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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 1983/2014, IA No.12243/2014 (u/O XXXIX R-1&2 CPC) &
IA No.21369/2014 (u/O VII R-11 CPC)
PUSHPA KANWAR Plaintiff

Through: Mr. Manav Gupta, Ms. Esha Dutta &
Mr. Sahil Garg, Advs.

Versus

URMIL WADHAWAN & ORS Defendants

Through: Mr. Siddharth Khattar, Adv. for D-3.

AND

TEST.CAS. 14/2011, IA No.9327/2013 (u/S 376 of Indian Succession
Act), IA No.9340/2013 (u/O XXXIX R-1&2 CPC), IA
No.17761/2013 u/O XXXIX R-1&2 CPC), IA No.4046/2012 (u/O
XXIII R-3 CPC), CrI. M.A. Nos.6342/2014 & 13725/2014

PUSHPA KANWAR Petitioner

Through: Mr. Manav Gupta, Ms. Esha Dutta &
Mr. Sahil Garg, Advs.

Versus

STATE & OTHERS Respondents

Through: Mr. Siddharth Khattar, Adv. for D-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **04.12.2017**

1. Test Cas. No.14/2011 was filed seeking Letters of Administration with respect to the estate of the deceased Sh. Kailash Berry, brother of the petitioner and the respondents no.2 to 4 therein who died intestate leaving the petitioner and the respondents no.2 to 4 as his only natural heirs.
2. IA No.4046/2012 under Order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) was filed in the Test Cas. No.14/2011 and though in a Test Cas., ordinarily a decree is not to be passed

and no suit for partition was pending at that time but perhaps applying the principle laid down in ***Harinder Singh Kochar Vs. State*** (2010) 173 DLT 365, a decree was passed and the Test Cas. No.14/2011 disposed of on 2nd March, 2012.

3. It was *inter alia* recorded in the compromise application in Test Cas No.14/2011, that i) though in the Test Cas. as originally filed, Letter of Administration was sought with respect to immovable as well as movable properties of the deceased but the claim was being confined to movable properties only; ii) that the petitioner has released her share in the immovable property of the deceased vide Release / Relinquishment Deed dated 25th October, 2010; iii) that the parties have mutually agreed to amend the Family Settlement dated 2nd November, 2010 with the intention to clarify and simplify distribution of the estate of the deceased and executed a Family Settlement dated 23rd February, 2012; and, iv) that the parties have agreed that save for equity shares and debentures of deceased, all other movable and immovable properties of deceased shall be inherited by respondent no.3 Urmil Wadhawan only.

4. This court, as aforesaid, on 2nd March, 2012, passed a decree in terms of aforesaid compromise.

5. On enquiry, as to why Test Cas. No.14/2011 is still being listed, it is stated that an application of respondent no.4 for extension of Letters of Administration to properties other than those earlier mentioned in the Schedule to the petition and some other applications are pending consideration.

6. CS(OS) No.1983/2014 has been filed for cancellation of the Release Deeds both dated 25th October, 2011, executed by the plaintiff and defendants no.2&3 in the suit in favour of the defendant no.1 as null and void and for decree for possession of 1/4th share in the immoveable properties subject matter of the Release Deeds aforesaid.

7. Cancellation of the Release Deeds is sought on the ground of the defendant no.1 in the suit having suppressed and concealed the entire estate of the deceased from the plaintiff and defendants no.2&3 in the suit and qua which the defendant no.1 has subsequently applied for amendment of Letters of Administration.

8. I have enquired from the counsel for the plaintiff in the suit that the Release Deeds having formed part of the Compromise entered into the Test Cas. No.14/2011 and in terms whereof decree in the Test Cas.No.14/2011 was passed, isn't the suit barred by provision of Order XXIII Rule 3A of the CPC.

9. The counsel for the plaintiff in the suit states that he is not seeking alteration of the decree or setting aside of the Compromise but cancellation of the Release Deeds.

10. Once the Release Deeds have found mention in the Compromise filed in the Test Cas. No.14/2011 and decree passed in terms thereof, the relief sought of cancellation of the Release Deeds would be of no avail without the plaintiff impugning the decree passed in terms of the Test Cas. No.14/2011. The plaint is thus liable to be rejected as barred by law contained in Order XXIII Rule 3A of the CPC and for which purpose IA No.21369/2014 filed by defendant no.1 is already pending in the suit.

11. The counsel for the plaintiff then states that the Letters of Administration was sought with respect to the moveable properties of the deceased and the immovable properties qua which the Release Deeds have been executed were not part of the Schedule of the Letters of Administration.

12. The counsel for the defendant has however drawn attention to para 6 of the Compromise Application being IA No.4046/2012 filed in the Test Cas.No.14/2011 and which records the agreement of the parties of all remaining moveable and immovable properties left behind by the deceased being inherited by defendant no.1 Urmil Wadhawan only and the other parties having no objection to the Letters of Administration / Succession Certificate being granted for those in favour of said Urmil Wadhawan. Para no.4 of the said Compromise Application also records that Pushpa Kanwar i.e. the plaintiff in the suit had released her share in the immovable properties of late Sh. Kailash Berry i.e. the property situated at Safdarjung Enclave, Delhi and at Mauza Neri, Tehsil and District Shimla, Himachal Pradesh vide Release / Relinquishment Deeds dated 25th October, 2010 and copies of which were made Annexure P3 and P4 to the said application. It is thus not open to the counsel for Pushpa Kanwar to today allege that Compromise Decree is not with respect to the immovable properties subject matter of the said Release Deeds qua which the suit has been filed.

13. The counsel for the plaintiff then states that he has also filed certain applications in the Test Cas. No.14/2011 and ad-interim order has also been granted.

14. Merely because interim order has been granted, does not assure the relief being granted finally. Moreover, if the plaintiff has any right to any relief in the Test Cas.No.14/2011 that would be considered therein.
15. Thus, as far as CS(OS) No.1983/2014 is concerned, the plaint therein is rejected and the suit and all pending applications are disposed of.
16. No time left for further consideration of Test Cas.No.14/2011.
17. List on 8th March, 2018.

RAJIV SAHAI ENDLAW, J

DECEMBER 04, 2017

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