

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

+ CS(OS) 1306/2011

Decided on : 26.02.2015

IN THE MATTER OF:

VIKRAM BEHL

..... Plaintiff

Through : Ms. Shobhna Takiar, Advocate with
plaintiff in person

versus

SUDHIR BEHL AND ORS.

..... Defendants

Through : Mr. Aditya Dewan, Advocate for D-1
Mr.Sacchin Puri & Ms.Aastha Lumba, Advocates
for D-2

Mr.Mayank Wadhwa, Advocate for D-3

Mr.Arush Khanna, Advocate for D-4

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.(Oral)

IA No.15108/2014(by the plaintiff u/S 24 r/w S 151 CPC for transfer of Ex.Pet. No.42/2011) & IA No.17520/2014(by the plaintiff u/S 51, 94 r/w Order 40 CPC)

1. Counsel for the plaintiff states that as Execution Petition No.42/2011 has been filed in the Saket Courts, Delhi, and the Executing court has already issued orders for partitioning the immovable property, subject matter of the present suit, he does not wish to press the present applications.

2. In view of the aforesaid submission, the applications are disposed of.

IA No.3978/2015(by D-1 u/S 151 CPC)

1. Learned counsel for the defendant No.1 states that he has filed the present application in opposition to IA No.9200/2014 and now that the said application has been dismissed, he does not wish to press the same.

2. Accordingly, the application is disposed of, as not pressed.

IA No.9200/2014(by the plaintiff u/S 151 CPC)

1. The present application has been filed by the plaintiff, stating *inter alia* that the parties had met for making efforts to try and negotiate a settlement on 2.4.2014 and counsel for the plaintiff had circulated a draft Memorandum of Family Settlement for the perusal of all the parties and for finalization of the compromise terms. A copy of the said draft Memorandum of Family Settlement has been enclosed by the plaintiff along with the list of documents filed on 5.5.2014.

2. It has been averred in the application that as the defendants No.1, 2 & 3 did not respond to the draft compromise agreement, the present application has been filed for seeking directions to the defendants to place on record their objections, if any, thereto.

3. On a query posed to the counsel for the plaintiff as to whether the document described as a 'compromise agreement' was actually signed by all the parties, learned counsel concedes that it does not bear their signatures. In such circumstances, it would be improper to term the document as a 'compromise agreement'.

4. Counsel for the defendant No.3 states as far as his client is concerned, he does not have any objection to sharing the movable properties of their deceased mother with the other legal heirs to the extent of 1/5th share each.

5. Counsel for the defendant No.4 states that his client has already relinquished his 1/5th share in the movable assets of the deceased mother, in favour of the plaintiff. The aforesaid statement made on behalf of the defendant No.4 has already been recorded in para 3 of the order dated 21.5.2013.

6. Counsels for the defendants No.1 & 2 state that their clients have not appended their signatures on the document described as a 'compromise deed' and they are not agreeable to the suggestions made by the plaintiff that they relinquish their 1/5th share each in the movable assets of their deceased mother, in his favour.

7. The court is not inclined to entertain any objections in respect of the purported `compromise deed' as it has not attained finality, except for the defendant No.4, on whose behalf a statement has been made by the counsel as recorded hereinabove.

8 The present application is disposed of.

CS(OS) 1306/2011

1. The suit is listed for framing of issues.

2. Counsels for the parties state that the auction of the immovable property, subject matter of the partial decree passed in the suit, shall take place on 21.4.2015, in the execution proceedings pending in the trial court.

3. By now, the controversy in the present case has narrowed down to the partition of the movable assets left by the deceased mother of the parties. It has been enquired from the counsels for the parties if they have identified the movable assets in respect of which the dispute survives.

4. Learned counsel for the plaintiff states on instructions from her client that an inventory of the entire movable assets left by the deceased mother was filed under an index dated 24.3.2014, but now the plaintiff seeks to confine his claim in the suit to those movable items, that have been specifically mentioned in the draft Memorandum of Family

Settlement, a copy whereof has been filed under an index dated 5.5.2014.

5. Now the plaintiff proposes to confine his claim in the suit to the monies, if any, lying in two Bank accounts in the name of the deceased mother, Lt.Smt.Shakuntla Behl, mentioned at S.No. 1 & 2 of the table to the Memorandum of Family Settlement, the Capital Gain Bonds issued by the National Housing Bank mentioned at S.No.3 of the table, the share certificates, (both demat and physical) mentioned at S.No.4 of the table along with their details mentioned in Annexure-1 & 2 and the jewellery/ornaments of the deceased mentioned at S.No.5 of the table with the details given in Annexure-3.

6. In view of the aforesaid submission, with the consent of the parties, the claim in the present suit is confined to the aforesaid articles/valuables. Counsels for the parties jointly state that the maturity amounts of the Capital Gain Bonds have already been deposited in the Registry and are lying in an FDR.

7. Coming to the jewellery/ornaments mentioned by the plaintiff at S.No.5 of the table enclosed with the Draft Memorandum of Family Settlement, Mr.Puri, learned counsel for the defendant No.2 states that he has furnished a list of the jewellery items of the deceased, that are in

the possession of his client and they have been set out in paras 7 & 8 of the written statement.

8. Counsels for the parties state that they accept the said list of jewellery items as the final list and have no objection if the said jewellery is sold and the sale proceeds divided to the extent of 1/5th share each, with the share of the defendant No.4 therein, going to the plaintiff.

9. As for the details of the shares mentioned in Annexures 1 & 2 to the table enclosed with the draft Memorandum of Family Settlement, all the parties are ad idem that they shall be entitled to 1/5th share each therein or their market value, with the defendant No.4's 1/5th share going to the plaintiff.

10. Coming to the Capital Gain Bonds, the maturity value whereof has been deposited in the Registry and is lying in a FDR, all the parties agree that it be declared that they are entitled to the extent of 1/5th share each in the maturity amount of the FDRs with 1/5th share of the defendant No.4 going to the plaintiff.

11. In view of the submissions made by the parties hereinabove, a final decree is passed, in respect of the movable assets of the deceased mentioned in paras 5-9 above. It is declared that the plaintiff and the defendants No.1, 2, 3 & 4 are entitled to 1/5th share each in the maturity

amounts of the Capital Gain Bonds issued by the National Housing Bank, that are lying in a FDR with the Registry, the share certificates(physical/demat) detailed in Annexures 1 & 2 enclosed with the table to the Draft Memorandum of Family Settlement and the jewellery/ornaments details whereof have been furnished by the defendant No.2 in paras 7 & 8 of the written statement. Further, as agreed by the defendant No. 4, his 1/5th share in the aforesaid moveable articles/valuables shall go to the plaintiff. Order accordingly. The Registry is directed to draw a decree sheet on the above terms.

12. This leaves the amounts lying in the two bank accounts held by Lt.Smt.Shakuntla Behl in the State Bank of India, Defence Colony Branch. It has yet to be ascertained as to the extent of deposits lying in the said accounts. Issue notice to the Manager of the said Bank directing him to file a statement of account giving the details of the monies lying in accounts bearing No. 10617024122 and 10617077720, by way of an affidavit within two weeks.

13. The plaintiff shall file the process fees within one week for effecting service on the Manager of State Bank of India, Defence Colony Branch by speed post, ordinary process, through courier as also **DASTI**, returnable on the date fixed. The notice shall indicate that the Manager of the Bank shall file an affidavit giving the details of the aforesaid

accounts maintained in the name of Lt.Smt.Shakuntla Behl as the first holder, along with the statement of account.

14. List on 10.4.2015.

FEBRUARY 26, 2015
mk/rs

(HIMA KOHLI)
JUDGE