

* **HIGH COURT OF DELHI : NEW DELHI**

+ **IA No.12888/2008 in CS (OS) No.1495/2005**

% Judgment reserved on : 2nd July, 2009

Judgment pronounced on : 6th July, 2009

Rajesh Kumar Bajaj ...Plaintiff
Through : Mr. Vineet Bhagat, Adv. with
Mr. Ashish Gupta, Adv.
Versus

Purshotam Lal Bajaj & Ors. Defendants
Through : Mr. Sachin Jain, Adv. with Def. No.2
in person

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

- | | |
|--|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. By this order, I shall dispose of the present application being IA No.12888/2008 filed by defendant No.2 praying deletion of para VI of the settlement agreement arrived between the parties on 27th September, 2008. The plaintiff has filed the present suit for declaration and permanent injunction against the three defendants. The plaintiff is the son of Sh. Ram Lal Bajaj and is the youngest of all the brothers and sisters. Defendant no. 1 is the elder brother, defendant no. 2 is the eldest sister and the defendant no. 3 is the younger sister. During the pendency of the suit, the parties have settled their dispute pertaining to

the suit property before the Delhi High Court Mediation and Conciliation Centre vide settlement agreement dated 27.09.08.

2. Disputes and differences had arisen between the Parties hereto and a CS(OS) 1495/2005 filed before Hon'ble High Court of Delhi.

3. The matter was referred to Mediation/Conciliation vide an order dated 01.09.2008 passed by this Court.

4. Several meetings were held during the process of Conciliation/Mediation i.e. on 5th September, 2008, 19th September, 2008, 27th September, 2008 and the parties with the assistance of the Mediator/Conciliator voluntarily arrived at an amicable solution, resolving the above mentioned disputes and differences.

5. The parties hereto confirm and declare that they have voluntarily and of their own free will arrived at settlement agreement in the presence of the Mediator/Conciliator as per terms and conditions mentioned in settlement agreement dated 27th September, 2008.

6. The following settlement has been arrived at between the Parties hereto :

“(i) That the property at Serial No 1 i.e. House Property bearing no. IX,/ 1059, Patel Street No. 1, Gandhi Nagar, Delhi 110 031 would come to the share of plaintiff/ Sh. Rajesh Kumar Bajaj as his absolute property.

(ii) That the property at Serial No. 2 i.e. House Property admeasuring 125 sq. yds. in Lal Dora, Patti Kalyana, Tehsil Samalkha, Haryana would come to the share of defendant no. 1/ Sh. Purshotam Lal Bajaj as his absolute property.

(iii) That the property at Serial No. 3 i.e. the plot measuring 44 sq. yds. in Lal Dora, Patti Kalyana, Tehsil

Samalkha, Haryana would come to the share of plaintiff/ Sh. Rajesh Kumar Bajaj as his absolute property.

(iv) That the property at Serial No. 4 i.e. the plot measuring 566 sq. yds. in Lal Dora , Patti Kalyana, Tehsil Samalkha, Haryana would be the exclusive property of defendant no. 1/ Sh. Purshotam Lal Bajaj.

(v) That the property at Serial No. 5 i.e. the Agriculture Land measuring about 7.5 acres would be divided as under :

(a) That 20 per cent share of the agriculture land would be the share of the defendant no. 3 / Mrs. Kusum Lata Katyal.

(b) That the plaintiff/ Sh. Rajesh Kumar Bajaj and defendant no. 1/ Sh. Purshotam Lal Bajaj shall divide the agriculture land equally except Birani Land out of the remaining 80 per cent after adjusting the share of the defendant no. 3 as above.

(c) That the Birani Land of two acres shall remain with defendant no. 1/ Sh. Purshotam Lal Bajaj to the extent of 80 % as absolute owner and defendant no. 3/ Mrs. Kusum Lata Katyal shall be owner to the extent of 20 per cent which land has been relinquished by the plaintiff/ Sh. Rajesh Kumar Bajaj in favour of defendant no. 1/ Sh. Purshotam Lal Bajaj in lieu of share in the property no.1 situated at Delhi subject to the condition that when the Birani land will be sold in open market, the plaintiff/ Sh. Rajesh Kumar Bajaj shall receive his 40 per cent share of the proceeds out of the sale consideration for the share in the land over and above two acres (if the total Birani land turns out to be more than two acres in the share of family of the parties).

(d) That in lieu of the full and final settlement and adjustment of the properties, the defendant no. 1/ Sh. Purshotam Lal Bajaj shall pay a sum of Rs.60,000/- to the plaintiff/ Sh. Rajesh Kumar Bajaj on the date of hearing i.e. October 22, 2008.

(e) That the defendant no. 1/ Sh. Purshotam Lal Bajaj shall hand over the vacant physical possession of the land coming to the share of the plaintiff/ Sh. Rajesh Kumar Bajaj after harvesting the crop standing on the agricultural

land as of today in the month of October/November and shall not sow the next crop.

(vi) That the defendant no.2/ Mrs. Raj Rani Khurana has relinquished all her shares with her sweet will without pressure or coercion in all the suit properties in favour of both her brothers in equal shares and she is not claiming anything. This is subject to implementation of the present agreement.

(vii) That defendant no. 3/ Smt. Kusum Lata Katyal has relinquished all her shares with her sweet will without pressure or coercion in the suit properties in favour of both the brothers in equal shares except her twenty per cent share in the agricultural land at serial no. 5 and she is not claiming anything in the remaining properties. This is subject to implementation of the present agreement. All the parties have amicably and mutually agreed to this arrangement.”

7. After signing this agreement, the parties hereto state that they have no further claims or demands against each other with respect to the suit properties and all the disputes and differences in this regard have been amicably settled by the parties hereto through the process of Conciliation/Mediation.

8. The said settlement dated 27th September, 2008 arrived at between the parties was duly signed by the plaintiff, defendants and their respective counsels as well as Learned Mediator. When the matter was listed on 24th October, 2008, it was reported that the Mediator had filed a settlement agreement dated 27th September, 2008. The plaintiff, defendant nos. 1 and 2 were also present in Court and it was recorded that there seems to be some acrimony which is still lingering between the parties, after which the matter was again sent to the Mediator on 7th November, 2008 at 4:30 p.m. The Learned Mediator again filed a report dated 8th December, 2008 wherein it was specifically mentioned

that the dispute between the parties has been settled vide settlement dated 27th September, 2008 but somehow on a very small issue, the matter was again sent to the Court as the said issue could not be settled by the parties.

9. On 10th December, 2008, when the matter was again listed before Court, the same was adjourned at the request of the learned counsels for the parties who agreed before the Court that they require some more time to iron out their *inter se* differences and the matter was adjourned to 20th January, 2009. On 20th January, 2009, the Mediator recorded that a meeting was held with the parties as well as their respective counsel on 15th December, 2008 which was continued till late evening and the matter was again fixed on 12th January, 2009. It was recorded that the plaintiff was agreeable for the said terms and conditions but the learned counsel for the defendant sought modifications, therefore, the matter was referred to the Court.

10. When the matter was listed before the Court on 12th January, 2009, it was agreed by learned counsel for both parties that joint application would be filed within two weeks on the basis of settlement arrived at before the Learned Mediator by way of settlement agreement dated 27th September, 2008. The matter was adjourned to 4th February, 2009. On the said date another adjournment was sought by the parties and the matter was adjourned to 18th March, 2009.

11. On 18th March, 2009, no one appeared on behalf of the defendant and the matter was adjourned to 27/04/09 with the directions that the defendant should be present in person on the next date of

hearing. On 27th April, 2009 at the joint request the matter was renotified on 28th May, 2009. It was directed that the defendant shall remain present on the next date of hearing.

12. On 28th May, 2009 when the defendant no. 2 was present in person, she sought modification of the terms and condition of the settlement, which had already arrived at between the parties on 27th September, 2008. The learned counsel for the plaintiff also informed that the application under Order XXII Rule 3 in view of the said agreement was handed over to the learned counsel for the defendants for signature and the learned counsel for the defendants at the same time sought time to get the signature of the defendants and the matter was adjourned to 2nd July, 2009 and the defendant no. 2 was ordered to be present before the Court on the next date of hearing.

13. When the matter was taken up on 2nd July, 2009, no one appeared on behalf of defendants nor was defendant no. 2 present in spite of the directions issued by the Court on 28th May, 2009. It appears from the record that after the settlement before the Mediator, the defendant No.2 filed the application being IA No.12888/2008 before this Court for modification of settlement dated 27th September, 2008.

14. It is pertinent to mention that the defendant no. 2, who sought some modifications of the order has mentioned in the application that he was present before the Mediator on 27/09/08 i.e. on the date when the settlement was finally arrived at between the parties. She has admitted that the dispute between the brothers of the applicant has narrowed down and they entered into an amicable settlement after

some exchange of property and money.

15. It is stated in para 5 of the application that looking at the fact that the long standing enmity between the brothers (the plaintiff and defendant No.) is being resolved, the applicant/ defendant no. 2 could not control her emotions and decided to relinquish her share in the ancestral property in favour of both the brothers in equal share as her goodwill gesture. However, after the settlement was arrived at on 27/09/08, the plaintiff started showing his true colour to the applicant and has also shown dis-respect to the applicant on more than one occasion and the plaintiff has humiliated the applicant in the presence of her family members at her matrimonial home while telling her that she had not given anything to anybody and that in fact being a woman, she had no right in the ancestral property when the brothers are alive.”

16. In view of the above averments made in the application, a prayer is made in the application for deletion of para 6 of the settlement agreement dated 27/09/08 being ineffective and not binding on the rights of the parties.

17. When the matter was listed before the Court on 2nd July, 2009, the plaintiff was present in person alongwith his advocate and informed the Court that he has greatest respect for his sister and he has no intention whatsoever to humiliate defendant no. 2 and will never think about the same in future.

18. Defendants have not disputed the fact that they have signed the settlement agreement before the Learned Mediator. The said agreement is duly signed by all the parties and the same agreement is

also signed by their respective counsel. The only reason to delete para VI of the settlement as given by the defendant no. 2 is that the plaintiff has embarrassed the defendant no. 2 in the presence of her family members at her matrimonial home.

19. I feel that it is not a valid ground to set aside the settlement reached between the parties. On emotional ground the defendant no. 2 cannot turn around and oppose the said settlement which has already been agreed by the parties at the time of modification proceedings. No sufficient reasons in this respect have been assigned by the defendant No.2, therefore, prayer made in the application cannot be accepted.

20. The similar situation has arisen in the matter reported in **Jasbir & Ors. V/s State and Anr., 142 (2007) DLT 141** where the parties after settlement before the Learned Mediator tried to wriggle out of the settlement proceedings, which arrived at the time of Mediation proceedings, wherein this court in para 9 has observed as under :

“The settlement was arrive at during mediation proceedings. The Legislature has amended Section 89 of the code of Civil Procedure in the year 2002. There is an all round attempt by the Legislature and Judiciary, as well as the Executive, to promote the settlement of disputes through the process of Mediation. Therefore, once disputes between the parties have been settled by the process of mediation, it would be in the public interest as well as to attach importance to such a process and treat the settlement as a solemn settlement. Otherwise, the movement of mediation may itself suffer if the parties are given to understand that even after they agree for settlement, one of the parties can still back out.”

21. I fully agree with the findings of the judgment given by this Court. In these circumstances, I find no force in the application filed by the defendant no. 2. The application IA No. 12888/08 is dismissed.

22. The suit is disposed of in view of the terms and conditions of the settlement agreement dated 27/09/08 and it is directed that the parties shall be bound by the said terms and conditions without any further modifications. The suit as well as pending applications are accordingly disposed of.

JULY 06, 2009
mr

MANMOHAN SINGH, J.