

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

% **Date of decision: 28th February 2019.**

+ **CS(OS) 124/2019, IA Nos.3117/2019 (u/O XXXIX R-1&2 CPC) & 3118/2019 (for exemption)**

SUSHILA MALGE **Plaintiff**

Through: Mr. Jatin Rajput, Adv.

Versus

RAJ SINGH BHATTI & ORS. **Defendants**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for declaration, that the deed of settlement dated 3rd April, 2018 executed by her husband namely Sh. Suresh Babu Malge impleaded as defendant no.8 and by the defendant no.1 namely Sh. Raj Singh Bhatti on behalf of defendants 1 to 7 namely Sh. Raj Singh Bhatti, Smt. Sunita Bhatti, Sh. Umesh Bhatti, Smt. Anita Bhatti, Sh. Narender Bhatti, Sh. Papu Bhatti & M/s Mahamedha Estate Private Limited, is illegal, false, null and void *ab initio* and not binding on the plaintiff and for perpetual injunction restraining the defendants from using the said deed of settlement dated 3rd April, 2018 in any manner whatsoever.

2. The suit, for the relief of declaration is valued for the purposes of jurisdiction at Rs.60 crores, being the amount claimed by the defendants 1 to 7 from the plaintiff and defendant no.8 under the said deed of settlement dated 3rd April, 2018 and for the relief of court fees at Rs.20/- only. The suit, for the relief of permanent injunction, for purpose of jurisdiction as well as court fees is valued at Rs.200/- only.

3. The Registry has listed the suit without raising any office objection as to the valuation and/or court fees.
4. The counsel for the plaintiff, on enquiry as to how the suit with the aforesaid valuation lies before this court, refers to para 7 of ***Suhrid Singh Alias Sardool Singh vs. Randhir Singh and Ors.***, (2010) 12 SCC 112 laying down that a non-party to a deed relating to immovable property, if in possession of immovable property, seeking declaration for cancellation of deed with respect to the property, executed by another, is not required to pay *ad valorem* court fees. It is argued that since the plaintiff is not the executant of the deed, is entitled to maintain the suit with fixed court fees on the relief of declaration.
5. The aforesaid argument loses sight of the fact that the plaintiff is also seeking the consequential relief of permanent injunction restraining the defendants from relying upon the deed of settlement dated 3rd April, 2018 *inter alia* for recovery of the amount claimed thereunder from the plaintiff and the defendant no.8. Option to a plaintiff, suing for declaration simplicitor, to maintain the suit without paying *ad valorem* court fees under Article 17(iii) of the Second Schedule to the Court Fees Act 1870 is not available when the suit for declaration is accompanied with a consequential relief.
6. Once the suit is for declaration with consequential relief, Section 7(iv)(c) of the Court Fees Act will apply and *ad valorem* court fees will have to be paid on the valuation, which as per Section 8 of the Suits Valuation Act, 1887 is required to be the same for the purposes of court fees and jurisdiction.

7. The counsel for the plaintiff states that he does not press the suit for consequential relief of permanent injunction.

8. The suit for consequential relief of permanent injunction is dismissed as withdrawn.

9. I have next enquired from the counsel for the plaintiff, how the suit for declaration simplicitor, without claiming consequential relief to which the plaintiff is entitled to, maintainable. Attention is invited to proviso to Section 34 of the Specific Relief Act, 1963, providing that no Court shall make any declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

10. Declaration simplicitor will not serve any purpose. It will not prevent the defendants No.1 to 7 from taking proceedings for recovery of monies claimed by them to be due from the plaintiff and defendant No.8 and pendency of this suit for declaration will not come in the way of such proceedings. I may mention that even grant of permanent injunction to restrain institution or prosecution of any proceeding in a Court, is barred by Section 41(b) of the Specific Relief Act. Thus, the defendants, notwithstanding this suit for declaration, if desirous of recovering monies, as the plaintiff pleads they are demanding, would be entitled to do so. Needless to state, in the said proceedings if any, the defence of the plaintiff will be the same as in the plaint in the present suit. It is appropriate that the dispute if any raised by the plaintiff is decided by way of defence to the claim of the defendants No.1 to 7 and not by way of this suit for declaration simplicitor. No declaration as sought can be granted without adjudicating the claim of the defendants No.1 to 7.

11. Grant of relief of declaration is in the discretion of the Court and cannot be demanded as of right. Reference if any required can be made to *M.P. Mathur Vs. DTC* (2006) 13 SCC 706.

12. In *American Express Bank Ltd. Vs. Calcutta Steel Co.* (1993) 2 SCC 199, it was held that discretion should not be exercised in favour of plaintiff in a suit for declaration that the bills of exchange were illegal, null and void, invalid, inoperative and of no effect nor binding on the plaintiff. In my view, ends of justice will be served by holding that such declaration cannot be granted, leaving the plaintiff to defend the claim if any on the basis of deed of settlement dated 3rd April, 2018, including on the grounds taken in the plaint.

13. The counsel for the plaintiff withdraws the suit with liberty to approach the court of appropriate pecuniary jurisdiction i.e. the court of the Civil Judge, Delhi.

14. Dismissed as withdrawn with liberty aforesaid but subject to the condition that the plaintiff, along with the fresh proceedings, if any, will file a copy of this order.

15. Since the suit is being withdrawn, it is clarified that the dismissal as withdrawal of the suit insofar as for injunction, will not come in the way of the plaintiff filing an appropriate proceedings.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 28, 2019

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