

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) No.1368/2011**

% **22nd April, 2016**

HARICHINTAN SINGH MALIK Plaintiff
Through: Mr Ashish Dholakia, Adv

versus

SAMARJIT SINGH MALIK & ORS. Defendants
Through: Mr Rahul Singhal, Advocate for
defendant no.1
Mr Sanjay Shandilya, Advocate
for defendant no.2

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This is a suit for recovery of a sum of Rs. 7,33,23,168/- filed by the plaintiff Sh. Harichintan Singh Malik against three defendants namely Sh. Samarjit Singh Malik-defendant no.1, Sh. Baljit Singh Malik-defendant no.2 and M/s. Greatway Estates Ltd-defendant no.3. A reading of the plaint, and this is conceded by the learned counsel for the plaintiff, shows that the moneys which are sought to be recovered by way of the present suit are those moneys which are payable by virtue of the Compromise Order dated 30.05.2008 passed in CS(OS) No.433/1999 decreeing the suit between the plaintiff and defendant nos. 1 and 2 in CS(OS) No.433/1999 and who are also the plaintiff and defendant nos. 1 and 2 in the present suit.

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2. CS(OS) No.433/1999 was a suit for partition filed by the present plaintiff against the present defendant nos. 1 and 2 with respect to the property no. 4, Bhagwan Das Road and in this suit a preliminary decree was passed and thereafter the parties agreed by compromise to sell the suit property to M/s. Greatway Estates Ltd which company is defendant no.3 in the present suit. M/s. Greatway Estates Ltd was a signatory to and a party to the application bearing IA No. 7132/2008 filed under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) in CS(OS) No.433/1999 and which application was signed and filed by the original parties to the suit bearing CS(OS) No.433/1999 who are also the plaintiff and defendant nos. 1 and 2 in the present suit. This application IA No. 7132/2008 was not only signed by the parties to the suit but also by M/s. Greatway Estates Ltd and supported by the affidavit of the parties to that suit including Mr. Amar Sarin on behalf of M/s. Greatway Estates Ltd.

3. The suit CS(OS) No.433/1999 was disposed of in terms of the Compromise Order dated 30.05.2008 and which compromise order reads as under:-

“1. This is an application in a partition suit. The preliminary decree was passed on 28.5.2007. Thereafter, the property was directed to be sold. Unfortunately, for one reason or the other, it could not be sold. Now, after going through the process of mediation, the parties have arrived at a compromise and have settled their disputes with regard to the sale of the property.

The parties agree and undertake to sell the entire suit property bearing No. 4, Bhagwan Das Road, New Delhi-110001 admeasuring 2.8 acres approximately to Greatway Estates Ltd., having its registered office at H-65 Connaught Circus, New Delhi – 110001 through its authorized Director, Shri Amar Sarin, for a total sum of Rs 210 crores.

2. The terms of the sale are set out in detail in the application in paragraphs 1 (a) to 1 (j). The same need not be repeated herein. All the parties have undertaken to abide by the said compromise. The counsel for the parties pointed out that there is a typographical error in paragraph 1(h) (c) and the words “defendant No.2” ought to be read as “plaintiff”. The counsel for the parties are permitted to carry out the said correction in this application under their signatures. The said application be read with the said correction.

3. The learned counsel for the parties have been authorized by virtue of paragraph 3 of the application to make statements before Court accepting the said compromise. The defendant No. 2 (Mr Baljit Malik) is present in Court. The counsel for all the parties are also present in Court and all of them endorse the compromise. This application has been signed by the plaintiff, the defendant No.1 and the defendant No.2 as also by their respective counsel. Affidavits of the plaintiff, defendant No.1 and the defendant No.2 as well as of the said Mr Amar Sarin have been filed in support of this application. This application be marked as “Ext. C-1”.

4. The following cheques, all drawn on State Bank of India, have been handed over by Mr Tanuj Khurana, who appears on behalf of the buyer Greatway Estates Ltd, to the counsel for the following persons who acknowledged receipt of the same:-

Sr.No.	Cheque No.	Cheque date	In favour of	Amount in Rupees
1	733428	29.5.2008	DefendantNo.1	8,40,00,000/-
2	733426	29.5.2008	DefendantNo.2	6,30,00,000/-
3	733427	29.5.2008	Plaintiff	6,30,00,000/-
4	733465	30.5.2008	DefendantNo.2	16,00,00,000/-

5. I have examined the terms of the settlement/compromise arrived at between the parties and I am satisfied that the same are lawful. The settlement/compromise is taken on record. The suit is decreed in terms thereof. The formal decree be drawn up. Ext. “C-1” shall form part of the decree. No costs.

6. The keys of the ground floor of the suit property which are

with this Court, shall be handed over to Greatway Estates Ltd through its counsel Mr Tanuj Khurana. In case the keys of the ground floor of the suit property are not available with the Registry, the said buyer is permitted to break open the locks and take possession of the ground floor of the suit property.

7. Because the settlement has been arrived through mediation, in view of the provisions of Section 16 of the Court Fees Act, 1870, the plaintiff shall be entitled to a certificate from the Court authorizing him to receive back from the Collector of Stamps, the full amount of the fee paid in respect of the plaint. Such a certificate be issued.

This application, the suit and all pending applications stand disposed of.”
(underlining added)

4. A reading of the aforesaid Compromise Order dated 30.05.2008 shows that on behalf of M/s. Greatway Estates Ltd, Mr. Amar Sarin is shown to have filed the affidavit in support of the compromise application and learned counsel for M/s. Greatway Estates Ltd (defendant no.3) handed over the cheques, as detailed in paragraph 4 of the Compromise Order dated 30.05.2008, to the parties in CS(OS) No.433/1999 and who are the plaintiff and defendant nos. 1 and 2 in the present suit as well. By the Compromise Order dated 30.05.2008, the suit CS(OS) No.433/1999 was decreed in terms of the settlement application bearing IA No.7132/2008.

5. In the present suit an issue with respect to the maintainability of the suit was framed on 20.08.2014 which reads as under:-

“(iv)(a). Whether the suit pertaining to

execution satisfaction and discharge of decree dated 30.08.2008 in CS (OS) no.439 of 1999 as averred in the plaint is barred under Section 47 CPC, if so to what effect?”

6. Though in my opinion bar to the suit would not arise because of Section 47 of the Code of Civil Procedure, however, bar to the suit arises because once a decree has been passed, then enforcement of the decree has to be got done by way of filing execution proceedings and not by filing a fresh suit to enforce the decree.

7. Learned counsel for the plaintiff states that the plaintiff was forced to file the present suit in as much as M/s. Greatway Estates Ltd was not formally added as a party to CS(OS) No.433/1999, but, the apprehension of the learned counsel for the plaintiff, in opinion of this Court, is not valid inasmuch as though M/s. Greatway Estates Ltd (defendant no.3 in the present suit) was not formally added as a party by way of an application under Order I Rule 10 CPC when the order was passed on 30.05.2008 in CS(OS) No.433/1999, however, a holistic reading of the Compromise Order dated 30.05.2008 makes it clear that the said suit CS(OS) No.433/1999 was disposed of and a decree in terms of the settlement was passed, not only between the parties to the suit but also with respect to the new party i.e. M/s. Greatway Estates Ltd, who is defendant no.3 in the present suit. Therefore, M/s.

Greatway Estates Ltd is deemed to have become a party to the suit CS(OS) No.433/1999 and the decree passed in that suit was not only against defendant nos. 1 and 2 but also against M/s. Greatway Estates Ltd, who is defendant no.3 in the present suit. Once there is a decree against M/s. Greatway Estates Ltd who is defendant no.3 in the present suit, in terms of the decree passed on 30.05.2008 in CS(OS) No.433/1999 by allowing IA No. 7132/2008 and specifically decreeing the suit in terms of that application, the plaintiff is entitled to seek execution of the decree passed on 30.05.2008 against the present defendant no.3 M/s. Greatway Estates Ltd as well and who will also be a judgment debtor in terms of the decree passed on 30.05.2008.

8. In view of the above, the preliminary issue framed on 20.08.2014 is decided by holding that the decree dated 30.08.2008 in CS(OS) No.439/1999 would act as a bar to the present suit and by also simultaneously holding and clarifying that the plaintiff will be entitled to file execution of the decree dated 30.05.2008 in CS(OS) No.433/1999 not only against defendant nos. 1 and 2 but also against M/s. Greatway Estates Ltd inasmuch as M/s. Greatway Estates Ltd had become a party to the Judgment and Decree dated 30.05.2008 in CS(OS) No.433/1999.

9. The suit is accordingly disposed of, subject however to the aforesaid clarifications and observations of entitling the plaintiff to file the execution proceedings.

APRIL 22, 2016
sm

VALMIKI J. MEHTA, J