

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

% **Date of decision: 2nd May, 2013**

+ **CS(OS) 397/2006, I.A. No.5134/2010 (u/O 6 R-17 CPC) & I.A. No.7178/2013**

SUDHA JAIN AND ORS. Plaintiffs

Through: Mr. Vinay Kumar Garg, Adv.
Mr. Sachin Jain, Adv. for objecting
plaintiffs.

Versus

SUBHASH CHAND JAIN AND ORS. Defendants

Through: Mr. Rajan Sharma, Adv. for D-1&2.
Mr. Avneesh Garg, Adv. for D-3&4
with D-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

% **02.05.2013**

1. The matter has been put up before this Bench in terms of the order dated 17th April, 2013 of the Joint Registrar for recording of settlement which the parties on 17th April, 2013 reported before the Joint Registrar had been arrived at in terms of the Deed of Family Settlement filed before the Joint Registrar on that date.

2. The counsel who was earlier representing all the six plaintiffs and the counsel who represents all the four defendants (it is informed that an

amended memo of parties on demise of some of the parties was filed which is not found on Part-I file) support the said Settlement and seek that that the suit be decreed in terms thereof.

3. However, Mr. Sachin Jain, Advocate appears and states that he has after 17th April, 2013 filed his *Vakalatnama* on behalf of the plaintiffs No.1 & 4 to 6 and objects to the suit being decreed in terms of the Deed of Family Settlement. I.A. No.7178/2013 has been filed by the said plaintiffs to restrain plaintiffs No.2 & 3 and the erstwhile Attorney from withdrawing this suit on the basis of collusive Deed of Family Settlement dated 16th April, 2013 and to allow the suit to proceed.

4. Order XXIII Rule 3 of Civil Procedure Code (CPC), 1908 requires the Court to, where it is alleged by one party and denied by other that a compromise had taken place, decide the said aspect without granting any adjournment, unless for reasons to be recorded, it is so deemed fit. The Supreme Court in *Mahalaxmi Co-operative Housing Society Ltd. Vs. Ashabhai Atmaram Patel* MANU/SC/0302/2013 has held that the proviso to Rule 3 of Order XXIII (as inserted by amendment of 1976) enjoins the Court to decide the lis one way or the other and expressly states that the Court shall not grant adjournment. I have recently in judgment dated 21st

March, 2013 in CS(OS) No.1375/2010 titled ***Bela Kapoor Vs. Vandana Kapoor*** also had occasion to consider the said aspect and held that the test while dealing with such an objection is to be akin to that in grant of leave to defend under Order XXXVII of CPC and if the Court finds objections to the compromise being a moonshine or fantastic or vexatious or *mala fide*, the same, even though raising a factual controversy, need not be put to trial and are to be dismissed summarily and the suit decreed in terms of the compromise. As such Mr. Sachin Jain, Advocate objecting to the compromise has been heard.

5. The plaintiffs No.1 to 3 are the daughters and the defendants No.1 to 3 are the sons of late Sh. Faqir Chand Jain who died on 11th June, 1990. The plaintiffs No.4 to 6 are the legal heirs of another daughter of late Sh. Faqir Chand Jain, who has since died. The defendant No.4 is the wife of the defendant No.3. It is informed that the defendant No.1 has died during the pendency of the suit and his legal heirs have been substituted.

6. The suit was filed for declaration that the Agreement dated 23rd July, 2004 amongst the defendants to partition the property No.4501-09, Trilok Bhawan, 7 Ansari Road, Daryaganj, New Delhi is void and illegal and for partition of the said property. The plaintiffs claim that the four daughters

and the three sons of late Sh. Faqir Chand Jain have 1/7th share each in the property.

7. The defendants contested the suit and issues were struck on 26th October, 2009.

8. Suffice it is to state that the defense of the defendants inter alia was that the claim of the plaintiffs predicated on the Amendment of the year 2005 of Hindu Succession Act was untenable owing to the father having died much prior thereto on 11th June, 1990 and that the plaintiffs had no share whatsoever.

9. The plaintiffs examined plaintiff No.2 as PW-1 and her cross-examination was concluded on 8th February, 2013. Though on that date, the plaintiff No.3 Mrs. Anila Jain whose affidavit by way of examination-in-chief has been filed as PW-2 was also present but recording of her statement was deferred. Thereafter, again on 9th April, 2013, though the plaintiff No.3 Mrs. Anila Jain was present but the parties sought an adjournment submitting that they were desirous of an amicable settlement. The matter was adjourned to 17th April, 2013.

10. On 17th April, 2013, the parties reported settlement and filed a Deed of Family Settlement dated 16th April, 2013 signed between them. The

learned Joint Registrar recorded the statement of Mr. Ashok Kumar Jain who is the husband of the plaintiff No.3 Mrs. Anila Jain, as the Attorney of all the plaintiffs as well as of the defendant No.2 and defendant No.3 in support of the said settlement. The Attorney of the plaintiffs Mr. Ashok Kumar Jain in his statement also proved the General Power of Attorney executed by the plaintiffs in his favour as Ex.C-1. The Deed of Family Settlement is informed to be signed by the said Mr. Ashok Kumar Jain as Attorney of all the plaintiffs and by the defendants.

11. The contention of Mr. Sachin Jain, Advocate for the plaintiffs No.1 & 4 to 6 in objection to the said Settlement is that the plaintiffs together were entitled to 43% share in the property; however in the Settlement which has been arrived at and recorded in the Deed of Family Settlement, the property has been agreed to be sold and all the plaintiffs together are to get 6% of the net sale proceeds of the property. He contends that the Settlement/compromise by Mr. Ashok Kumar Jain, Attorney of the plaintiffs is fraudulent for the reason of Mr. Ashok Kumar Jain as Attorney having agreed to take only 6% instead of 43% share in the sale proceeds.

12. It has been enquired from Mr. Sachin Jain, whether the objecting plaintiffs challenge the authority of Mr. Ashok Kumar Jain to settle on their

behalf.

13. The answer is that he was so authorized to settle.

14. The counsels for the defendants point out that Mr. Ashok Kumar Jain was the Attorney of the plaintiffs even in the proceedings earlier filed for probate of the Will of late Sh. Faqir Chand Jain and had been appearing on behalf of the plaintiffs i.e. plaintiffs No.1 to 3 and the predecessors of the plaintiffs No.4 to 6 in that proceedings also.

15. The counsel earlier appearing for all the plaintiffs on enquiry informs that though the plaint was signed by all the plaintiffs themselves but subsequently Attorney in favour of Mr. Ashok Kumar Jain was filed and Mr. Ashok Kumar Jain had been pursuing the present suit as Attorney of the plaintiffs.

16. It has next been enquired from Mr. Sachin Jain, counsel for the objecting plaintiffs as to when they came to know about the Settlement.

17. The answer is that the plaintiffs came to know of the Settlement on 17th April, 2013.

18. It has next been enquired whether any First Information Report (FIR) of the fraud which the said Mr. Ashok Kumar Jain is stated to have

committed, has been lodged as yet.

19. The answer is in the negative, though the counsel now offers that it will be got lodged today itself.

20. In the aforesaid state of affairs, it falls for adjudication whether the compromise should not be recorded.

21. In my opinion, once a litigant has given an authority to the Attorney to settle, the litigant cannot be permitted to, thereafter renege from the same. It is fortuitous that on 17th April, 2013, the matter was before the Joint Registrar and not before this Bench and the learned Joint Registrar owing to limitation on his powers could not dispose of the suit in terms of the Settlement. Had the matter been before this Bench, the suit would have been decreed in terms of the Settlement on 17th April, 2013 itself.

22. Moreover, the Attorney is none other than the husband of one of the daughters of late Sh. Faqir Chand Jain. It is not the averment that the said Attorney had any oblique/collateral reasons for entering into the said settlement. The wife of the Attorney under the Settlement is getting the same share as the other sisters.

23. Mr. Sachin Jain has also argued that on an earlier occasion when the parties were referred to mediation, the same had resulted in a non-settlement

and the parties had appeared themselves at that stage.

24. That happened on 3rd August, 2012. Much water has flown thereafter. The recording of the evidence had commenced and one of the plaintiffs had already been cross-examined. Often on cross-examination, the litigant, who till then has been litigating through Advocates, realises the true worth of his/her case and is able to make a proper assessment of chances of his/her success.

25. It is also not as if the Settlement happened overnight. As aforesaid, the parties on 9th April, 2013 informed that they were desirous of settlement and the settlement was finally reduced into writing on 16th April, 2013 and produced before the Joint Registrar on 17th April, 2013.

26. Once the plaintiffs had entrusted the husband of one of the sisters to deal on their behalf, they cannot be permitted to wriggle out of the action of their agent and are bound therewith. The plaintiffs, after representing to the defendants that their Attorney was competent to settle on their behalf and making the defendants negotiate and settle with their Attorney, have no ground to challenge the same. The only ground urged is of the Attorney having settled for much less than the claim. However that is what Settlement is all about. The objecting plaintiffs forget that the defendants

who were earlier denying altogether any right/share of the plaintiffs, have agreed to sell the house and pay a share therein, howsoever minuscule, to the plaintiffs. The rights, in a Family Settlement cannot be measured in a scale. The plaintiffs are siblings and the only reason that the Courts have freed family settlements from clutches of technicalities is that the consideration for such Family Settlement is not tangible but abstract i.e. love and affection and restoration of family harmony. Thus, the action of the agent of the plaintiffs cannot be said to be fraudulent merely for the reason of the Settlement being for less than the claim.

27. It may be noticed that there was a serious issue as to the entitlement at all of the plaintiffs to any share whatsoever in the property.

28. On enquiry, Mr. Sachin Jain, counsel for objecting plaintiffs confirms that none of the objecting plaintiffs were in possession of the property which was in the sole enjoyment of the defendants. Under the Settlement, the property has been agreed to be sold within two years and part of the sale consideration though much less than the original claim of the plaintiffs has been agreed to be disbursed to the plaintiffs.

29. It is also worth mentioning that the objecting plaintiffs had not only trusted their Attorney who as aforesaid is the husband of plaintiff No.3 to

settle on their behalf but had also trusted the plaintiffs No.2 & 3 only to prove the case also. The list of witnesses filed by plaintiffs mentions the plaintiffs No.2 & 3 only as witnesses. The objecting plaintiffs were not even willing to step into the witness box and cannot now blame the plaintiffs No.2 & 3 or the husband of plaintiff No.3.

30. I am therefore not satisfied about any illegality in the compromise arrived at between the parties.

31. Once the compromise arrived at between the parties is found to be lawful, there is no reason not to dispose of the suit in terms thereof. The decision of the Division Bench of this Court in *Naresh Kumar Vs. Ashok Arora* my also be taken note of, where approving the earlier dicta of this Court in *Double Dot Finance Ltd. Vs. Goyal MG Gases Ltd.* 117 (2005) DLT 330, the Court held that if such pleas are sustained, the sanctity and purpose of amicable settlements between parties would stand totally eroded and such tendency need to be checked.

32. Accordingly, I.A. No.7178/2013 filed by the objecting plaintiffs for restraining withdrawal of the suit is dismissed and the compromise as contained in the Deed of Family Settlement dated 16th April, 2013 is allowed.

33. The counsel earlier appearing for all the plaintiffs and the counsels for the defendants seek decree in terms of the Deed of Family Settlement.

34. The suit is accordingly decreed in terms of the Deed of Family Settlement dated 16th April, 2013 which shall form part of the decree sheet, leaving the parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MAY 02, 2013

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