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

Date of Decision: 30th May, 2023

\+ CS(OS) 209/2017

SH. DINESH KAPOOR ..... Plaintiff

Through: Mr. Praveen Mahajan & Mr. Abhinav Chauhan, Advocates.

versus

MR. MUKESH KAPOOR & ORS ..... Defendants

Through: Mr. Rohit Kumar, Advocate.
Ms. Pavitra Kaur, Advocate for GNCTD.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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I.A. 4773/2021(*Condonation of delay in refiling I.A. 4772/2021*)

This is an application on behalf of the plaintiff seeking condonation of delay of 7 days in refiling I.A. 4772/2021.

For the reasons stated in the application, the application is allowed and delay in refiling I.A. 4772/2021 is condoned.

I.A. 4772/2021 (*Application on behalf of the plaintiff for directing the Registry to withdraw their letter dated 24.09.2019 and prepare decree sheet in terms of the order dated 01.08.2019 without requiring the parties to file stamp duty*)

1. The captioned suit was filed for partition of a property bearing No. *A-278, Defence Colony, New Delhi-110024* ["the suit property"]. It was decreed on 01.08.2019 in terms of a Settlement Agreement dated 10.07.2019. The plaintiff has filed this application for a

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direction upon the Registry to recall a communication dated 24.09.2019, addressed to the concerned Sub-Divisional Magistrate, calling for a valuation of the property, and for a direction that the decree sheet be drawn up [pursuant to the order dated 01.08.2019] without payment of stamp duty.

2. Learned counsel for the parties submit that the Settlement Agreement dated 10.07.2019 did not effect a partition of the suit property. Instead, the parties acknowledged each others' 1/5th share in the suit property. The parties agreed to sell the suit property and share the proceeds in this proportion. The decree was passed in terms thereof. The relevant clause of the Settlement Agreement are reproduced below:-

> "*6. The following settlement has been arrived at between the Parties hereto:-*
>
> *a. It has been agreed between the parties that all the parties have equal share in the suit property and they shall sell the suit property jointly within a period of six months from the final decree/ disposal of the suit and sale proceeds so received, shall be distributed in equal shares i.e. 1/5th share to each of them.*"

3. Learned counsel for the parties submit that a decree in these terms is not registerable under Section 17(2)(vi) of the Registration Act, 1908 ["the Registration Act"] and is also not susceptible to stamp duty under the Indian Stamp Act, 1899 ["the Stamp Act"]. They refer to the Division Bench judgment of this Court dated 20.11.1987 in *P.K. Nangia vs. Land & Development Officer*[1] and the judgment of a

[1] 1987 SCC OnLine Del 421.

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learned Single Judge of this Court dated 17.02.2012 in *Razia Begum vs. Mohd. Ilyas*[2].

4. Learned counsel for the plaintiff has also addressed a communication dated 14.01.2020 to the Registrar (Original) in this connection. In fact, the Registrar has written a further communication dated 30.01.2020 to the concerned Sub-Divisional Magistrate for this purpose, in which it is *inter alia* stated that a decree of partition requires to be stamped under Section 2(15) of the Stamp Act, but for preparation of a decree of declaration, the applicant has been requested to file an application on the judicial side.

5. Although the suit was filed for partition of the suit property, it is clear from the Settlement Agreement dated 10.07.2019 that no partition was ultimately effected and the parties have, in fact, acknowledged each other's share in the suit property.

6. In the present case, the decree is one on a compromise, but concerns an immovable property which was the subject matter of the suit. The present decree is therefore not registrable as it falls under Section 17(2)(vi) of the Registration Act. Section 17, to the extent it is relevant, provides as follows:-

> "*17. Documents of which registration is compulsory.—(1)* ***The following documents shall be registered,*** *if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely—*
>
> *(a) instruments of gift of immovable property;*

[2] 2012 SCC OnLine Del 1015.

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(b) ***other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;***

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do no exceed five years and the annual rents reserved by which do not exceed fifty rupees.

***** ***** *****

(2) ***Nothing in clauses (b) and (c) of sub-section (1) applies to—***

***** ***** *****

(vi) ***any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding****];*"[3]

7. The judgment of the Division Bench in *P.K. Nangia*[4] clearly holds that such a decree is non-registerable:-

"*6. Documents of which registration is compulsory are given in clauses (a) to (e) of sub-section (1) of Section 17 of the Registration Act. The decree in question effects the partition of the immovable property and therefore it falls under Section 17(1)(b). However, by virtue of the provisions contained in Section 17(2)(vi), clause (b) of sub-section (1) of Section 17 does not apply*

[3] Emphasis Supplied.
[4] Supra (note 1).

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> *to "any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding". The decree in question is made on a compromise. However, it does not comprise immovable property other than that which was subject matter of the suit. This decree, therefore, does not come within the exception mentioned in clause (vi) of sub-section (2) of Section 17. In our view, the decree in question does not require registration. Respondent No. 1 was not justified in refusing mutation on this ground.*"

8. The decree also does not fall within the definition of an "instrument of partition" under Section 2(15) of the Stamp Act, which provides as follows:-

> "*"Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue-authority or any Civil Court and an award by an award by an arbitrator directing a partition.*"

9. Reliance may be placed upon the judgment of the Coordinate Bench in *Razia Begum*[5], which has considered the earlier authorities and held as follows:-

> " *In the circumstances, the point for consideration is whether the plaintiff is liable to pay stamp duty on the decree which has been passed and whether the decree tantamounts to instrument of partition.*
>
> *In Nitin Jain (supra)*[6]*, a suit for partition and rendition of account was filed between the members belonging to an undivided Hindu family. Parties were constituents of various bigger and smaller HUFs and during the pendency of the proceedings the parties had negotiated and arrived at an oral settlement. Pursuant to the settlement, the movable and immovable properties were distributed and the possession of respective portions had also been taken over by the parties. The oral settlement which was arrived at between the parties was also reduced into writing and incorporated in the application which was filed before the Court. The compromise application was accepted by the Court and the suit was decreed and*

[5] Supra (note 2).
[6] Nitin Jain vs. Anuj Jain, 2007 SCC OnLine Del 582.

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the compromise application was directed to form part of the decree. The question had arisen as to whether such a decree incorporating an oral partition between the parties will be an instrument of partition and will require stamp duty or not.

In para 10 of the said judgment, the Division Bench had held that the compromise application had recorded the oral family settlement to avoid any ambiguity and the Court was not required to pass any decree of partition but only declared the existing factual position on the date when the compromise application was filed that the parties had entered into an oral family settlement and had partitioned and separated the properties among themselves. In para 10 of the said judgment, the Court had held as under:-

"10. Relevant paragraphs of the application for compromise and the orders passed by the Court have been quoted above. In the application it is specifically stated that the parties had entered into an oral family settlement and had distributed movable and immovable properties. In fact it is further stated that the parties had already been put in possession of the respective portions and the possession had been taken over. The compromise application merely records the oral family settlement to avoid any ambiguity. Therefore, in this case the Court was not required to pass any decree of partition but only declare the existing factual position on the date when the compromise application was filed, that the parties had entered into an oral family settlement and had partitioned and separated the properties amongst themselves. It was a decree of declaration that there exists an oral family settlement that was passed and no decree that amounts to an instrument of partition under Section 2(15) of the Stamp Act was passed. Thus, the objection raised by the Registry that the appellant and other co-owners must furnish valuation report and pay stamp duty is not correct and legally tenable. However, it is clarified that in case the appellant or any of the co-sharers want to have a decree of partition prepared by the Registry, they shall have to file valuation report and also pay stamp duty."

Consequently, it was held that the objection raised by the Registry that the parties to the suit were required to furnish valuation report and pay stamp duty was held to be not legally tenable and correct.

Similarly in B.S. Goel (supra)[7] *another Division Bench of this Court has held that if a decree is passed on the basis of oral family settlement, which is reduced into writing, the decree of a partition will not be an instrument which will require stamp as contemplated*

[7] B.S. Goel vs. Registrar, 2006 SCC OnLine Del 1232.

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> *under Section 2(15) of the Stamp Act and will not attract the stamp duty. Another Single Judge of this Court in Rajinder Kumar (supra)*[8] *has also reiterated the same legal proposition.*
>
> *In the circumstances and for the foregoing reasons, the directions of the Registry to the parties to pay the stamp duty for the purpose of drawing the decree are set aside and the Registry is directed to prepare the decree forthwith.*"

10. In these circumstances, it is held that the decree is not required to be stamped under Section 2(15) of the Stamp Act.

11. The Registry is directed to act accordingly.

12. It is made clear that if there is any other provision under which the decree is required to be stamped, the Registry may inform learned counsel for the parties within four weeks from today.

13. The application is disposed of with these directions.

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[8] Rajinder Kumar vs. Iqbal Singh, 2003 SCC OnLine Del 591

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