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

% *Date of Judgment: 29th January, 2018*

\+ EFA(OS) 36/2016 & CM No.48079/2016

BILLOO SINGH ..... Appellant

Through: Mr. M.S. Ahuluwalia, Advocate

versus

RATTAN SINGH & ORS ..... Respondents

Through: Mr. Siddharth Bambha, Advocate for respondent Nos.1 to 4

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. *(ORAL)*

This appeal under Section 10 of the Delhi High Court Act, 1966 read with Order XXI Rule 58 of the Code of Civil Procedure, 1908 ('CPC') impugns order dated 8.12.2016 passed by the Execution Court in Ex.P. No.306/2014 and in EA No.508/2016.

2. The appellant submits that the decree dated 17.2.2014 in CS(OS) No.61/2013 was a non-executable decree and hence, execution application is not maintainable. In support, our attention was drawn to para 7 of the order dated 17.02.2014, which records that the counsels were informed that if they want an executable decree for partition in terms of the Memorandum of Family Settlement, they would have to pay stamp duty. Paras 7 to 16 of the order dated 17.2.2014, for the sake of convenience, are reproduced below:-

"7. I have informed the counsels that if they want an executable decree for partition in terms of the Memorandum of Family Settlement, they will have to pay stamp duty thereon.
8. The counsels invite attention to the terms of the Memorandum of Family Settlement wherein the parties have agreed to separately execute documents to vest the properties in

the party / parties in which the same have been agreed to be so vested to the exclusion of the others: The counsels thus state that they do not desire an executable decree tor partition to be passed.
9. The terms aforesaid are found to be lawful.
10. The application under Order 23 Rule 3 is allowed.
11. The suit is disposed of in terms of the Memorandum of Family Settlement, without passing any executable decree for partition in terms thereof and leaving the parties to bear their own costs.
12. The undertakings given by all the parties and as contained in the application are accepted and the parties ordered to be bound thereby.
13. All counsels inform that all the parties are present in the Court today.
14. The counsel for the plaintiff seeks refund of court fee.
15. The suit having been amicably settled by the parties at an initial stage, even prior to the framing of the issues, applying the law laid down in Aya P Singh Vs. Munshi Ram 4 (1968) DLT 310 (DB) and J.K. Forgings Vs. Essar Construction India Ltd. MANU/DE/2862/2009, it is directed that the plaintiff shall be entitled to refund of Court Fees of Rs.60,000/- out of the total Court Fees stated to have been paid of Rs. 82,000/-. A certificate enabling the plaintiff to obtain refund of Rs.60,000/- from the Collector of Stamps, Delhi be accordingly issued to the plaintiff.
16. Needless to state, the interim order stands vacated."

3. The Memorandum of Family Settlement, dated 2.2.2014 placed on record, would show that late father of the parties had left behind the following seven properties:-

1. *Shop No. 8213-14/6, Multani Dhanda, Pahar Ganj, New Delhi in the name and style of Talwar Jewellers.*
2. *A rented shop at 2967/40 Beadon Pura, Karol Bagh, New Delhi-110005.*
3. *Shop No.3075/37 Beadon Pura, Karol Bagh, New Delhi-110005.*
4. *Flat at second and third floor of property No.9225/2, Multani Dhanda, Pahar Ganj, New Delhi.*
5. *Residential House Nos. 9280-1 & 2, Gali No. 6, 9236/5 Gali No.5, Multani Dhanda, PaharGanj, New Delhi.*

6. *Residential House No. 9293/6, Multani Dhanda, Pahar Ganj, New Delhi.*
7. *1/6th undivided share in shop bearing no. 2509/8, Ground Floor, Ajmal Khan Road, Karol Bagh, New Delhi show-room, where the business was being carried out in the name and style of M/s M.S. Talwar Jewellery House Pvt Ltd.*

4. In addition to the above properties, the appellant and his four brothers, who are the respondents in this appeal, were joint owners of the three properties, namely, J-9, Ganga Ram Vatika, Tilak Nagar, New Delhi, Property No.8202-05, Gali No.7, Multani Dhanda, Pahar Ganj, New Delhi and 5/6th undivided share in shop bearing No. 2509/8, Ground Floor, Ajmal Khan Road, New Delhi. Their sister had relinquished her share in the third property in favour of the brothers. It was mutually agreed and settled that the three properties would be sold and consideration divided equally amongst the appellant and four brothers.

5. With regard to the properties inherited from father, documents of *inter se* transfer had to be executed and registered. It is, in this context, that the learned Single Judge, while disposing of the application under Order XXIII Rule 3 of CPC, vide order dated 17.4.2011, had observed and posed the question of payment of stamp duty. We need not go into the said aspect, in view of subsequent developments, as documents have been executed after filing of Ex. P. No.306/2014 which was filed by Rattan Singh, respondent No.1 before us, against the present appellant and three brothers. In this execution petition, on 13.2.2015, with consent, the following order was passed:-

> *"Statement of the Decree Holder and Judgment Debtors No.1to 4 has been recorded in Court again today whereby*

they have undertaken that they continue to be bound by the settlement agreement dated 2.2.2014. Learned counsel appearing for Decree Holder and Judgment Debtors agree that the Relinquishment Deed will be executed and got registered as provided for in the Settlement Deed concurrently for all the concerned properties. The copies of the Relinquishment Deed which are proposed by the Decree Holder have been placed on record. Learned counsel appearing for Judgment Debtor No.4 submits that he would like to take instructions as to whether the drafts of the Relinquishment Deeds are in order. In case there are any objections to the draft placed on record he may give an alternative draft well in advance to learned counsel for the Decree Holder.

List this matter on 20.03.2015.

In the meantime, as per Settlement Agreement dated 02.02.2014, the parties are free to hunt for any prospective buyers for the three properties, namely, property No.(i)J-9, Ganga Ram Vatika, Tilak Nagar (ii)8202-5, Gali No.7, Multani Dhanda, Pahar Ganj and (iii)Ground Floor bearing No.2509/8, Ajmal Khan Road, Karol Bagh and bring offers regarding the same in Court. Judgment Debtor No.5 may remain present in Court on the next date or may file affidavit as per the statement of other Judgment Debtors."

The appellant had stated and affirmed that he would abide by all the terms and conditions of the Family Settlement, dated 2.2.2014. Statements of the appellant and his brothers were also recorded. Relinquishment Deeds were executed in terms of the settlement. In their statements, the brothers had stated that they have no objection if the three properties, namely, J-9, Ganga Ram Vatika, Tilak Nagar, New Delhi; Property No.8202-05, Gali No.7, Multani Dhanda, Pahar Ganj, New Delhi and Ground Floor, bearing No.2509/8, Ajmal Khan Road, New Delhi were sold.

6. Order dated 18.7.2016, again passed in the execution proceedings, records that the four brothers were ready and willing to purchase the share of the appellant in the Paharganj property by

paying him Rs.55,00,000/-. The appellant had then stated that he was not ready and willing to accept Rs.55,00,000/- for his share. The appellant had also expressed his inability to buyout share of his brothers. The Court had accordingly directed that the properties would be put to public auction. The Court noticed complete lack of faith *inter se* the appellant and his brothers.

7. On 20.7.2016, another order was passed in the execution proceeding regarding sale of Paharganj and Karol Bagh properties. By consent, Mr. Kamlesh Kumar, a retired District Judge, was appointed as a Local Commissioner ('LC') to sell the properties by public auction. The LC was to take necessary steps for auctioning the properties on "as is where is basis" by issuing advertisements in the press and online by inviting bids. Bidders were to deposit 25% of the reserve price by way of a draft in the name of the Registrar-General of this Court. Directions were given to ensure that the public auction takes place smoothly.

8. We have recorded and mentioned the aforesaid orders dated 13.2.2015, 18.7.2016 and 20.7.2016 to highlight that consent orders were passed in the execution application in the presence of the appellant, who did not object to these orders. In fact, the appellant is a beneficiary of these orders, for relinquishment deeds etc., were executed and registered in terms of the Memorandum of Family Settlement to enforce and implement the decree. In these circumstances, we do not think that the appellant should be permitted and allowed to go back, resile and question the execution application after he has taken advantage and benefits of the orders passed. These orders are not challenged before us. We would not go into the said challenge. We have no hesitation and would not hold that this is a

case of void *ab initio* proceedings, for settlement was binding and even enforceable. The manner of enforcement could have been an issue. Further, non-executable portion of the decree related to transfer of title in the seven properties between the brothers. Settlement and decree in respect of the three properties did not postulate transfer of title *inter se* the brothers. These properties were to be sold and on sale, stamp duty would be payable.

9. The impugned order under challenge, dated 8.12.2016, refers to the LC report dated 6.12.2016 and states that condition of pre-deposit of 25% would not be applicable to the respondents, as they have 80% share in the property at Paharganj. This is correct and not questioned. We do not see any reason and cause to interfere with the aforesaid direction.

10. At this stage, learned counsel for the appellant submits that the LC, in his report dated 25.10.2016, had observed that the market value of the property at Paharganj was Rs.2.5 crores. We observe that Rs. 2.5 crores has been fixed as the minimum reserve price. Appellant submits that the market price is higher. We are not going into the said aspect, for the said plea is to be raised before the execution court and the LC can go into the said aspect, provided evidence and proof is furnished. Respondents state that inspite of repeated opportunities the appellant could not find a buyer or offer a higher price.

11. Learned counsel for the respondents submits that the appellant is obstructing and not allowing sale of the properties, in terms of the Settlement Agreement dated 2.2.2014 and the statements recorded on different dates. The respondents state that they are ready and willing to sell their share at the same price, which they have offered to the

appellant. The counsel for the appellant states that the appellant is also interested in the sale of three properties, but wants best price. We have merely recorded what is asserted by the counsel. We feel that the execution proceedings should not be interjected and the sale of properties must take place as soon as possible. This would be fair, just and in the interest of the parties.

12. With the aforesaid observations, the appeal is dismissed, with no order on costs

Dasti.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JANUARY 29, 2018/tp