



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 22nd February, 2024

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Pronounced on: 2nd March, 2024

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CS(OS) 448/2016

SMT REKHA MANGLIK & ORS

..... Plaintiffs

Through: Ms. Priyanka Goswami, Advocate for
P-2.

versus

SHRI VINAY KUMAR GARG & ORS.

..... Defendants

Through: Mr. Arvind Bhatt, Ms. Ritika
Choubey & Ms. Swastika Singh,
Advocates for D-1 with D-1 in
person.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 10007/2023 (u/S 151 of CPC, 1908 by D-1-cum-Counter Claimant for directions)

1. The Application under Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) has been filed on behalf of the applicant/defendant No. 1-cum-Counter Claimant seeking modification of the Preliminary Decree dated 18.10.2019.

2. **It is submitted in the application** that consequent to the demise of Shri Ravi Chand Garg, the father of the parties, on 12.08.2016, the present Suit for Partition was filed *inter se* the legal heirs of Late Shri Ravi Chand



Garg and other co-owners. The parties arrived at a Settlement dated 10.10.2019 in the Delhi High Court Mediation and Conciliation Centre and on the basis of said Settlement, a Preliminary Decree and a final Decree were made on 18.10.2019.

3. Now, in the year 2023, the present application has been filed wherein it is submitted that Smt. Kaushalya Garg, the original defendant No. 2 has died on 23.04.2021 and Shri Sushil Garg, defendant No. 5 has died on 04.05.2021. Both the deceased left their properties which has devolved upon their legal heirs. On account of the demise of the two defendants, the parties are facing difficulty in execution of the Final Decree and the Sale of the properties as there are concerns being raised by the prospective buyers about the entitlement of the legal heirs of the two deceased defendants to the suit properties which is creating an impediment in realising the actual value of the suit properties.

4. It is further submitted that since the final Decree is yet to be engrossed on non-judicial stamp paper, the Preliminary and Final Decree may be re-drawn with the legal heirs of Smt. Kaushalya Garg, the original defendant No. 2 and Shri Sushil Garg, defendant No. 5 being substituted in the original Preliminary Decree itself.

5. **The learned counsel on behalf of the defendant No. 1**/judgment debtor No. 1/counter-claimant, has placed reliance upon Syed Mohiddin & Ors. vs. Abdul Rahim & Ors., AIR 1964 AP 260; Surjdeo Dubey & Ors. vs. Kripa narayan Tiwary, AIR 1969 PAT 284; S. Narayana Reddy & Ors. vs. S. Sai Reddy, 1990 SCC OnLine AP 12; Dharmaraja Vellalar vs. Ramachandra Vellalar & Ors., MANU/TN/0397/1992; wherein, it was observed that the Final Decree becomes executable only on being engrossed



on the requisite stamp paper.

6. Submissions heard.

7. The controversy in hand is whether the legal heirs of the parties to a Final Decree can be permitted to seek a change in the Final Decree on account of demise of some of the parties leading to change in the shares as defined in the Preliminary decree; especially when Final Decree is yet to be engrossed on the requisite stamp paper.

8. In Yeswant Deorao Deshmukh vs. Walchand Ramchand Kothari, 1950 SCC 766, it was held that the payment of court fee i.e. on the amount found due was entirely in the power of the decree-holder and there was nothing to prevent him from paying it then and there; a decree is capable of execution from the very date it was passed.

9. In the case of Hameed Joharan vs. Abdul Salam, AIR 2001 SC 3404, while considering the bar under Section 35 of the Indian Stamp Act, it was held that *the prescribed period shall not be allowed to remain suspended, until the stamp paper is furnished and the partition decree is drawn thereon and subsequently signed by the Judge*. The Apex Court differentiated between ‘**executability**’ and ‘**enforceability**’ of the decree. The word ‘*execution*’ was held to mean the process for enforcing or giving effect to the Judgment of the Court and it is completed when the decree holder gets the money or the relief awarded to him, by the Judgment. Though the decree may not be received in evidence or be acted upon/ enforced in execution due to the non-payment or deficient payment of stamp duty on the decree, but the period of limitation cannot be said to remain under suspension at the volition and mercy of the litigant. The period of limitation starts from the date of *Final Decree* and cannot be stopped from running at the instance of



an individual unless the same has a statutory sanction of being conditional.

10. The Apex Court in the case of Chiranji Lal through LRs vs. Hari Dass through LRs, (2005) 10 SCC 746, considered this very aspect. It was explained that a decree in a suit for Partition declares a right of the parties in an immovable property and divides the shares by metes and bounds. Such a decree in a suit for partition is considered as an instrument liable for the payment of stamp duty under the Stamp Act. The object of the Stamp Act is to secure the revenue for the State and the Scheme of the Act provides that a decree of partition not duly stamped can be impounded and once, the requisite stamp duty along with the penalty, if any, is paid, the decree can be acted upon.

11. It was further observed in Chiranji Lal (supra) that the engrossment of the Final Decree in a suit for Partition, would relate back to the date of decree. The date of furnishing of stamp paper is dependent and within the domain purview and control of the party. The Code of Civil Procedure, 1908 or the Limitation Act, does not provide a period or a timeframe for furnishing of stamp paper. Pertinently, on the engrossment of a Final Decree in a suit for partition, it relates back to the date of the decree. Therefore, a party by its own act of not furnishing the stamp paper, cannot stop the running of the period of limitation. The limitation for execution of a decree within a period of 12 years, commences as soon as a Final Decree is made and cannot be suspended due to the violation of either party in failing to provide the requisite stamp paper. Nor can the period of limitation be suspended, till the stamp paper is furnished and the decree is engrossed there upon.

12. A reference was made to earlier Judgments of Shankar Balwant



Lokhande (Dead) by Lrs. vs. Chandrakant Shankar Lokhande, (1995) 3 SCC 413 and West Bengal Essential Commodities Supply Corporation vs. Swadesh Agro Farming and Storage Pvt. Ltd. & Ors., (1999) 8 SCC 315, to observe that even if there is a direction by the Court for furnishing of the stamp paper by a particular date for the purposes of engrossing of a decree, the period of limitation commences from the date when the Decree is passed and not from the date when the Decree is engrossed on the stamp papers supplied by the parties. The legislative mandate as sanctioned under Article 136 of the Limitation Act, cannot be kept in abeyance unless the said legislation makes a provision thereof.

13. In Chiranjil Lal (supra), it was further observed that, the Indian Stamp Act, 1899 is a fiscal measure enacted with an object to secure revenue for the State on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent.

14. Section 2(15) of the Indian Stamp Act, 1899 defines 'instrument of partition' as any instrument whereby co-owners of any property divide or agree to divide such property in severality, and includes also a final order for effecting a partition passed by any Civil Court/Arbitrator, directing partition. Article 45 of Schedule I of the Indian Stamp Act, 1989, prescribes the proper stamp duty payable in case of an instrument of partition. Section 33 of the Indian Stamp Act, 1989, provides for the impounding of the instrument not duly stamped and for examination of the instrument for ascertaining whether the instrument is properly stamped. Section 35 provides that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties, authority to receive evidence or shall be acted upon, registered or authenticated unless such instrument is



duly stamped. Section 40(b) provides for impounding of an instrument not duly stamped.

15. In Arjun Somdutt vs. Vivan Somdutt, EFA (OS) No. 1/19, decided by the Division Bench of this Court on 17.11.2022, it was held that the issue of stamp duty cannot be a stumbling block to the enforcement of a decree by directing creation of the first charge on the sale proceeds for the payment of stamp duty. In this manner the interest of the State, shall be secured and the apportionment of the sale proceeds amongst the decree holder and transfer of rights would only be done thereafter.

16. The Co-ordinate Bench of this Court in Suman Sapra vs. Rosy Dabas and Others (2023 SCC Online Delhi 1843), referred to the afore-discussed judgments and observed that the decree becomes executable, on the date of passing of the judgment and not from the date, it is engrossed on the requisite stamp paper.

17. In a suit for partition, the shares of the parties to the suit are declared by the Court, by passing of a preliminary decree and the allotment of specific portion of the property to different owners, is finally worked out by way of a final decree. Thus, if demise of any of the legal heirs takes place after the passing of preliminary decree, but before the Final Decree, the Court is still in seision???? of the matter and may pass a second Preliminary Decree on the basis of the change brought about by the death. ***This, however, cannot go on interminably and the power of the Court to effect alteration in the shares of the parties on the basis of death would terminate with the passing of a Final Decree. Thereafter, the Court has no power to modify the decree and the Executing Court is obligated to execute the decree as it stood on the day of final judgment.***



18. A decree in a suit of partition, declares the rights of the parties in the immovable properties and divides the shares by metes and bounds. Since the decree creates rights and liabilities of the parties in immovable properties, it is considered as an instrument liable for payment of stamp duty under the Indian Stamp Act and if it is submitted for execution, it has to be necessarily impounded. Only, on payment of requisite court fee and a stamp duty along with the penalty, it can be executed/acted upon.

19. The Apex Court in Phoolchand & Anr. vs. Gopal Lal, AIR 1967 SC 1470, recognizing the peculiar nature of a partition suit, observed that if an event transpires after the passing of Preliminary Decree and necessitates a change in shares, the Court can and should do so and if there is a dispute in that behalf, the Order of the Court deciding that dispute and making variation in shares specified in the Preliminary Decree already passed, would be a decree in itself which is liable to appeal. It was clarified that such change can be done only so long as the Final Decree has not been passed. Therefore, the changes brought due to demise of any of the parties, which brings about alteration in the shares can be considered till the passing of Final Decree, after which this power ceases.

20. The Executing Court cannot go behind the Final Decree. The Executing Court would not be competent to either refuse or execute a decree or modify the shares of the respective parties, by reason of death occurring subsequent to the passing of Final Decree.

21. In the case of Gostha Behari Ghosh vs Anil Kumar Sarkar & Ors., 1980 SCC Online Cal 21, while considering this aspect, it was held that *it would not be competent for the executing Court to either refuse to execute a decree or to modify the same on the ground of alteration in the shares of the*



respective patties by reason of death occurring subsequent to the passing of the decree.

22. In the Case of Shivaramaiah v. Mallikarjunaiah, 1977 SCC OnLine Kar 215 it was held that if shares get altered as a result of the death of any of the parties after the completion of the process of partition by the Civil Court which made the decree under Order 20 Rule 18 of the CPC, the same court cannot be approached for the purpose of adjustment of the shares of the parties in the very same proceedings. In such a case, the parties may have to seek relief in a separate suit, as has also been held in the Case of Phoolchand & Anr. vs. Gopal Lal (supra) and Parsuram Rajaram Tewari vs. Hira Bat Rajaram Tewari, AIR 1957 Bom 59.

23. Coming to the facts of the present case, the Final Decree was admittedly passed on 18.10.2019, which means an executable Final Decree was made on the 18.10.2019. Merely because it is yet to be engrossed on the requisite non-judicial stamp paper, it cannot be claimed that there is anything further to be done by the Court. Essentially, it is a ministerial act to be done on providing of the requisite stamp paper by the parties and nothing further survives before the Court. Non engrossing of the Final Decree does not make it inexecutable but shall be unenforceable till it is engrossed on the requisite stamp paper. In the light of the law, as discussed above, it has to be necessarily held that after the passing of Final Decree, the Court cannot take cognizance of subsequent events or alteration of shares, on account of death of some of the parties.

24. In this regard, it would be pertinent to refer to **Order XXII Rule 6 CPC**, which reads as under:-



“Order XXII-

6. No abatement by reason of death after hearing.— Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.”

25. From this provision, it can be inferred that the legal heirs of a party may not be impleaded once the final arguments are concluded and irrespective of the death of a party, the final Judgment would still be pronounced in the name of the deceased party. This implies that the hearing of a case stands concluded once the final arguments are addressed and nothing more survives to be done by either party except that the Court on the basis of the pleadings and the Judgment, has to make the final adjudication. Therefore, the Rule itself provides that no suit shall abate on demise of either party once the final hearing has been concluded. The Code of Civil Procedure, 1908 itself contemplates situations where the demise of either party would not make it necessary to implead the legal heirs of a deceased party even though the Judgment is yet to be pronounced. In the cases where Final Decree has been passed there is nothing more to be done even by the Court and therefore, the contention of the defendant/applicant that the proceedings do not stand concluded till the Final Decree is engrossed on the requisite stamp paper is fallacious and not sustainable.

26. It is also pertinent to refer to **Order 41 Rule 1 CPC**. The provision originally provided that an Appeal can be preferred only against a “*decree*”,



however, the word “decree” stands substituted by word “*Judgment*” vide amendment dated Civil Procedure (Amendment) Act, 1999 Act 46 of 1999 w.e.f. 01.07.2002. This amendment further reinforces the conclusion that a drawing of a decree is not essential for the purpose of filing an Appeal as the last paragraph of Judgment is to be construed as the Decree, implying a finality to the judgement once pronounced. Therefore, non-engrossing of the Final Decree on the requisite stamp paper, is no longer a pre-requisite for preferring the Appeal. By the same logic, once the judgement has become final, drawing of decree is no longer a prerequisite for its *executability* though it shall not be enforceable till it is *engrossed* on the requisite stamp paper.

27. In light of the above discussion, the judgements relied upon by the learned counsel on behalf of the defendant No. 1/judgment debtor No. 1/counter-claimant [*Surjdeo Dubey & Ors.*(supra); *S. Narayana Reddy & Ors.* (supra); *Dharmaraja Vellalar* (supra); wherein it was observed that the Final Decree becomes executable only on being engrossed on the requisite stamp paper, are of only persuasive value and not applicable in view of the express dictum of the Apex Court in the judgements discussed above.

28. Now adverting to the assertions in the present case, the *defendant No. 1, Smt. Kaushalya Garg* has died on 23.04.2021, i.e. subsequent to the Final Decree and has left a Will dated 20.09.2016, whereby she has bequeathed her share in favour of the defendant No. 1. The validity of the Will would have to be necessarily established by way of a separate Suit and may require not only impleadment of her other legal Heirs but also fresh adjudication in regard to her share on the basis of subsequent events and Will. It is a fresh cause of action which cannot be transposed to the events which have



happened in the past and have been concretized by way of a Final Decree. To interpret it otherwise would lead to an absurdity of there being no finality in Partition Suits where the shares would keep devolving on the demise of parties, after the passing of Final Decree.

29. Likewise, for the reasons discussed above, the subsequent demise of defendant No. 5 cannot allow the reopening the Final Decree dated 18.10.2019, which has already attained finality.

30. The application of the defendants, is, therefore, not tenable in law and is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 02, 2024
S.Sharma/RS