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

+ RFA 1067/2019

MANJEET KAUR Appellant
Through: Mr.Shreyans Singhvi, Adv.

versus

BALJEET KAUR Respondent
Through: Ms. Akanksha Agrawal, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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17.08.2022

CM APPL. 35630/2022 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CM APPL. 35629/2022 (Order XXIII Rule 3 of the CPC) and RFA 1067/2019

3. This is an application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC), as the parties have amicably resolved the disputes between them. The Memorandum of Settlement arrived at between the parties on 9th August 2022 has been placed on record. The terms of the settlement read thus:



“1. That this Agreement shall come into effect immediately upon the affixation of signatures of both the Parties to this Agreement.

2. That both the parties shall move appropriate applications under Order XXIII Rule 3 before the respective courts within three months of signing of the present Memorandum of Settlement, for bring on record the present Memorandum of Settlement and further praying that a compromise decree may be passed as per the present Memorandum of Settlement.

3. That the parties have agreed to sign a separate Agreement to Sell with respect of 1 /3rd share in property bearing No. D- 24, Bhagwan Dass Nagar, Delhi 110026 at a complete consideration amount of ₹ 1,15,00,000/= (Rupees One Crore and Fifteen Lakhs Only) less the amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) the receipt of which has already been acknowledged by the First Party and the remaining sale consideration amounting to Rs.1,00,00,000/-(Rupees One Crore) shall be paid by the Second Party to the First Party in the following manner.

a. Rs. 1,00,000/- (Rupees One Lakh Only) has been paid by the Second Party to the First Party vide UCO NEFT IMPS Ref no 220812021792 dated 27/07/2022.

b. Rs. 99,00,000/- (Rupees Ninety Nine Lakhs Only) at the time of signing of the Sale Deed in favour of the Second party (i.e. his name or in the name of his nominee or assignee).

4. That the First Party acknowledges the possession of the Second Party which was handed over to them in the year 2001 in pursuance of the Oral Agreement to Sell dated 15th June 2001. The First Party further agrees that First Party does not want the physical and vacate possession of the property bearing No. D-24, Bhagwan Dass Nagar, Delhi 110026 and the Second Party may retain the same.



5. That the First Party undertakes not to execute the decree passed by the Shri Ajay Nagar Ld. Additional Rent Controller (west), Tis Hazari Courts, Delhi vide Order dated 24 July 2019 in case titled "Baljit Kaur VS. Kanwarjit Singh" bearing Eviction petition No 25293/2016 in their favour and same shall be deemed to executed and satisfied. The First Party further undertakes not to dispute the possession of the Second Party and the Second Party shall have right to enjoy the peaceful possession of the property bearing no. D-24, Bhagwan Dass Nagar, Delhi 110026.

6. That the First Party further undertakes not to execute the decree Dated 16th October 2019 passed by Ld. Hasan Anzar, ADJ (West), Tis Hazari Courts, New Delhi in CS no.7636/2016 titled "Smt. Baljeet Kaur vs. Smt. Manjeet Kaur" in their favour and same shall be deemed to executed and satisfied. The First party further undertakes not to dispute the possession of the second Party and the Second Party shall have right to enjoy the peaceful possession of the property bearing no. D- 24, Bhagwan Dass Nagar, Delhi 110026.

7. That the First Party has assured the Second Party that she has been duly authorized by her three daughter and son to sell the 1/3rd Share of the Property bearing no. D - 24 , Bhagwan Dass Nagar, Delhi 110 026 which has fallen in their share after the death of S. Harjit Singh as per the Will dated 9.11.1990 executed by S. Rakha Singh. The First Party further undertakes to get the Relinquishment Deeds/any other documents executed in her favour from the other legal heirs of Late S. Harjit Singh i.e. all the three daughter and one son within a period of one month of signing of the present Memorandum of Settlement.

8. That both parties further agree that the final Sale Deed with respect to the property bearing D - 24, Bhagwan Dass Nagar, Punjabi Bagh, Delhi 110 026 would be executed after the outcome of Probate proceedings pending before the Hon'ble Court of Shri Sanjeev Aggarwal, ADJ-02, West, Tis Hazari Courts, Delhi titled "Gurcharan Singh vs. State". In case the Probate is granted by the Hon'ble Court in the Probate proceedings as stated in the preceding paragraph, then the First Party shall execute the Sale Deed with regard



to the 1/3rd share in favour of Second Party within 6 months of passing of such Probate Decree. It is further agreed by the parties that in case the Probate is not granted, the First Party shall execute the Sale Deed of their respective share and the consideration amount would be calculated in proportion thereof and the agreement with regard to the 2/3rd share would automatically stand cancelled/revoked.

9. That the First Party assures the Second Party that the property in question is still free from all sorts of encumbrance as sale, mortgage, gift, transfer, lien, decree, security, surety, burden charges, notifications, acquisition, complications, attachments, notices Wills, legal flaws, etc. etc. and there is no legal defect in the title of the First Party regarding their ownership and they are fully empowered and competent to sell or transfer their share in the said property in question unto the Second Party, subject to the abovesated Probate Proceedings.

10. That First Party shall not violate any of the terms and conditions of this Agreement in future failing which Second Party will have a right to enforce this agreement through a competent court by a suit for specific performance or otherwise as it deems appropriate at the costs and risks and of First Party.

11. That the First Party admits that this Memorandum of Settlement shall remain irrevocable and Second Party shall not revoke or cancel the same in future in any circumstances.

12. That all the expenses with regard to transfer of property in favour of the Second Party shall be borne by the Second Party.

13. That both the parties undertake not to do any act which may in any manner contravene the terms and conditions of this Memorandum of Settlement.

14. That no changes or modifications or alterations to this Agreement will be made without the written consent of both the parties and this Agreement shall remain binding on both the parties.



15. That this Agreement cannot be cancelled without the specific Agreement of cancellation in writing signed by both the parties.”

4. Learned Counsel for the parties agreeing on behalf of their respective clients to abide by the aforesaid Memorandum of Settlement.

5. In view thereof, nothing survives for adjudication in the present appeal, which is, accordingly, disposed of in terms of the Memorandum of Settlement dated 9th August 2022, binding the parties therein.

6. The next date already fixed in the matter i.e. 22nd August 2022 stands cancelled.

AUGUST 17, 2022
r.bararia

C. HARI SHANKAR, J