

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

+ **RFA No.472/2018**

% **31st May, 2018**

MADAN SINGH & ORS. Appellants

Through: Mr. Praveen Kumar, Advocate.

versus

BHUPINDER SINGH & ORS. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.23887/2018(exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.23886/2018(for condonation of delay)

2. For the reasons stated in the application, delay of 200 days in filing the appeal is condoned.

C.M. stands disposed of.

RFA No.472/2018 and C.M. Nos.23884/2018 (under Order I Rule 10 CPC) & 23885/2018(stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit

impugning the order of the Trial Court dated 12.7.2017 by which the trial court has disposed of the suit as compromised as between the respondent nos. 1 and 2/defendant nos.1 and 2 with respect to property no. B-9, Rajouri Garden, New Delhi and with respect to the other property which was subject matter of the suit for partition bearing no. 2898 out of Khasra no.2932/2614, Block-I, Ragarpura, Arya Samaj Road, Karol Bagh, New Delhi the court declined to pass a compromise decree so far as this Karol Bagh property is concerned on account of appellants/plaintiffs having 3/4th out of the total share in the Karol Bagh property. The appellants/plaintiffs are aggrieved in the suit being disposed of as compromised between the respondent nos. 1 and 2/defendant nos.1 and 2 *qua* property no.B-9, Rajouri Garden, New Delhi.

4. The facts of the case are that the appellants/plaintiffs filed the subject suit for partition with respect to two properties. The first property was the Karol Bagh property and the second property was the Rajouri Garden property. As regards the Karol Bagh property, the case of the appellants/plaintiffs was that the three appellants/plaintiffs and the respondent no.1/defendant no.1 were the equal co-owners of 1/4th

share in this property in terms of the Conveyance Deed dated 9.7.1956 executed in their favour. As regards the Rajouri Garden property, the appellants/plaintiffs in the plaint pleaded that the property belonged to their father Sh. Dhanna Singh who had executed his registered Will dated 21.10.1985. As per the appellants/plaintiffs by virtue of this Will dated 21.10.1985 (and as per the interpretation of the appellants/plaintiffs of this Will) the mother Smt. Shahni Devi i.e the widow of late Sh. Dhanna Singh became the sole owner of the Rajouri Garden property. It was further pleaded in the plaint that Smt. Shahni Devi had left behind her Will dated 8.12.1993 giving 30% rights in this Rajouri Garden property to the respondent no.2/defendant no.2, 13% to the appellant no.1/plaintiff no.1, 20% to the appellant no.2/plaintiff no.2, 13% to the appellant no.3/plaintiff no.3, 13% to the respondent no.1/defendant no.1 and 2.5% each to the respondent nos. 3 and 4/defendant nos.3 and 4, with 6% value of the property to be given for charitable purposes.

5. The suit was contested by the respondent nos. 1 and 2/defendant nos.1 and 2 as regards the Rajouri Garden property. As per the pleading of the respondent no.1/defendant no.1 it was seen that

with respect to Rajouri Garden property three Wills were propounded by respective parties being dated 21.10.1981, 18.12.1981 and 8.12.1993 whereas the Will dated 21.10.1981 and 18.12.1981 were propounded by the respondent no.2/defendant no.2, the third Will dated 8.12.1993 was propounded by the appellants/plaintiffs. Respondent no.2/defendant no.2 pleaded illegality and invalidity of the Will propounded by appellants/plaintiffs. Respondent no.2/defendant no.2 denied execution of the Will dated 21.10.1981 and she pleaded that Sh. Dhanna Singh had in fact executed his Will dated 21.10.1981 bequeathing the Rajouri Garden property to the respondent no.2/defendant no.2. As regard the Karol Bagh property there was no dispute that the three appellants/plaintiffs and respondent no.1/defendant no.1 were 1/4th owners each of the Karol Bagh property. As regards the Rajouri Garden property the respondent nos. 1 and 2/defendant nos.1 and 2 denied that late Smt. Shahni Devi died leaving behind her Will dated 8.12.1993 as contended by the appellants/plaintiffs. Respondent no.1/defendant no.1 denied the interpretation which was being put by the appellants/plaintiffs to the Will of Sh. Dhanna Singh dated 21.10.1981. Reference was also

made to other litigations pending between the parties where the Wills were propounded.

6. When the suit was first filed, it was filed in the original side of this Court. Right of the appellants/plaintiffs to lead evidence was first closed in terms of the order passed by this Court in the suit on 24.3.2012, as seen from the list of dates filed with this appeal. That order was challenged in the appeal before a Division Bench of this Court and one opportunity was granted by the Division Bench to the appellants/plaintiffs to lead their evidence. Once again however the appellants/plaintiffs failed to lead evidence and therefore the right of the appellants/plaintiffs to lead evidence was closed by the order dated 21.8.2015. This order dated 21.8.2015 has become final as there was no challenge to this order and thus the position which emerges is that appellants/plaintiffs' right to lead evidence was closed and therefore appellants/plaintiffs have not lead any evidence to prove the fact that Smt. Shahni Devi died leaving behind her Will dated 8.12.1993, and as was propounded by the appellants/plaintiffs. The suit was thereafter transferred to the District Courts and matter was fixed for leading of evidence by the respondent nos. 1 and 2/defendant nos.1 and 2.

Certain evidence was led by the respondent nos. 1 and 2/defendant nos.1 and 2 and which is recorded in the orders passed in the suit on 26.9.2016 and 22.10.2016. At this stage, the respondent nos. 1 and 2/defendant nos.1 and 2 *inter-se* compromised the suit in terms of the Settlement Deed Ex.D1. Orders were accordingly passed by the Court on 18.5.2017 recording such facts and this order and statements dated 18.5.2017 read as under:-

“Order dated 18.5.2017

File taken up today on the application moved on behalf of defendant no.1 and 2.

Present: Both the defendants in person.
Sh. Prashant Mehta, counsel for defendant no.1.
Sh. Sanjeev Manchanda, counsel for defendant no.2.
None for remaining defendants.

It is stated by parties that matter has been compromised between the parties. Deed of settlement annexed with the application.

Both the defendants have given their statement today in the court with this regard.

At request, let the matter be listed for consideration on the application on 27.05.2017 at 2 PM. The date of 05.06.17 stands cancelled.

sd/-

Sugandha Aggarwal
ADJ/West/Delhi
18.05.2017

Statements of defendant nos.1 and 2

Joint Statement of Sh. Bhupinder Singh Narang (Defendant no.1) and Smt. Paramjeet Kaur (Defendant no.2)

ON SA

Both the defendants have entered into a Memorandum of understanding/Settlement Deed dated 18.05.17. By the said settlement deed, both the defendants have compromised/settled all pending disputes in respect of suit properties. The said MOU has been entered into with free will and without any coercion which is Ex.D-1. We identify our signatures on Ex.D-1.

RO & AC

sd/-

sd/-

Sugandha Aggarwal

7. Pursuant to the order and the statement recorded on 18.5.2017, the impugned order has been passed on 12.7.2017 disposing of the suit. As regards the Rajouri Garden property on account of compromise between the respondent nos. 1 and 2/defendant nos.1 and 2 the same was accepted only *qua* the Rajouri Garden property but as regards the Karol Bagh property compromise was not accepted inasmuch as it was an undisputed position as per the pleadings of all the parties that appellants/plaintiffs had 3/4th ownership interest in the Karol Bagh property. The impugned order dated 12.7.2017 reads as under:-

“12.07.2017

Present: None for plaintiff.

Sh. Prashant Mehta, counsel for defendant no.1

Defendant no. 1 is present in person.

Sh. Sanjeev Bansal, counsel for defendant no. 2

Husband of defendant no. 2 is present.

None for defendant no. 3 and 4.

Perusal of record shows that plaintiff has not been appearing in this court for the last many dates. PE was also closed on 16.08.2015 and thereafter the matter was contested between defendant no. 1 and 2. Considering that plaintiff is not appearing in the court, it appears that plaintiff is not interested in pursuing the case. Defendant no.1 and 2 have already entered into compromise. Statement in this regard recorded separately on 18.05.2017. Settlement deed is also placed on record which is Ex-D-1.

It is stated on behalf of defendant no.1 and 2 that nothing remains to be performed and all the disputes are settled between the parties.

However, Ld. Counsel for defendant no.1 insists that a compromise decree be passed with respect to property bearing no. 2898 out of Khasra no. 2932/2614, Block-I, Ragarpura, Arya Samaj Road, Karol Bagh, New Delhi in terms of settlement deed only to the extent that defendant no.1 alongwith all the plaintiffs is entitled to 1/4th share each in the said property. It is further stated that said terms are incorporated in the settlement deed Ex. D-1. It is further submitted that the prayer made by plaintiff in the suit also states that all the defendants are entitled for 1/4th share in the abovementioned property. It is stated that as plaintiff prayer was also this that defendant no. 1 alongwith all the plaintiffs are entitled to 1/4th share each in the said property, hence, compromise decree be passed only to the limited extend thereby declaring defendant no.1 alongwith plaintiffs are entitled for 1/4th share each in the abovementioned property.

Plaintiff has not been appearing before court. The settlement deed is not signed by any other parties except defendant no.1 and defendant no.2. By passing a compromise decree in view of the settlement deed, defendant no.1 alongwith plaintiffs will be vested with certain rights. If the court passes a compromise decree as prayed thereby declaring that all the plaintiffs alongwith defendant no.1 are entitled for 1/4th share each than a right accrues in favour of defendant no.1 to execute the same against the plaintiffs who are not present in the court and neither party to the settlement. Hence, in these circumstances, prayer to pass a compromise decree in terms of settlement deed dated 18.05.2017 with respect to property no. 2898 out of Khasra no. 2932/2614, Block-I, Ragarpura, Arya Samaj Road, Karol Bagh, New Delhi in favor of defendant no.1 is declined.

At this stage, ld, counsel for defendant no.1 submits that settlement deed made be considered only with property bearing no. B-9, Rajouri Garden, New Delhi and he may be granted liberty to pursue the case for property bearing no. 2898 out of Khasra no. 2932/2614, Block-I, Ragarpura, Arya Samaj Road, Karol Bagh, New Delhi.

Request is allowed.

Let settlement arrived between the parties be considered only for the property bearing no. B-9, Rajouri Garden, New Delhi and the matter stands disposed off qua property no. B-9, Rajouri Garden, New Delhi in terms of settlement.

Be listed for further proceedings on 05.09.2017.

Interim order shall continue with respect to property bearing no. 2898 out of Khasra no. 2932/2614, Block-I, Ragarpura, Arya Samaj Road, Karol Bagh, New Delhi. Needless to say, as matter stands disposed off qua property bearing no. B-9, Rajouri Garden, New Delhi, interim order if any stands vacated.

sd/-

Sugandha Aggarwal

8. In my opinion, no fault can be found with the impugned order disposing of the suit for the Rajouri Garden property because appellants/plaintiffs’ claim for Rajouri Garden property was based upon the Will of the mother Smt. Shahni Devi dated 8.12.1993. As already stated above, appellants/plaintiffs’ right to lead evidence was closed not once but twice and therefore there is no evidence by the appellants/plaintiffs to prove the Will dated 8.12.1993 of Smt. Shahni Devi relied upon by them with respect to Rajouri Garden property. There was therefore only the pleadings and the evidence of the respondent nos. 1 and 2/defendant nos.1 and 2 with respect to the Wills propounded by the respondent no.2/defendant no.2 in her favour with respect to Rajouri Garden property. Therefore, it was surely possible for the respondent nos. 1 and 2/defendant nos.1 and 2 to *inter-se* arrive at an agreement as regards the Rajouri Garden property once the appellants/plaintiffs led no evidence. Disputes as regards the property are resolved either by a judgment of the court on merits or by parties compromising the matter, and once the appellants/plaintiffs failed to lead evidence and pursue the suit for partition then in such a

case respondent nos. 1 and 2/defendant nos.1 and 2 could surely enter into a compromise with respect to Rajouri Garden property for which no claim could be established by the appellants/plaintiffs in terms of their propounded Will dated 8.12.1993 of Smt. Shahni Devi.

9. Learned counsel for appellants/plaintiffs very passionately argued that appellants/plaintiffs be given one more opportunity to prove their case, but I fail to understand as to how another opportunity can be granted by this Court in view of the fact that appellants/plaintiffs first failed to lead evidence resulting in closure of their evidence on 24.03.2012 and thereafter once again evidence was closed when the liberty to lead evidence in terms of the order passed by the appellate court was not utilized by the appellants/plaintiffs. The order dated 21.08.2015 has become final thereby closing right of the appellants/plaintiffs to lead evidence. Appellants/plaintiffs at this stage cannot challenge the order dated 21.08.2015, more so because there are no sufficient grounds urged by the appellants/plaintiffs, nor could be validly urged, that the order dated 21.08.2015 be recalled at this stage and appellants/plaintiffs be allowed to lead evidence.

10. Learned counsel for the appellants/plaintiffs argued that the respondent nos. 1 and 2/defendant nos.1 and 2 could not have arrived at a compromise because the respondent no.2/defendant no.2 had propounded Wills which had to be proved before a court, only then could a court pass a decree. However this argument is misconceived inasmuch as disputes with respect to a property are resolved either in terms of a judgment by court on merits after parties lead evidence or the parties can compromise their disputes in terms of settlement. Appellants/plaintiffs did not pursue cases for claiming any rights to the Rajouri Garden property and therefore *inter se* respondent nos. 1 and 2/defendant nos.1 and 2, there could always be a settlement with respect to the Rajouri Garden property, and appellants/plaintiffs now cannot question any compromise entered into between the respondent nos. 1 and 2/defendant nos.1 and 2 as regards the Rajouri Garden property more so in view of the fact that not only the appellants/plaintiffs failed to lead evidence, they were not even appearing in the suit from 21.08.2015 till the passing of the impugned order on 12.07.2017. This argument of the appellants/plaintiffs is therefore rejected that there had necessarily to be a judgment by the

court on merits with respect to the disputes of the Rajouri Garden property.

11. I would like to note that trial court has been more than fair in not accepting any compromise between respondent nos. 1 and 2/defendant nos.1 and 2 as regards Karol Bagh property in view of the admitted position in terms of plaint filed by the appellants/plaintiffs and the written statement filed by the respondent nos. 1 and 2/defendant nos.1 and 2 whereby three appellants/plaintiffs were admittedly owners of 3/4th share in the suit property at Karol Bagh with the balance 1/4th share in the Karol Bagh property vesting with the respondent no.1/defendant no.1. Trial court therefore by the impugned order has decreed the suit as compromised between respondent nos. 1 and 2/defendant nos. 1 and 2 only for the Rajouri Garden property and not for the Karol Bagh property.

12. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

MAY 31, 2018
Ne/SRwt

VALMIKI J. MEHTA, J