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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 04th May, 2022

+ TEST.CAS. 73/2021, I.A. 11466/2021 & I.A. 4137/2022

S K MITTAL

..... Petitioner

Through: Mr. Pawan Upadhyay and Mr. Rajesh Chhetri, Advocates.



versus

NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Sanjeev Kumar, Advocate for R-2 and 3.
Mr. S.S. Sastri, Advocate for D-4 & 5.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Mr. S. K. Mittal has applied for letters of administration in respect of the estate of his deceased brother – late Shri Rajan Mittal, who passed away intestate on 18th June, 2021.

2. Under Section 218 of the India Succession Act, 1925, if a Hindu person dies intestate, the administration of the estate may be granted to a person who, according to the rules of distribution of the estate applicable in the case of such deceased, would be entitled to whole or any part of the deceased estate. In the instant case, the right to such estate would lie first with the deceased's Class 1 legal heirs. Therefore, at the outset, the Court has queried the counsel regarding the maintainability of the petition at the instance of the Petitioner,



when the deceased is survived by Class 1 Legal Heirs i.e., his elder son – Mr. Shrey Mittal [Respondent No. 2] and younger son – Mr. Tushaal Mittal [Respondent No. 3].

3. Counsel for the Petitioner has endeavoured to establish that the instant petition is maintainable, by placing substantial reliance on a Deed of Settlement dated 06th March, 2018 executed between Mr. Rajan Mittal [the deceased, who the “First Party” to the deed] and his wife – Ms. Reshu Mittal [as the “Second Party No. 1”]. In the settlement deed, Respondents No. 2 and 3 were also joined as parties [as “Second Party No. 2 & 3”, respectively] and the same, *inter alia*, records as under:

“5. That the First Party herein became the absolute owner of the Said Property no. B-6/49, Safdarjung Enclave, New Delhi 110029 and first Party has full right, absolute authority to sell, dispose off and transfer the same in whole or in parts.

6. That now in order to obtain the Decree of Divorce by Mutual Consent the First Party has agreed to execute a Gift Deed in respect of the entire First Floor and Second Floor having land share of 45% beneath these floors and hereinafter referred to as the Gift Property (excluding the Ground Floor, the right to construct basement beneath Ground Floor, terrace or roof rights including the right to construct a Third Floor having land share of 55% beneath these floors, hereinafter referred to as the Said Residual Property) of Property No. B-6/49, Safdarjung Enclave, New Delhi 110029 in favour of the Second Party No.1 in respect of full and final settlement of all the disputes between the First Party and Second Party collectively (Second Party No. 1, 2 & 3).”

xx ... xx ... xx

“j. That the Second Party No. 2 and the Second Party No.3 agree that the present settlement is full and final settlement for all their claims arising out of birth against the First Party towards any ancestral property, movable or immovable (past, present and future) etc.

k. That the Second Party No.1 agrees that the present settlement is full and final settlement for all the claims of the Second Party No.2 and the Second Party No.3 arising against the First Party towards any ancestral property, movable or immovable (past, present and future) etc.



xx ... xx ... xx

- m. *That the Second Party collectively further agrees to withdraw the Domestic Violence Case No. 461410/2016 titled as 'Reshu Mittal & Other Vs Rajan Mittal' filed before the court of Ms. Niti Phutela, C.M.M., South, Saket Courts, New Delhi subject to the full and final execution of the present Settlement Deed."*

4. Counsel for the Petitioner argues that Respondents No. 2 & 3 have waived and relinquished all their rights and claims over any and all properties of the deceased, both present and future, by signing the Settlement Deed, and therefore, only the Petitioner is entitled to Letters of Administration.

5. In the opinion of the court, the contention of the Petitioner is devoid of merit, for several reasons discussed hereinbelow.

6. The aforementioned settlement was essentially between Late Mr. Rajan Mittal and Ms. Reshu Mittal, who were in matrimonial discord and a domestic violence case was also pending. They arrived at a settlement, agreeing to go for a divorce by way of mutual consent. Ms. Reshu Mittal agreed to settle all her claims in full and final settlement by accepting the gift of the entire first floor and second floor having land share of 45% beneath these floors in respect of property bearing no. B-6/49, Safdarjung Enclave, New Delhi, 110029. The settlement terms were implemented and a gift deed dated 28th March, 2018 was executed in favour of Ms. Reshu Mittal. On 23th May, 2018, the parties jointly petitioned to the Court under Section 13(b) of the Hindu Marriage Act, 1955, for divorce by mutual consent. Thus, the settlement deed was essentially an agreement between Mr. Rajan Mittal and Ms. Reshu Mittal, in furtherance of settling their differences and finalizing their divorce. No doubt, Respondents No. 2 and 3, who were then aged 20 and 18



respectively, joined the Deed and also signed the document, however, they were only *pro forma* parties, as they could not really have any say in the matter regarding the matrimonial disputes between their parents. The said document therefore, cannot be considered as a document ousting their right to the estate of their father – Mr. Rajan Mittal. Pertinently, Respondents No. 2 & 3 did not receive any consideration under the said settlement.

7. Next, a bare renunciation of an expectation to inherit cannot bind the expectant unless he or she receives consideration for the renunciation. There was, in fact, no settlement between the deceased and Respondents No. 2 & 3. The gift deed was admittedly exclusively in favour of Ms. Reshu Mittal.

8. Moreover, on the date of signing of the settlement, Respondent No. 2 & 3, during the lifetime of their father, had no right of inheritance in respect of his self-acquired properties. They only had a right by birth in ancestral properties. At the highest, it could be argued that clause ‘j’ as extracted above, amounts to relinquishment or waiver of rights in the ancestral properties. That would still not affect the right of Respondent No. 2 & 3 in the self-acquired assets of their deceased father.

9. Further, in absence of any consideration, the condition relied upon by the Petitioner would have to be construed as debarment, which the law does not recognize, unless Late Mr. Rajan Mittal had divested his sons of his estate by way of instruments recognised under law.

10. It also emerges from the submissions advanced by the Counsel for the



Petitioner that the portion of the said property which remained with late Mr. Rajan Mittal was subsequently sold off by him and he moved out from the said property. Later, Mr. Rajan Mittal acquired moveable properties and immoveable properties, as mentioned in para 12 of the petition, which are culled out hereinbelow:

“Immovable properties:

- A. *Flat measuring 288 sq. ft. bearing no. 301, Swastik Bhawan, Ranjit Nagar, New Delhi-110008.*
- B. *Upper Ground Floor bearing no 112, Mohamad Pur, New Delhi-110066 (area 77 sq. Yd)*
- C. *Membership right in Housing Society namely Saraswati Kunj, Section 46, Gurugram.*

Movable properties:

- A. *Saving bank & fixed deposit with HDFC BANK, B-6/03 Safdarjung Enclave, New Delhi-(1129- S/B), (a/c no 5031000142079- S/B)*
- B. *Fixed deposit a/c no 50300352182012*
- C. *Saving bank, a/c no 05031050071433 with HDFC BANK Vasant Vihar. (Customer ID 760999)*
- D. *Saving bank & Fixed Deposit with Kotak Mahindra Bank, Green Park Branch- Fixed deposit a/c no 2413564001. (Customer ID no 32821840)*
- E. *Saving bank & fixed deposit with ICICI Bank, Green Park Extension- (Customer Id 50794100)*
- F. *Saving Bank & Fixed Deposit with Bank of India, Safdarjung Enclave Branch- including locker- S/B 603610110001023*
- G. *Saving Bank & Fixed Deposit with Bank of Baroda, Safdarjung Enclave Branch- including locker- S/B a/c no 71720100001824*
- H. *Saving Bank & Fixed Deposit with IndusInd Bank, Africa Avenue Branch. (S/B account no 159447096000)*
- I. *Term Deposit with Sarojini Nagar Post Officer*
- J. *PPF with Sarojini Nagar Post Office account ID 0390750976*
- K. *Saving bank account with Sarojini Nagar Post Office. (Account No. 010001180662)*
- L. *Saving Bank & Fixed Deposit with Punjab National Bank, South Circle- S/B 3862000101044340*
- M. *LIC policies no 113768658 & 113754751 with LIC of India, branch unit no 310, 86, Janpath, New Delhi*
- N. *Saving Bank with Bandhan Bank Green Park Branch*
- O. *Shares & Bond in physical & D Mat form with Bharat Bhushan*



- Equity Traders Pvt Ltd 5-E Rani Jhansi Road, Jhandewalan Extension, New Delhi, Custodian NSDL*
- P. *Capital Gain Bonds with NHAI (National Highway Authority of India)*
- Q. *Loan to third Parties like Nripendra Shah, Ajay Nuri & Neeraj Aggarwal*
- R. *Jewellery ware with Nripendra Shah r/o 17 Poorvi Marg, Vasant Vihar, New Delhi 110057.”*

11. The afore-noted properties in question, by the Petitioner's own admission, were self-acquired by late Mr. Rajan Mittal after the execution of the settlement deed. Succession to the estate of a person is available only upon his/her death. As on the date of execution of the settlement deed, there was only an expectation to succeed, i.e. a mere possibility. Thus, even if relinquishment was attempted under the deed of settlement, the same would not amount to a valid transfer and is thus ineffective as far as Respondents No. 2 & 3 are concerned. It cannot be assumed that Respondents No. 2 and 3, by virtue of the settlement deed, have waived their rights for every property acquired by Mr. Rajan Mittal during his lifetime.

12. Moreover, the waiver/relinquishment of inheritance rights in a property can only be by way of an instrument, which is recognised in law. The settlement deed is inarguably an unregistered document, which, *inter alia*, also notes that the sons “agree that the present settlement is full and final settlement for all their debt claims arising out of birth against the First Party towards any ancestral property, moveable or immovable (past, present and future) etc.” Under Section 17 of the Registration Act 1908, the extinguishment of any right in an immovable property, whether present or future, whether vested or contingent, is to be by way of a compulsorily registrable instrument. No such instrument has been shown to exist.



13. For the foregoing reasons, *ex-facie* the Petitioner cannot maintain a petition to seek letters of administration for the estate of Late Mr. Rajan Mittal.

14. Accordingly, the Court does not find the instant petition to be maintainable. Dismissed.

15. The pending applications also stand disposed of.

SANJEEV NARULA, J

MAY 4, 2022

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(corrected and released on 10th May, 2022)