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

Decided on: 2nd July, 2019

+ CM(M) 1446/2018 & CM Appl. 49963/2018

OM PRAKASH BHARDWAJ

..... Petitioner

Through: Mr. Vipin Arora and Mr. Shelender
Kashyap, Advocates

versus

NITYANAND BHARADWAJ & ORS

..... Respondents

Through: Mr. Manjeet Singh, Adv. for R-1.
Mr. P.N. Dhar, Adv. for R-3.
Mr. Vaibhav Sharma, Adv. for R-2
and 4.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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1. The petitioner in the present petition under Article 227 of the Constitution of India is the plaintiff no.1 in a partition suit, C.S. No. 2875/2016, pending in the court of the Additional District Judge-03, East District, Karkardooma Courts, Delhi. The respondents are his siblings, of whom one brother (Nityanand Bharadwaj, respondent no.1 herein) was also a plaintiff in that suit. The other siblings (respondent nos.2 to 4 herein) were arrayed as defendants in the suit.

2. The prayers made by the petitioner in this petition are as follows:

“A) to call for the record of the Civil Suit No.2875/2016 titled as Omprakash Bhardwaj & Anr Vs. Jagdish Prasad Bharadwaj & Ors. judgment & decree Dt.7/12/2017 And review Order dt.19/11/2018 passed by Sh.Siddharth Sharma, LD. ADJ-03, East KKD, Delhi and

B) to modify the judgment and decree dt.7/12/2017 to the extent of portion Exhibit P-1, yellow colour, may kindly be given to the petitioner, instead of Exhibit P-2 shown in site plan Exhibit C-1 & C-2 and set aside the review order dt.19/11/2018 by allowing the present petition keeping in view the facts and submissions made herein above and

C) Any other relief, which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case, be passed in favour of the petitioner and against the respondents, in the interest of justice. Prayed accordingly.”

3. During the proceedings in the suit, it appears that the parties arrived at a compromise. On 07.09.2017 and 08.09.2017, statements of the parties was recorded by the Court. The statement of the petitioner was recorded on 07.09.2017 as follows:

“Case No. 2875/1607

07.09.2017

Statement of Sh. Om Prakash Bhardwaj S/o Late Sh. Nand Lal Bhardwaj, aged about 66 years, R/o X/7, Shivaji Street, Raghupura ,No.1, Gandhi Nagar, Delhi.

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I am the plaintiff No.1 in this case and I have settled the matter of partition between the parties without any pressure or threat from any corner. My share has been shown in property No. X/7, Shivaji Street, Raghupura, No.1, Gandhi Nagar, Delhi, which is ad-measuring 20 sq. yards (6 feet x30 feet) which is shown in yellow on mark A on Ex. C-2 from ground

floor to top floor. I have left with no dispute/claim between the other parties and I am agreed for partition as mentioned above.

I have also no other claim with regard to the rendition of accounts against the defendants or any other claim whatsoever nature and I further do not pursue the same.

RO & AC

(VIPIN KUMAR RAI)
Additional District Judge-03
East District/KKD Courts/Delhi
07.09.2017”

4. At this time, two site plans were marked before the Trial Court as Ex. C-1 and Ex. C-2 respectively. Those have also been placed before me. In Ex. C-2, there are four sketches, one each of the ground floor, first floor, second floor and third floor. A part of the ground floor plan is marked with the indicators “P-1”, “6 x 30” and “Mark A” and is bordered in yellow. However, yellow borders have also been used on other parts of the document marked as Ex. C-2.

5. After the aforesaid statements were recorded, the Trial Court apparently noticed the possibility of confusion by reason of discrepancy in respect of reference to the portions by colour. It sought clarifications and after several dates of hearing, in accordance with the orders of the Court, new site plans were prepared and handed over on 06.12.2017. On that date, the petitioner was represented by a “proxy counsel”. It is recorded in the order that the copies of the site plans were supplied to him. He raised an objection that the copies supplied to him did not contain the measurement. It was clarified that the measurement of the portion given to the petitioner was 6 ft. x 30 ft., as recorded in the site plan Ex. C-2, which was already on

record. The case was put up for orders on 07.12.2017.

6. On 07.12.2017, the Trial Court passed a “judgement on settlement” in which it was recorded that the site plans filed on 07.12.2017 removed the discrepancy *vis-a-vis* colour and clarified the position as to the respective portions of the parties by vertical division in terms of their statements recorded on 07.09.2017 and 08.09.2017. The new site plans were marked as Ex. P-1 and Ex. P-2 on that date, and formed part of the decree passed pursuant to the said judgment. In the plan marked Ex. P-2 (which is also described as “copy of Ex. C-2”), a portion of 6 feet x 30 feet has been marked in yellow and has been allotted to the petitioner herein, in each floor of the property i.e. ground floor, first floor, second floor and third floor. The Trial Court decreed the suit in terms of the settlement and recorded that the parties would be allotted the portions mentioned in Ex. P-1 and Ex. P-2 which are in conformity with the site plans mentioned as Ex. C-1 and Ex. C-2, at the time statements were recorded.

7. Learned counsel for the petitioner submits that his client was unaware of or, at any rate, unable to comprehend the site plans which have ultimately been marked in the decree. He further submits that, at the time of recording his statement, he was shown a different site plan in which various other portions were also marked in yellow and proceeded on the belief that he would be allotted all those portions of the property.

8. It is undisputed that the petitioner has not filed any appeal against the decree. At the stage of execution, he filed an objection petition against the decree claiming that he was not consulted when the second set of site plans was filed and relied upon his younger brothers. He claims that he was assured by the respondents that his possession will not be affected, but has thereafter come to know that the portion allotted to him has no room for the

residence of his family. He objected to this site plan contending it did not contain his signatures. His objections were dismissed by the Trial Court on 26.10.2018 with the following observations:

“Objection has been moved by Sh. Omprakash, one of the brothers seeking setting aside judgement dated 7.12.2017 and execution dated 6.4.2018.

It is seen that the decree was passed after recording the statement of the parties by my predecessor for which the execution petition has been filed. This court being executing court cannot go beyond decree specially when as per the statement of the parties, the matter was settled without any pressure or threat from any corner and the objector has given the statement stating that after the statement, there is no claim against the defendants whatsoever. In these circumstances, there is no merit in the objection, same are dismissed.

Issue fresh warrants of possession in respect of portion seen in yellow in site plan Ex. P2 alongwith judgement. Issue fresh warrants of attachment against the JD on filing of PF in respect of decretal amount.

To appear before Ld. ACJ for the appointment of Bailiff on 24.11.2018 and to appear before this court on 22.02.2019.”

9. The petitioner did not challenge this order and instead filed an application for review of the judgment dated 07.12.2017, wherein he, admittedly, raised the same grounds. The review petition was dismissed on 19.11.2018 with the following order:

“An application U/s. 114 r/w Section 151 CPC for review of order dated 7.12.2017 has been moved on behalf of the plaintiff.

Earlier in the execution petition, the applicant has moved objection which were dismissed by this court vide order dated 26.10.2018 wherein it was observed that the decree was passed after recording the statement of the parties by Sh. V. K. Rai, Ld. ADJ (E), Karkardooma court, Delhi. In the said

statement, the applicant who was plaintiff no. 1 categorically agreed and stated that he had settled the matter of partition without any pressure or threat from any corner and accepted his share shown in yellow colour in mark A which is Ex. C2. He also made a statement that he did not have any dispute or claim with the other parties and has agreed for partition. He further stated that he had no other claim with regard to receiving of amount against the defendant or any other claim whatsoever in nature and he does not want to pursue the matter further.

Ld. Counsel for applicant states that site plan does not bear his signature and he was not explained the settlement.

I am not in agreement with the Ld. Counsel for applicant. The applicant cannot take U turn after making a settlement statement before the court. The objection has also been rejected and he cannot make frivolous applications after making settlement before the court and passing of decree. The application is dismissed.”

10. Learned counsel for the petitioner has drawn my attention to the fact that the site plans which formed part of the decree were not the same site plans which had been placed on record at the time his statement was recorded. He contends that the portion allotted to him (marked in yellow in Ex. P-2 as annexed to the decree), is not the entirety of the portion marked in yellow in Ex. C-2, as marked by the Trial Court on 07.09.2017.

11. Although the site plans are not identical, I find that the statement of the petitioner as recorded on 07.09.2017, does not refer to the property only by means of the colour, but also by the means of measurement of “20 sq. yards (6 feet x 30 feet)” and the fact that it is identified by “Mark A” in Ex. C-2. This is the portion he was to be allotted from the ground floor to the top floor. Ex. C-2, as originally placed on record, contains only one portion which is identified with the words “Mark A” and “6 x 30”. That part is also

marked in yellow, and marked “P-1”. Although there are also other portions which are marked in yellow and marked “P-1”, those do not satisfy the description of the property in terms of “Mark A” or the measurement, which also formed part of the plaintiffs’ statement on 07.09.2017.

12. The part of the property which has been allotted to the petitioner under the decree (Ex. P-2) reflects the portion of the property which contains all the identifying specifications, from ground floor to top floor. Further, as noted in the judgement of the Trial Court dated 07.12.2017, the revised site plans were submitted after several dates of hearing and were placed before the Court on 06.12.2017. The only objection raised by the counsel representing the petitioner on that date was with regard to the absence of measurements on his copies of the site plans. There is however no dispute that the measurement in fact accords with the statement made by the petitioner on 07.09.2017. It is also significant that the judgment dated 07.12.2017 has not been challenged by the petitioner at any stage in a properly constituted appeal, and that the dismissal of his objections by the order dated 26.10.2018 has also not been challenged. In these circumstances, I am satisfied that the part of the property allotted to the petitioner under the decree corresponds with the part identified in his statement recorded on 07.09.2017.

13. In the present petition, the petitioner now prays for a modification to the extent that the portion marked in yellow colour in Ex. P-1 (as annexed to the decree) be allotted to him. I find that, although there is a portion of each floor marked in yellow and which contains the identification “Mark A” in Ex. P-1 as well, it is very clear that Ex. P-1 identifies the entitlement of defendant nos. 1 and 3 (respondents nos. 2 and 4 herein) and not that of the petitioner who was plaintiff no.1. The entitlements of the plaintiffs and

defendant no. 2 are reflected in Ex. P-2, not Ex. P-1. There is little scope for confusion on that account. The areas marked out in yellow in Ex. P-1 and allotted to defendant nos.1 and 3 do not correspond with the measurement of 6 feet x 30 feet, or “Mark A” in the site plan Ex. C-2, which was on record at the time the statement dated 07.09.2017 was recorded. In these circumstances, the prayer of the petitioner in this petition does not relate to the alleged confusion or grievance which he claims to have suffered by reason of the revision in the site plans.

14. It is settled law that a settlement between members of a family should generally be given sanctity, and parties should be held bound by them. Reference may be made to the celebrated judgment of the Supreme Court in *Kale and Ors. vs. Deputy Director of Consolidation and Ors.* (1976) 3 SCC 119, which has been followed *inter alia* in *Manish Mohan Sharma and Ors vs. Ram Bahadur Thakur Ltd. and Ors.* (2006) 4 SCC 416 and *Hari Shankar Singhania and Ors. vs. Gaur Hari Singhania and Ors.* (2006) 4 SCC 658. In *Hari Shankar Singhania* (supra), the Court placed reliance on several authorities and observed as follows:

“Family arrangement/family settlement

42. Another fact that assumes importance at this stage is that, a family settlement is treated differently from any other formal commercial settlement as such settlement in the eye of the law ensures peace and goodwill among the family members. Such family settlements generally meet with approval of the courts. Such settlements are governed by a special equity principle where the terms are fair and bona fide, taking into account the well-being of a family.

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53. Therefore, in our opinion, technical considerations should give way to peace and harmony in the enforcement of family arrangements or settlements.”

15. The following observations of the Supreme Court in *K.K. Modi vs. K.N. Modi* (1998) 3 SCC 573, are also of relevance:

“.... Such a family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 to 1995 the Memorandum of Understanding has been substantially acted upon and hence the parties must be held to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be viewed a little differently from ordinary contracts and their internal mechanism for working out the settlement should not be lightly disturbed....”

16. There is of course no doubt that a family settlement would be accorded the deference referred to above only if it is bona fide and honestly entered into. Having come to the findings recorded hereinabove; I see no reason to come to a contrary conclusion in the facts of this case.

17. In the circumstances aforesaid, I am of the view that no interference is called for in the present petition.

18. However, I find from the record of the present case that confusion and protracted litigation has occurred on account of fact that there were ambiguities in the site plans which were presented to the parties at the time their statements were recorded. Although those ambiguities were quite rightly resolved by seeking revision of the site plan, no further statements were recorded thereafter. Even thereafter, the same colours and identification marks have been used in Ex. P-1 and Ex. P-2 annexed to the decree. In the interest of utmost clarity, it would be advisable for site plans or similar documents which are fundamental to the rights of the parties, to be prepared in such a manner that no ambiguity of any sort can be discerned. The statements of the parties should ordinarily be recorded after

final site plans have been placed on record.

19. For the reasons aforesaid, the petition is dismissed.

PRATEEK JALAN, J

JULY 02, 2019/'j's

