

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

+ **CS(OS) No.2667/2000**

Date of Decision : 07.04.2010

Ms. Preeti Arora

.....Plaintiff

Through: Ms. Zeba Tarannum
Khan, Advocate.

Versus

Mrs. Nita Lal & Anr.

..... Defendants

Through: Mr. R. K. Gupta,
Advocate.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

- | | | |
|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (oral)

IA No.2727/20006

1. This order shall dispose of an application bearing no. 2727/2006. By virtue of which the plaintiff has prayed that the he may not be directed to furnish the valuation report and the stamp papers in order to draw the decree as has been directed by the Registry.
2. Briefly stated the facts of the case are that the plaintiff filed a suit for partition in respect of the suit property bearing no. A-30, Nizamuddin West, New Delhi consisting of three floors, namely, ground floor, first floor and barsati floor. It was alleged in the suit that the property was an H.U.F. property of Late Shri Nand Lal (the father of the plaintiff and the defendants) and Shri

Deepak Kumar Lal/defendant no. 2 the brother of the plaintiff. It was alleged that on 01.04.1975 Late Shri Nand Lal and Shri Deepak Kumar Lal had effected the partition of the suit property by virtue of which Late Shri Nand Lal became the sole owner of the first floor and barsati floor along with the first floor servant quarters and first floor motor garages in the said building. So far as the ground floor and the servant quarter and the motor garage situated on the ground floor are concerned, it is stated to have fallen to the share of the defendant no. 2. It is alleged that Late Shri Nand Lal died on 01.02.1984 and before his death Nand Lal had executed the WILL dated 22.08.1981 on the basis of which he had bequeathed the first floor and barsati set along with first floor servant quarters and first floor motor garage in property bearing no. A-30, Nizamuddin West, New Delhi and the defendant no. 1 in equal share.

3. The plaintiff is stated to have married and settled in America. It is alleged by her, since the partition of the suit property by metes and bounds has not been effected by the parties, accordingly she has filed the present suit.
4. The defendant nos. 1 and 2 filed their written statement and contested the claim of the plaintiff.
5. During the pendency of the suit the parties have arrived at a settlement and accordingly filed an application under Order XXIII Rule 3 CPC for passing the decree in terms of the said settlement.
6. The application bearing no. 2919/2005 which was exhibited as C/1 as a memorandum of settlement and decree in terms of the said settlement was passed on 13.04.2005. On 07.03.2006 the

plaintiff filed a fresh application bearing no. 2727/2006. By virtue of which the exemption from filing the valuation report of the suit property and the stamp papers was sought on the ground that the Registry had directed the plaintiff to file the valuation report and the requisite stamp papers to enable it to draw the decree on the stamp papers.

7. The Court appointed Mr. Rajeev Endlaw (Advocate) (as His Lordship then was) the learned Amicus Curiae to assist the Court in deciding the application. The learned Amicus had cited the number of judgments including one relied upon by the plaintiff in case titled **Rajinder Kumar Vs. Iqbal Singh & Ors** 2003 V AD (DELHI) 469 wherein it was observed that the question of as to whether a decree is to be drawn on a stamp paper as per the valuation report of the property would depend on the nature of decree which is sought by the plaintiff. The learned Amicus submitted that if it was merely a declaratory decree which recognizes oral family settlement arrived at between the parties and subsequently reduced into writing, it would not require to be stamped. However, if the decree itself divides the property by metes and bounds and is not executable as such the decree would have to be drawn on a stamp paper. The learned counsel for the plaintiff on observing this legal position had sought some time to obtain instructions from the plaintiff in this regard and since then more than 3 ½ years have elapsed yet no decision has been intimated by the counsel. Repeatedly for one reason or the other adjournments have been obtained.

8. In the light of the aforesaid factual matrix, the only question which requires to be considered is twofold as to whether the settlement which is arrived at between the parties on the basis of which the compromise decree was passed was only recognizing an oral settlement arrived at between the parties or the document of settlement itself was creating the right, title or interest warranting the submission of stamp papers so as to draw the decree on the said basis.
9. Needless to say that a perusal of the order sheet shows complete negligence on the part of the plaintiff in getting this short issue decided. Even today a request for an adjournment is made on behalf of the learned counsel of for the plaintiff on the ground that he may be given some time to obtain the instructions as to whether the valuation report be submitted or not. The request was disallowed keeping in view the fact that 3 ½ years have gone by and yet the plaintiff has not been able to make up its mind.
10. A reading of the contents of the application as well as the settlement which is the basis of application, under Order XXIII Rule 3 CPC shows that it was not an oral settlement which was reduced into writing. A perusal of the settlement shows that the word 'Oral' was used only to avoid the payment of the stamp duty and the registration charges. The legal position has already been enunciated in the judgment which has been relied upon by the learned Amicus. In the instant case, I feel that since the settlement which has been made the basis of disposal of the case was not an oral settlement (notwithstanding the fact that the word oral is used), but it is the settlement itself which is creating right, title or interest, therefore, I feel that the Registry

was justified in asking the plaintiff to submit the valuation report as well as the stamp papers to enable the Court to draw the decree on a stamp papers. Accordingly, the application bearing no. 2727/2006 seeking exemption from filing stamp papers is totally misconceived and the same is dismissed. The plaintiff is directed to submit the stamp papers and the valuation report within a period of three months from today to enable the Registry to draw the decree. Accordingly, the application stands dismissed.

V.K. SHALI, J.

April 07, 2010
KP