

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

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Reserved on: 01st November, 2022
Pronounced on: 22nd November, 2022

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I.A. 17698/2022 & 17699/2022
(FILED BY THE APPLICANT- ASHA SHARMA)
In CS(OS) 2183/2010

RAM SHARMA
S /o Sh. Ashok Kumar Sharma
RZ-F1/3A, Nasirpur Road, Mahavir Enclave,
Palam, New Delhi – 110045

...Plaintiff

Through: None.

versus

ASHOK KUMAR SHARMA
S/o Late Sh. Devki Nandan Sharma
RZ-F1/3A, Nasirpur Road, Mahavir Enclave,
Palam, New Delhi - 110045.

SHYAM SHARMA
S /o Sh. Ashok Kumar Sharma
RZ-F1/3A, Nasirpur Road, Mahavir Enclave,
Palam, New Delhi - 110045

ANURADHA SHARMA
W /o Neeraj Sharma
EI42/B, Sadh Nagar, Part – 2,
Near Solanki Chowk,
New Delhi - 110045

... Defendants

Through: Mr. Ranjeet Kumar,
Advocate for applicant-Asha
Sharma.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

NEENA BANSAL KRISHNA, J.

I.A. 17698/2022 (U/O XXIII Rule 3 r/w Section 151 of CPC, 1908)

1. An application has been filed by Asha Sharma, wife of Defendant Ashok Kumar Sharma under Order XXIII Rule 3(sic) read with section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) to set aside the Judgement dated 12-12-2011 on the ground that a conspiracy was hatched by the parties to the suit by practicing fraud and concealment of material facts with an object to deprive the applicant of her due share in the suit properties.
2. It is stated in the application that Shri Ram Sharma filed the Civil Suit against his father, Shri Ashok Kumar Sharma (Defendant no. 1), brother- Shri Shyam Sharma (Defendant no. 2), sister- Anuradha Sharma (Defendant no. 3) seeking Declaration, Mandatory Injunction and Partition of the movable/immovable properties. The Defendants opposed the claims in their written statement filed by them, which was controverted by Plaintiff in his replication.
3. During the pendency of the suit, the matter was referred to the Delhi High Court Mediation and Conciliation Centre, where a settlement was effected between the parties vide Mediation Settlement dated 24th November 2011. In terms of this settlement, the suit was disposed of by this Court vide Judgment dated 12th December 2011 with the direction, “Accordingly, present suit is decreed in terms of Exhibit C-1 leaving the parties to bear their own costs. Let a decree sheet be drawn up accordingly. No order as to costs.”

4. It is averred in the application that the Judgement/Decree dated 12th December 2011 is an outcome of fraud and collusion of the parties to the suit with the object to grab the share of the Applicant in the property bearing number RZ-F1/3A, Nasirpur Road, Mahavir Enclave, Palam, New Delhi (hereinafter referred to as the suit property), which according to the application is jointly owned by Defendant No.1 and the Applicant. The property was originally owned by Devki Nandan Sharma, the father of Defendant No.1 and after the death of Devki Nandan Sharma, the property was inherited by Defendant No.1 as the absolute owner.

5. The applicant has claimed that Defendant No.1 had transferred an area measuring about 168 square yards out of the total area of 268 square yards in the suit property and to claim ownership of the said part of the property the applicant has annexed transfer documents such as Agreement to Sell, Power of Attorney, Receipt, Will, Affidavit Possession Letter etc. Based on these documents, the applicant claims to be the absolute owner of an area measuring about 168 sq. yards in the suit property along with two adjacent shops.

6. It is averred in the application that in March, 2022, the Applicant came to know that an application has been filed by the Plaintiff in relation to the suit property, pursuant to which she came to know that the Plaintiff and the Defendants are in collusion and had obtained a fraudulent decree from this court without informing the applicant who is the co-owner of the suit property. A Prayer is, therefore made that the Judgement/Decree dated 12th December 2011 be set aside.

7. **Submissions heard.**

8. The factual background is that the present suit was instituted by Sh. Ram Sharma, son of the applicant against Sh. Ashok Kumar Sharma, husband of the applicant, Sh. Shyam Sharma, son of the applicant and

Anuradha Sharma, daughter of the applicant, claiming Partition of the Scheduled Properties and the Declaration of the Scheduled Properties as Joint Hindu Family properties/Ancestral properties, along with other consequential reliefs. It was claimed that the parties to the Suit constituted an Undivided Joint Hindu Family having a Common Ancestor, Late Shri Devki Nandan Sharma, who partitioned the Ancestral Property during his lifetime amongst his sons. The Defendants opposed the Plaintiff by filing a common Written Statement.

9. During the pendency of this matter, by Order dated 15th November, 2011, this court referred the matter to the Delhi High Court Mediation and Conciliation Centre, pursuant to which the parties entered into an amicable settlement dated 24th November 2011. The key terms of the settlement are produced as follows:

"The above mentioned property is currently being given to Mr. Ashok Sharma, Defendant No.1. It is further agreed between the parties that after the demise of the Defendant No.1, the same will be equally divided among Mr. Ram Sharma, Petitioner and Shyam Sharma, Defendant in the following manner....."

It is further agreed between the parties that if Ram Sharma, Plaintiff or Shyam Sharma, Defendant No.2 wants their current possession in the above mentioned property, they can keep the same by mutual consent."

10. The key terms of the settlement was that the Suit Property was to be divided equally amongst the Plaintiff and Defendant No. 2 and 3 who were the sons and daughter of Defendant No.1, after the demise of father Defendant No.1. The settlement further provided that both Shop No.1 & Shop No.2 came to the share of Plaintiff, Shri Ram Sharma.

11. The applicant who is the mother of Plaintiff and Defendant No. 2 & 3, and wife of Defendant No.1, now by way of the present application claims that the Settlement Agreement is vitiated on the ground of fraud and collusion between the parties. She claims to be the owner of a portion of the suit property on the basis of documents which include General Power of Attorney dated Nil.

12. In order to consider this argument, it is imperative to consider Order XXIII Rule 3 of the CPC, 1908.

Order XXIII of the CPC:

13. Order XXIII CPC deals with withdrawal and adjustment of Suits. Rule 1 of Order XXIII deals with “withdrawal of suit or abandonment of part of claim”; whereas Rule 3 of Order XXIII deals with “Compromise of the Suit”. The main distinction between rule 1 and Rule 3 of Order XXIII is that a withdrawal or abandonment of the suit under rule 1 is a unilateral action by the plaintiff, whereas Rule 3 of Order XXIII is a bilateral action of the plaintiff and the defendant to compromise and settle the suit or a part of the claim to the dispute. Rule 3 of Order XXIII states as follows:

*“3. **Compromise of suit.**—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise,⁵⁷⁰ [in writing and signed by the parties] or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith”⁵⁷¹ [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit]:*

⁵⁷² [Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding

the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

⁵⁷³*[Explanation.—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]”*

14. The language of Order XXIII Rule 3 CPC bears testimony to the intention of the Legislature for a final determination of disputes among the parties with the object to bring finality to litigation. This intention is further fructified in Rule 3A to Order XXIII which bars the institution of a fresh suit to challenge a decree on the ground that the compromise decree was not lawful. The solemn object of the Legislature to bring an end to litigation between the parties also finds expression in section 96(3) of the CPC, 1908 which states that no Appeal shall lie from a decree passed by the court with the consent of the parties.

15. A compromise decree under Order XXIII Rule 3 is as much a decree as a decree passed on adjudication of a dispute by the court. A consent/compromise decree passed by the court is not merely a contract between the parties but is a hybrid creature, consisting both a command and a contract execution. The Bombay High Court in **Bajranglal Gangadhar Khemka v. Kapurchand Ltd., 1950 SCC OnLine Bom 12**, has observed that a consent decree is a contract with the imprimatur of the court. Therefore, by passing a decree in terms of a consent order the court authorises and approves the course of action consented to by the parties. Moreover, the provisions of Order 23 Rule 3 of the Code of Civil Procedure require the court to pass a decree in accordance with the consent terms only when it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any **lawful agreement**.

16. The Hon’ble Supreme Court has observed in **Pushpa Devi Bhagat v. Rajinder Singh, (2006) 5 SCC 566** that Rule 3 of Order XXIII consists of

two parts. The **first part** provides that where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, the court shall order such agreement or compromise to be recorded and shall pass a decree in accordance therewith. The **second part** provides that once such agreement or compromise is recorded, the court shall pass a decree in accordance therewith.

17. The Rule also makes it clear that the compromise or agreement may relate to issues or disputes which are not the subject-matter of the suit and that such compromise or agreement may be entered not only amongst the parties to the suit, but others as well, but the decree to be passed shall be confined to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.

18. The Hon'ble Supreme Court in **Pushpa Devi Bhagat** (**supra**) further discussed the parameters on which a consent decree can be challenged. It observed that the only remedy available to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but a contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. These observations were reiterated by the Supreme Court in **R. Janakiammal v. S.K. Kumarasamy**, (2021) 9 SCC 114.

19. The applicant by the present application has impugned the Judgement dated 12-12-2011 by which the compromise was recorded by the court. The primary ground for challenging the Judgement is that it suffers from fraud as there has been active concealment of facts before the court. The applicant contends that she is the owner of a portion of the suit property and two adjacent shops (which have come to the share of the Plaintiff according to the compromise by virtue of documents namely, Agreement to Sell, Power of Attorney, Receipt, Will, Affidavit, Possession letter etc. However, a perusal of the application and the record shows that the applicant has only annexed a copy of the General Power of Attorney (GPA) in her favour which is undated, unsigned and lacks material particulars. Such a Power of Attorney is non-est. Moreover, a mere GPA does not create any right, Title or interest in the suit property. Interestingly while ownership is claimed by the applicant, but she has failed to produce any documents whatsoever in this respect.

20. Even if her contention was to be considered that she had acquired ownership, she was required to produce valid documents which she has failed to do.

21. It cannot be overlooked that applicant is none other than the mother of the Plaintiff and Defendant No.2 and 3. There is no averment whatsoever if she was estranged from her husband/Defendant No.1 or when and how she became aware about this Compromise Decree. The application has been filed in 2022 while the Judgement/Decree is dated 12.12.2011. Material particulars of Knowledge of this decree or its date are blissfully missing.

22. On a specific query being put if she was estranged or living separately from her family, there was no response forthcoming except silence.

23. The other aspect is that of the Agreement to Sell. According to the applicant as well, the property was ancestral and was belonging to Sh. Devki Nandan, father of Defendant No.1 and her father-in-law. So be the case, all the parties to the suit had a right in the property and the suit for Partition was accordingly filed. The only basis on which the applicant is claiming a right is a non-existent Agreement to Sell. The only right this non-existent Agreement to Sell, is to seek its performance. There is no fraud made out in the facts discussed by the applicant.

24. Without prejudice to her contentions, it would not be out of place to mention that the law does not confer ownership merely on an Agreement to Sell. The transfer of an immovable property can only happen by a registered sale deed. The Hon'ble Supreme Court in **Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656** has observed that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SPA/GPA/Will transfers' do not convey title and do not amount to transfer, nor can they be recognised as a valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of Title, except to the limited extent of Section 53-A of the Transfer of Property Act, 1882.

25. Though the applicant has failed to produce any documents in her support, but no right is shown even on her own averments. If she had an Agreement to Sell executed in her favour by her husband/Defendant No.1 [though no date is mentioned], the right, if any, was against Defendant No.1 to get the sale deed executed. Mere undated, unregistered GPA does not establish any right whatsoever in the applicant.

26. This application is an attempt by the applicant to overreach the Court and is a gross abuse of the process of the Court. The application is hereby dismissed.

I.A.17699/2022 (U/S 151 of CPC, 1908 for stay)

In view of the above Judgement, the application is dismissed.

NEENA BANSAL KRISHNA, J

NOVEMBER 22, 2022

S.Sharma/R.D.

