in transferor being left with less than that prescribed, are also effected by simultaneously

transferring the balance to a nominee/family member of the transferor. Here, the joint holding of the parties itself was less than minimum 8 standard acres prescribed. I do not see as to how the amicable partition effected by the parties themselves would prejudice anyone.

20. As far as Section 57(1)(b) is concerned, the same provides that where the partition will result in a holding less than 8 standard acres, the Court instead of dividing the holding may either direct the sale of the same and distribution of the sale proceeds or proceed to divide the holding in accordance with such principles as may be prescribed or in the alternative dismiss the suit. It is thus not as if Section 57(1)(b) prohibits partition resulting in a holding of less than 8 standard acres. The counsel for the Respondents No. 1 & 2 also fairly admits that while applying the principles, the holding can be divided but contends that the same has to be done only in the presence of the Gram Sabha and by the Revenue Assistant and cannot be done amicably by the parties themselves or by way of family settlement and with which proposition, I do not concur.

14. In case there is violation of any provision of law as a result of a family settlement/mutual partition, resort to these sections can be made and these sections can be given effect to, but this alone cannot compel us to accept that a family settlement or mutual agreement cannot be one of the methods for affecting partition and in case joint bhumidhars want partition of joint bhumidhari rights, they must sue each other and litigate against each other.

15. Learned Counsel for the Appellant has relied upon the decision in the case of Nathu Vs. Hukam Singh and Others, , wherein the Division Bench had made the following observations:

10. These provisions and various other provisions of the Act show that a Bhumidar does not have an unrestricted interest in the agricultural land which was held by him before the commencement of the Act as an owner or proprietor. After the commencement of the Act and the declaration of the Bhumidari rights, he is only given the right to use the agricultural land in a particular manner as specified in the statutory provisions. There are restrictions laid down on the rights of a Bhumidar to create leases. A Bhumidar cannot transfer possession of the land. A Bhumidar is obliged to use the land for agricultural purposes. A Bhumidar is only a tenure holder having lost the right of ownership on agricultural land after the commencement of the Act. There is, however, a great security of the tenure under the Act. Bhumidari rights are, therefore, special rights created on the abolition of the ownership of the agricultural land and are controlled and regulated by the provisions of the Act. The language of Section 5 of the Act shows that a Bhumidar has all the rights and is subject to all the liabilities conferred or imposed upon a Bhumidar by or under the Act. The rights to the tenure holder are granted under the provisions of the Act. The restrictions imposed on the rights of a Bhumidar are also by or under the Act. There is No. warrant to travel outside the Act and the Rules for further restrictions in the right or manner of transfer of the Bhumidari rights. Section 34 of the Act, permits

simple mortgage of land by a Bhumidar. This right is granted to tenure holder under the Act. Reading any further restriction by involving the customary law would come in conflict with the right granted under the Act. Any such impediment would be inconsistent with the provisions of the Act. The rule of custom pleaded and upheld by the Courts below in this case is inconsistent with the provisions of the Act. The inconsistent rule having the force of law stands repealed by Section 2(1)(vi) of the Act.

16. We fail to understand how the aforesaid observations are of any relevance to the issue in question. Bhumidhari rights are different from ownership rights. Rights of bhumidhar, as tenure holder, have been created and protected by the Reforms Act. A bhumidhar can, however, transfer possession of land unless in contravention to the Reforms Act. Section 31 of the Reforms Act reads:

31. Interest of a Bhumidhar to be transferable- The interest of a Bhumidhar shall be transferable subject to the conditions hereinafter contained.

17. In view of the aforesaid discussion we are of the view that the provisions of the Reforms Act neither expressly nor impliedly prohibit or bar joint bhumidhars from entering into a family settlement to partition or divide their holdings. In the present proceedings, we are not concerned whether after the said partition there is violation of Sections 33 and 57 of the Reforms Act and the effect thereof. In case the said Sections are or have been violated, the consequences will follow.

18. The appeal is accordingly dismissed with No. orders as to costs.