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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA(OS) 113/2014 & CM No.12166/2014

KISHORI LAL MONGA

..... Appellant

Through Ms. Anusuya Salwan and Mr. Kunal Kohli, Adv. alongwith Kishori Lal Monga and his grandson

versus

VIMLA MONGA

..... Respondent

Through Mr. Samir Malik, Adv. with Ms. Rouchyka Belani, attorney of respondent in person

+ FAO(OS) 484/2014 and CM No.18977/2014

KISHORI LAL MONGA

..... Appellant

Through Ms. Anusuya Salwan and Mr. Kunal Kohli, Adv. along with Kishori Lal Monga and his grandson

versus

STATE & ANR.

..... Respondents

Through Mr. Samir Malik, Adv. for R-2 with Ms. Rouchyka Belani, attorney of respondent in person

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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21.04.2015

1. The instant appeal has been filed by Shri Kishori Lal Monga, who was the son of Late Shri A.N. Monga against Ms. Vimla Devi, wife of Late Shri

J.N. Monga (predeceased son of Late Shri A.N. Monga). It appears that a property bearing No.A-315, Defence Colony, New Delhi in the name of Late Smt. Ramlubhai Monga , wife of Late Shri A.N. Monga, was acquired in her name by the family members.

2. Smt. Vimla Monga had filed CS(OS) No. 1059/1979 seeking partition of the Defence Colony property. Smt. Ramlubhai Monga expired on 08.04.1983 during the pendency of the suit, leaving the parties hereto as the only surviving relatives.

3. It appears that Smt. Ramlubhai Monga had executed a registered testamentary bequest in favour of Shri Kishori Lal Monga who had sought probate of the said Will through Test Case No.47/1990.

4. The parties before us were contesting the claims of each other in these two proceedings which were pending on the Original Side. The said two cases came up for consideration before the learned Single Judge who by a judgment and decree dated 31.03.2014 rejected Test Case No.47/1990 and accepted the prayer of the respondent in CS(OS) No. 1059/1979 herein holding that the parties hereto were entitled to 50% share each in the Defence Colony property. As a result by the judgment dated 31.03.2014, the learned Single Judge passed a preliminary decree of partition in respect of

the property A-315, Defence Colony, New Delhi.

5. Aggrieved thereby by way of RFA 113/2014, the preliminary decree dated 31.03.2014 has been challenged. Shri Kishori Lal Monga has separately challenged the rejection of Test Case No.47/1990 by way of FAO (OS) 484/2014.

6. During the pendency of these appeals, in order to explore the possibility of an amicable settlement of their disputes, the parties were referred to the Delhi High Court Mediation and Conciliation Centre by our order dated 19.02.2015. It appears that the mediation proceedings were fruitful and the parties have amicably resolved their disputes. The settlement agreement dated 30.03.2015 in original reached between the parties has been placed before us by the Delhi High Court Mediation and Conciliation Centre.

7. It appears that on account of old age Ms. Vimla Monga was unable to travel to Delhi. She consequently authorised her daughter Ms. Rouchyka Belani by way of a General Power of Attorney dated 22.10.2011(copy whereof has been proved before us as Exh.P-II) as her attorney to represent her in the mediation proceedings. The appellant - Shri Kishori Lal Monga was also assisted by his sons in the mediation proceedings.

8. We have separately recorded the statements of the appellant and

respondent's attorney in respect of the Settlement Agreement dated 30.03.2015 arrived at between them. The perusal of the Settlement Agreement dated 30.03.2015 would show that parties have voluntarily entered into the settlement agreement without any force and coercion. The settlement is in writing and there is no legal impediment in accepting the same. Both the parties pray that the suit and testamentary case as well as the present appeals be disposed of in terms of the settlement and a decree be passed.

9. A preliminary decree holding that the parties are entitled to 50% share each in respect of property bearing No.A-315, Defence Colony, New Delhi, had been passed in CS(OS) 1059/1979. In the settlement (Ex. P-I) arrived at between the parties, they have agreed that Shri Kishori Lal Monga has 57% share and the respondent shall have 43% share in the property. The parties have also agreed on terms about the disposal of the property and division of proceeds thereto. In view of the agreement between the parties, it would be necessary to modify the judgment and decree dated 31.03.2014 to bring it in consonance with the settlement.

10. We accordingly pass the following order:-

- (i) The settlement agreement dated 30.3.2015 (Exh. P-I) is accepted and taken on record.
- (ii) As a result Shri Kishori Lal Monga is entitled to 57% share in the property No. A-315, Defence Colony, New Delhi while Smt. Vimla Devi is entitled to 43% share in the property, A-315, Defence Colony, New Delhi.
- (iii) The judgment and decree dated 31.03.2014 in CS(OS) No.1059/1979 shall consequently stand modified by the terms of the settlement recorded in the agreement dated 30.03.2015 (Exh. P-I).
- (iv) In view of the settlement between the parties, the judgment dated 31.03.2014 dismissing the Test Case No.47/1990 is upheld.
- (v) Undertakings given by the parties to abide by the terms of the settlement are hereby accepted and they shall remain bound by the same.
- (vi) The property shall be sold in terms of Settlement Agreement dated 30.3.2015 (Exh. P-I) and final decree in terms thereof is also passed hereby.

- (vii) In view of the settlement between the parties and the final decree passed by us today, CS(OS) No. 1059/1979 is decreed in terms of Settlement Agreement dated 30.03.2015 (Exh. P-I) which shall form part of the decree.
- (viii) The Registry shall draw up the decree sheet in terms of the Settlement Agreement dated 30.03.2015.
- (ix) FAO(OS) 484/2014 is dismissed and RFA (OS) 113/2014 is disposed of in terms of the Settlement Agreement dated 30.03.2015 (Exh. P-I).


GITA MITTAL, J


P.S. TEJI, J

APRIL 21, 2015

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