

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.202

IOIN RSA No.1148 of 1993 in/and
RSA No.1148 of 1993 (O&M)
Date of decision: 11.12.2017

Dev Raj Malhotra (deceased) through LRs

....Appellants

versus

Wing Commander K.K. Malhotra

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Harminder Singh, Advocate
for the appellants.

Mr. Vikas Bahl, Senior Advocate with
Ms. Harbani, Singh, Advocate
for respondent the respondent.

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DEEPAK SIBAL, J. (Oral)

The respondent had filed Civil Suit No.169 dated 1.9.1984 through which he had sought partition, possession and recovery of damages for use and occupation of half share of House No.261, Sector 10-A, Chandigarh (for short – the suit property). The suit was dismissed by the trial court. The respondent challenged the judgment and decree of the trial court by way of an appeal, which was partly allowed. The appellate Court held both the appellant therein-Wing Cdr. K.K. Malhotra and his brother Dev Raj Malhotra (appellant herein) to be owners of the suit property to the extent of one half share each. A preliminary decree for possession of one

half share of the suit property was also passed. The appellate court further appointed a Local Commissioner to suggest the mode of partition by metes and bounds. The appellant being aggrieved by the afore-referred directions given by the appellate court, challenged the same by way of the present second appeal.

On 06.04.2017, after observing that the parties were closely related and that there was a good chance that the matter may be amicably resolved between the parties, this Court directed the parties to appear before the Mediation and Conciliation Centre of this Court in pursuance of which conciliation proceedings took place between them.

As per report dated 04.12.2017 submitted by the Mediator, the matter has been amicably resolved by the parties. The operative part of the settlement is as under:-

“5. After considerable time and effort, the parties have reached the settlement as under:-

- i That subject to the outcome of RSA No. 1269 of 1993, both the parties have mutually agreed that the First Party and the Second Party are owners of the Premises i.e. House No. 261, Sector 10, Chandigarh to the extent of 60 % and 40 % respectively. The ratio. In which the 60% share shall be distributed amongst the first party in the following ratio:-Hari Malhotra, son of Late Shri Dev Raj Malhotra (30% of the share); Smt. Sudha Malhotra-widow of Late Shri Dev Raj Malhotra (20% of the share); Mrs. Kompal daughter of Late Shri Dev Raj Malhotra (10% of the share).
- ii That both the Parties have agreed that they shall now jointly/separately apply for the transfer of the shares

mentioned hereinabove to the concerned authorities including but not limited to the Estate Officer, U.T. Chandigarh, Sub-Registrar, U.T. Chandigarh. Both parties further agree that they shall bear the cost of the transfer, as per the respective share of 60% and 40%.

- iii That once the cases, as mentioned hereinabove are decided/disposed of by this Hon'ble Court; both the parties shall apply for the transfer to the extent of their shares at the earliest and preferably within 4 weeks of the date of receipt of the certified order.
- iv That both the Parties have further agreed that the property-House No. 261, Sector 10-A, Chandigarh shall be sold, for which both the Parties are already cooperating with one another to identify a suitable buyer and shall continue to do the same till the time they do not find a suitable buyer. The parties have agreed that the suitable buyer shall be one, who will agree to purchase the premises i.e. 100 % share of the property-House No. 261, Sector 10, Chandigarh in its present condition for a consideration of Rs. Eight Crores or any price lesser than Rs. Eight Crores, which is mutually agreeable to both the Parties.
- v That further, once the property has been transferred in the names of both the Parties to the extent of their respective shares, both the parties shall enter into an agreement to sell with the buyer, mutually agreed to by both the Parties. The parties shall enter into the said agreement to sell within 3 months of the date of transfer or any other period as agreeable to the parties for their common benefit.

- vi That both the Parties, subject to the convenience of the prospective buyer endeavor to fix the date for executing the sale deed within 3 months of the date of the agreement to sell.
 - vii That both the Parties further agree that they shall render all assistance, which would be necessary to transfer the property, entering into an agreement to sell and executing the sale deed or doing any incidental act which is essential to carry out the transfer of the property, entering into an agreement to sell and executing the sale deed.
6. It has further been agreed between the Parties that they will not make any complaint/application to any authority or file Civil or Criminal case against the other with regard to the present dispute. It is further agreed between the parties that neither their successor nor assignee nor representatives nor legal heirs shall institute any kind of complaint/application to any authority or file Civil or Criminal case against the other with regard to the present dispute/premises.
7. With the execution of the present settlement/compromise, entire dispute between the parties shall stand settled. None of the parties shall institute any unwarranted litigation against each other with regard to the present dispute/premises.
8. The present settlement/compromise has been reached between the parties without any pressure. Both the parties undertake that they shall be bound by the terms and conditions mentioned/settled therein in the instant settlement/compromise. In case any party backs out from the terms/time schedule of settlement/agreement viz-a-viz

the sale of the property to a third party, then the other party has right to take recourse of law and it shall also be open to the parties to sell their respective share of 60% and 40%, without any objection from other side. However, before exercising their right to do so, the Parties shall first approach the Mediation Centre, Punjab and Haryana High Court for settlement of their disputes through mediation and concillation.

9. That both the parties are proficient with English language and have gone through the terms of the settlement and the Parties have understood and accepted the contents thereof voluntarily and of their own free will and without any pressure.
10. The execution of this settlement/compromise, each signatory acknowledges receipt of fully executed duplicate/original of this settlement/compromise.
11. That it has been further agreed between the parties that in case of necessity, both the parties shall be free to present the copy of the above settlement/compromise before any Authority or Court if the same is required to witness the execution of the settlement/compromise or to settle any pending controversy between the parties.
12. The present settlement/compromise has been reached between the parties without any pressure. That the parties undertake before the Hon'ble Court to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future.
13. Both the parties undertake that they shall be bound by the terms and conditions mentioned/settled therein in the instant settlement/compromise. In case any party backs out from the terms of settlement/agreement, then the other party has right to take recourse of law.”

In view of the above and by consent of both the parties, the

impugned judgment and decree of the appellate court is modified in terms of the afore-quoted terms of settlement arrived at between the parties.

It is reiterated that the parties shall remain bound by the afore-quoted terms of settlement between them.

The appeal is disposed of in the above terms.

(DEEPAK SIBAL)
JUDGE

December 11, 2017
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No