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

+ **CS(OS) 815/2012 & I.A. 20371/2013**

MRS. KANCHAN BATHEJA Plaintiff
Through: Ms. Neha Sharma, Advocate with
Mr. D. Verma, Advocate.

versus

MR. PRAMOD BATHEJA & OTHERS Defendants
Through: None.

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Date of Decision : 17th March, 2015

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for recovery of Rs.1,47,50,000/- along with pendente lite and future interest and for declaration, delivery up and cancellation of Memorandum of Family Settlement purportedly executed on 04th September, 2010.

2. On 30th July, 2013, this Court had framed the following issues:-

“(i) Whether the Plaintiff is entitled to a decree in the sum together with interest as prayed for? OPP

(ii) Whether the Memorandum of Family Settlement dated 4th

September, 2010 is liable to be declared as illegal, null and void as claimed by the Plaintiff? OPP

(iii) Whether the Plaintiff has received the entire amount as claimed by her? OPD

(iv) Whether the plaint is liable to be dismissed on the ground of suppression of material facts? OPD

(v) Relief.

3. Present case was heard on 05th February, 2015, 11th March, 2015 as well as today. It is pertinent to mention that none has been appearing for the defendants since 15th January, 2015.

4. The relevant facts of the present case are that the plaintiff and defendant No.2 are the widowed daughter-in-laws of late Mr. Bhagwan Das Batheja. While defendant No.4 is the wife, defendant No.1 is the only surviving son of late Mr. Bhagwan Das Batheja. Defendant No.3 is the daughter of defendant No.2.

5. Late Mr. Bhagwan Das Batheja owned the entire first and second floors and terrace of R-675, New Rajinder Nagar, New Delhi as well as the ground floor of Flat No.F-279, Rajinder Nagar, New Delhi and C-2/301, Exotica Apartments, Sector-53, Golf Course Road, Gurgaon.

6. Prior to executing his Will, late Mr. Bhagwan Das Batheja had entered into an Agreement to Sell with respect to R-675, New Rajinder Nagar and an Agreement for Purchase of C-2/301, Exotica Apartments for which he had made advance payment of Rs.50,00,000/-.

7. Late Mr. Bhagwan Das Batheja vide his registered Will dated 19th July, 2010 bequeathed R-675, New Rajinder Nagar and C-2/301, Exotica

Apartments, Golf Course Road, Gurgaon in favour of his son-defendant No.1 along with all movable assets including bank accounts, shares, bonds etc. The Will stipulated that defendant No.1 had to complete the sale transaction of R-675, New Rajinder Nagar property and from the sale proceeds, pay the balance consideration for C-2/301, Exotica Apartments property.

8. Under the Will, plaintiff was not given any immovable property, but was bequeathed a sum of Rs.1.25 crores which defendant No.1 was to deposit in plaintiff's bank account from the sale proceeds of R-675, New Rajinder Nagar as well as from his own resources. The relevant portion of the Will under which plaintiff was bequeathed Rs.1.25 crores is stipulated hereinbelow:-

“AND WHEREAS, after my demise my son, Mr. Pramod Batheja will deposit a sum of Rs.1.25 crores (Rupees one Crore Twenty Five Lacs Only) in the name of my daughter-in-law Mrs. Kanchan Batheja, W/o Late Shri Vinod Batheja which money will be deposited out of balance sale consideration receivable from the purchaser and also out of funds arranged by my son through his own sources. This Will also be subject to the condition that Mrs. Kanchan Batheja would not raise any objection to the Will being executed by me.”

(emphasis supplied)

9. After the demise of Mr. Bhagwan Das Batheja on 24th August, 2010, defendant No.1 got the plaintiff to sign the Memorandum of Understanding dated 04th September, 2010 wherein it was stated that defendant No.1 would pay a sum of Rs.1.25 crores to the plaintiff which would be in full and final settlement of the plaintiff's dues under the Will dated 19th July, 2010.

10. While plaintiff claims that defendant No.1 has till date not paid the

amount of Rs.1.25 crores due under the Will, the defendant No.1's case in the written statement is that plaintiff was paid the said amount by Mr.Bhagwan Das Batheja prior to his death. Since in the pleadings, there is considerable emphasis by both the parties on para 4 of the Memorandum of Understanding, the same is reproduced hereinbelow:-

"4. That in keeping with the said Will Shri Pramod Batheja will pay a sum of Rs.1.25 crores to Mrs. Kanchan Batheja as full and final settlement of her entitlement under the said Will, the receipt whereof Mrs. Kanchan Batheja do hereby admit and acknowledge being the full and final amount receivable by her under the Will of Shri Bhagwan Das Batheja and upon receipt of the same do hereby declare and confirm that she has no right, title or interest in any manner whatsoever in respect of the bequeath made by Shri Bhagwan Das Batheja in favour of other beneficiaries and further declare and confirm that Shri Pramod Batheja shall have full authority and power to sign and execute the sale deed in respect of the portion of the New Rajinder Nagar Property bearing No.R-675 in favour of M/s Space Infra Project Pvt. Ltd. or their nominees and convey the title in favour of the Purchaser and receive the entire balance sale consideration from the Purchaser in his name to which I have no objection in any manner whatsoever."

(emphasis supplied)

FINDINGS ON ISSUES (i) & (iii)

11. Having heard the learned counsel for the plaintiff and having perused the paper book, this Court finds that the Will dated 19th July, 2010 of late Mr.Bhagwan Das Batheja is not disputed in the present proceedings. Probate of a Will is not a mandatory requirement in Delhi in view of Section 213(2)(i) read with Section 57(a) & (b) of the Indian Succession Act 1925. Further, the Indian Succession Act, 1925 recognises 'Onerous Bequests'.

Section 122 of the Indian Succession Act, 1925 stipulates Onerous Bequests-*Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.*

12. In the Will, late Mr. Bhagwan Das Batheja has very clearly and categorically stated that after his death, defendant No.1 should deposit in the bank account of the plaintiff a sum of Rs.1.25 crores. This Court is of the view that once late Mr. Bhagwan Das Batheja had made a direction in the Will that plaintiff will be paid from the sale proceeds of R-675, New Rajinder Nagar by defendant No.1 as also from his own resources, there was no need or obligation on the part of late Mr. Bhagwan Das Batheja to make any such payment during his lifetime.

13. In fact, in the Will, there was a specific direction that money will be deposited in plaintiff's bank account. In any event, Rs.1.25 crores is too large a sum of money to be paid in cash. Had Rs.1.25 crores actually been paid by late Mr. Bhagwan Das Batheja prior to his death, the records of such payment would be available in his bank statement.

14. It is not the defendant No.1's case that he has paid the amount of Rs.1.25 crores to the plaintiff. In any event, the plaintiff has categorically stated in the plaint as well as in her evidence that defendant No.1 has not paid her Rs.1.25 crores under the Will. The onus to prove that plaintiff had received the aforesaid amount was on the defendants. The defendant No.1 in his cross-examination has also admitted that after his father's death he had been managing and in control of bank accounts of his father, yet he stated that he did not know by what mode and in what manner his father had paid Rs.1.25 crores. Consequently, defendant No.1's defence that plaintiff had been paid Rs.1.25 crores by Mr.Bhagwan Das Batheja during his lifetime is

disbelieved.

15. This Court has perused para 4 of the Memorandum of Understanding and is of the opinion that it does not record the factum of payment of Rs.1.25 crores. On the contrary, it states that defendant No.1 will pay a sum of Rs.1.25 crores to the plaintiff and upon receipt of the same she would have no right, title or interest in respect of the bequeathed made by late Mr. Bhagwan Das Batheja.

16. Consequently, issues No.(i) and (iii) are decided in favour of the plaintiff.

FINDING ON ISSUE (ii)

17. Further, as this Court is of the view that Memorandum of Family Settlement dated 04th September, 2010 does not amount to an acknowledgement of payment of Rs.1.25 crores, there is no necessity of declaring the Memorandum of Family Settlement as illegal, null and void as claimed by the plaintiff.

FINDING ON ISSUE (iv)

18. This Court also finds that the averment in the written statement with regard to suppression of material fact by the plaintiff is devoid of material particulars. Further, no evidence has been led by defendant No.1 in support of the said issue. Consequently, the said issue of suppression of material facts by the plaintiff is decided against the defendants.

19. In view thereof, the present suit is decreed against defendant No.1 for a sum of Rs.1.25 crores. Since the amount was to be received under a Will and not as a commercial transaction, this Court only grants simple interest

@5% per annum from the date of death of late Mr. Bhagwan Das Batheja till the date of payment.

MANMOHAN, J

MARCH 17, 2015

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