

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

+ CS(OS) 1984/2009

ANIL NATH Plaintiff

Through: Mr. Prakash Gautam and
Mr. Aman, Advocates.

versus

GITA KAPUR Defendant

Through: None.

**CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL**

ORDER (ORAL)

: REVA KHETRAPAL, J.

IA No. 728/2012 in CS(OS) 1984/2009

1. The present application has been filed by the Plaintiff under Section 151 of the Code of Civil Procedure praying for directions to the Registry of this Court to prepare decree sheet in terms of the judgment and order of this Court dated 23.12.2010 without requiring the parties to file stamp duty.

2. The abovementioned suit was filed by the Plaintiff, Shri Anil Nath against the Defendant, Smt. Gita Kapur, seeking *inter alia*

partition of first floor, second floor, and terrace floor of the property bearing No. D-32, Saket, New Delhi.

3. The case of the Plaintiff was that Shri Man Mohan Nath, father of the Plaintiff and the Defendant, was the owner of the suit property and after he died intestate on 21.05.2006, the Plaintiff, the Defendant & their mother, Smt. Shashi Nath became owners of the said property. Subsequently, on 1st May 2009, the mother of the Plaintiff and the Defendant also died and the Plaintiff and the Defendant became owners of one-half share each in the said property.

4. During the pendency of the suit, the parties orally settled their disputes and entered into a Memorandum of Past Oral Family Arrangement and Understanding on 01.10.2010 recording the oral arrangement/agreement between the parties. Thereafter, the parties jointly filed an application bearing IA No. 17509/2010 under Order XXIII Rule 3 of CPC, which was allowed by this Court on 23.12.2010 in the following terms:

“IA No.17509/2010 (under O. 23 R. 3 r/w S. 151 of the CPC)

This is an application filed by the parties under the provisions of Order 23 Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 (in short, ‘CPC’). The parties have arrived at a settlement under the aegis of the Delhi High Court Mediation and Conciliation Centre. The settlement is recorded in the ‘Memorandum of Past Oral Family Arrangement and Understanding’(in short, ‘MOU’) dated 01.10.2010. The original of the Memorandum

(Ex. 'X'), appended in Part-I of the court file, has been filed by the Mediator. The captioned application (Ex. 'Y') bears the signatures of the plaintiff and the defendant as well as the counsels for the parties. The captioned application is also accompanied by the affidavits of the plaintiff and the defendant.

*In view of the settlement arrived at between the parties through intersession of the Delhi High Court Mediation and Conciliation Centre, which is even otherwise lawful, **I decree the suit in terms of paragraph no.4 of the settlement.** A decree sheet be prepared accordingly. The Memorandum (Ex. 'X') and the captioned application (Ex. 'Y') shall form part of the decree. The captioned application and the suit are disposed of.*

The suit be consigned to record."

5. The Registry of this Court, by its letter dated 18.08.2011, required the parties to furnish valuation report of the subject property for the purpose of calculating the stamp duty in order to prepare the decree. It is the case of the Plaintiff-applicant that no stamp duty is required to be paid as no right or interest is being created in favour of the Plaintiff or the Defendant by the decree which is to be passed in terms of the settlement recorded between the parties. It is contended that by way of the settlement arrived at, the parties merely agreed to retain possession of their respective floors and made arrangements regarding the sharing of terrace over the second floor pursuant to the oral agreement arrived at between the parties.

6. Upon filing of the present application by the plaintiff, the Registry was directed to file a report in this regard. Accordingly, the Registry filed a Report dated 03.12.2012, wherein it is claimed that the issue before the Court was not of declaration but for clear cut demarcation of rights regarding ownership of specific portions of the property amongst the parties to the suit, and therefore the decree in the instant case will be an 'instrument of partition' as defined in Section 2(15) of the Indian Stamp Act, 1899. Reliance is placed on the following portion of the judgment of a Division Bench of this Court in **B.S.Goel and Others versus The Registrar, High Court of Delhi, AIR 2007 Delhi 72:**

*“.....They have agreed to divide immovable property in severalty in terms of the compromise application thus creating rights and extinguishing rights in the immovable properties which compulsorily requires a decree to be drawn up on a stamp paper of adequate value. Reliance on the case of **Ravinder Kumar Rishi (supra)**, is also misplaced for the reason that in the said case, the court was not dealing with the issue of requirement of stamp duty for drawing up a decree of compromise, but the payment of ad-valorem court fee under the Court Fee Act as a condition precedent for drawing up a decree in terms of a compromise arrived at between the parties.”*

7. I have heard the learned counsel for the Plaintiff and scrutinized the record.

8. The law in this regard is fairly well settled. An ‘instrument of partition’ as defined in Section 2(15) of the Stamp Act, 1899 includes a final order for affecting a partition passed by any Civil Court. However, by a catena of judgments, it is well settled that every decree in a partition suit is not an ‘instrument of partition’ and cannot be required to be registered and drawn on a stamp paper. A Division Bench of this court in the case of Nitin Jain Vs. Anuj Jain and Others AIR 2007 Delhi 219, reiterated the settled position of law in the following words:

“8. The Courts have recognized that it is legally permissible to arrive at an oral family settlement dividing/partitioning the properties and thereafter record a memorandum in writing whereby the existing joint owners for the sake of posterity record that the property has been already partitioned or divided. The memorandum does not by itself partition the properties but only records for information what has already been done by oral partition. The memorandum itself does not create or extinguish any rights. A record of oral partition in writing is created. The writing records a pre-existing right and does not by itself partition the properties for the first time. As the memorandum only records oral partition which has already taken place but does not in praesenti create any right, it cannot be treated as an instrument creating partition.”

9. Reliance placed by the Registry of this Court in its Report on the judgment of B.S.Goel and Others (Supra) is misplaced as the said case is clearly distinguishable on facts. In the said case stamp duty was held to be chargeable as the Court had come to the

conclusion that the decree in the said case was not directed to be drawn up by the learned Single Judge by recognising the oral family settlement arrived at between the appellants and reduced into writing by way of a memorandum of family settlement dated 31.10.2002, **but instead a decree was directed to be drawn up in terms of the compromise arrived at between the parties as contained in the compromise application. It was stated in the application that the memorandum of family settlement dated 31.10.2002 stood modified in terms of the application and the final compromise as arrived at between the parties was stated in para 3 of the application.**

10. To be noted that the Division Bench in the aforesaid case also reiterated the settled legal position that: “..... *any decree drawn by the Court recognising an oral partition between the members of family settlement which had taken place earlier and concretised in a memorandum of family settlement does not require execution on a stamp paper or require compulsory registration.*”

11. Applying the aforesaid legal position to the facts of the present case, in my considered opinion, there is merit in the prayer made in the present application. A joint application was filed by the parties under Order XXIII Rule 3, stating therein that the matter was compromised and settled between the parties and accordingly a ‘Memorandum of Past Oral Family Arrangement and Understanding’ was executed between the parties pursuant to the oral settlement on

01.10.2010. The suit was decreed on 23.12.2010 in terms of para 4 of the said Memorandum of Settlement (Ex. 'X') and a decree sheet was ordered to be prepared. Memorandum of Settlement (Ex. 'X') and the joint application (Ex. 'Y') were to form part of the decree.

12. A perusal of the 'Memorandum of Past Oral Family Arrangement and Understanding' dated 01.10.2010 further reveals that the settlement was in fact entered into between the parties on/or around 30.05.2010 and the parties intended to reduce the same into writing by way of the said Memorandum, which was eventually executed on 01.10.2010. Para 4 of the Settlement, in terms of which the decree is to be passed, contains the following recital evidencing the factum of oral settlement:

"4. That the said arrangement shall be considered as a Past Oral Family Arrangement with regard to the property at D-32, Saket, 1st, 2nd Floor and roof rights, one car parking, 2 servant quarters one for each other"

13. It is therefore clear that the suit property was divided between the parties by an oral family settlement and by way of the 'Memorandum of Past Oral Family Arrangement and Understanding' dated 01.10.2010 the parties only intended to reduce the same into writing. Accordingly, neither the Memorandum of Settlement nor the decree passed in terms thereof can be said to be an 'instrument of partition' within the meaning of Section 2(15) of the Stamp Act, 1899 requiring payment of stamp duty as per Article 45 thereof.

14. In view of the aforesaid discussion, the Registry's letter dated 18.08.2011 cannot be said to be justified. The Registry is directed to draw up a decree sheet without insisting on submission of valuation report by the parties and/or payment of stamp duty.

15. The application stands disposed of in the above terms.

**REVA KHETRAPAL
(JUDGE)**

November 29, 2012