

(2012) 10 DEL CK 0272

In the Delhi High Court

Case No : IA No. 13464 of 2012 in CS (OS) 1673 of 2006

Bhai Manjit Singh and Others

APPELLANT

Vs

Bhai Analjit Singh and Others

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 151
Stamp Act, 1899 — Section 2, 2(15)

Citation : (2013) 133 DRJ 604

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Anil Airi, for the Appellant; B.B. Sawhney with Mr. B.K. Sood, for the Respondent

Final Decision : Disposed Off

Judgement

Reva Khetrapal, J.—The present application has been filed by the Defendant No. 3 u/s 151 of the CPC praying for appropriate directions to be issued to the Registry to draw up the decree without requiring the parties to file stamp duty. The abovementioned suit, filed by the Plaintiff No. 1 in August, 2006 seeking, inter-alia, partition of the estate of late Dr. Bhai Mohan Singh, as mentioned in Schedule-I of the plaint, on the premise that late Dr. Bhai Mohan Singh had died intestate and assailing the validity of the registered Will dated 24.08.2005, was decreed on 27.4.2012 in terms of the Memorandum of Family Settlement dated 26.04.2012 and the application bearing IA No. 7789/2012 filed under Order XXIII Rule 3 CPC. The Registry was directed to draw up a decree sheet in terms thereof.

2. The Registry of this Court, by its letter dated 15.06.2012, called upon the parties to file stamp duty amounting to Rs. 1,10,00,000/- to facilitate drawing up of the decree by the Registry. The present application has been preferred by the Defendant No. 3 on the premise that the said communication calling upon the parties to file stamp duty of Rs. 1,10,00,000/- has been addressed mistaking the

compromise decree incorporating the Memorandum of Family Settlement passed in the suit to be an "instrument of partition" falling under Article 45 of the Stamp Act, 1899.

3. It is contended by the learned counsel for the Applicant (defendant No. 3) that the decree incorporating the Memorandum of Family Settlement dated 26.04.2012 is not an "instrument of partition" because the oral family settlement was concluded on 20.04.2012, and subsequently on 26.04.2012, recorded in writing by way of Memorandum of Family Settlement. It is further contended that no part of the estate of late Dr. Bhai Mohan Singh or any other assets as set out in Schedule I of the plaint and alleged by Plaintiff No. 1 to be forming part of the estate, were actually divided/partitioned between the parties. In fact, by way of the Memorandum of Family Settlement, the Plaintiffs accepted the Will dated 24.08.2005 of late Dr. Bhai Mohan Singh as genuine, valid and binding and undertook to withdraw his objections to the grant of probate of the said Will dated 24.08.2005, pending before the Tis Hazari Courts, Delhi. The Plaintiffs further withdrew, gave up and released the defendants from all allegations, contentions and claims made against them in the present suit.

4. To buttress his contentions, the learned counsel for the Applicant relied upon the following judgments:-

- (i) Nitin Jain v. Anil Jain & Ors., AIR 2007 Delhi 21
- (ii) B.S. Goel and Others Vs. The Registrar, High Court of Delhi,
- (iii) Mukarramuddin Vs. Rahimuddin and Others,
- (iv) Shri Rajinder Kumar Vs. Shri Iqbal Singh and Others,
- (v) Manjeet Kaur and Another Vs. Amarjeet Kaur and Others
- (vi) Mst. Razia Begum v. Mohd. Ilyas & Ors., CS(OS) No. 456/2009 dated 17th February 2012.
- (vii) Shri Mahip Singh Thakur Vs. Mrs. Hema Thakur, Shri Vikram Thakur, Shri Goruv Thakur and Ms. Madhu,

5. The Law in this regard is fairly well settled. An "instrument of partition" as defined in Section 2(15) of the Stamp Act, 1899 includes a final order for effecting a partition passed by any Civil Court. However, by a catena of judgments, including those relied upon by the Applicant, it is well settled that every decree in a partition suit is not an "instrument of partition" and cannot be required to be registered and drawn on a stamp paper. Each case would depend upon its own peculiar facts. A Division Bench of this Court in the case of B.S. Goel (Supra) held:

Only such of the decrees are required to be drawn on a stamp paper which allot and vest particular share in each co-sharer as it affects partition of a property and hence requires to be stamped. Such a division of property has the effect of

creation of an exclusive right, title or interest in those portions, which fall to the exclusive shares of the others. Such a decree shall be covered by the definition of instrument of partition as defined in clause (15) of Section 2 of the Act. In such a case, the provisions of Article 45 of Schedule I would be attracted and stamp duty would be leviable and as a result, the decree shall have to be drawn up on a stamp paper of adequate value.

6. It is also trite that the Courts have recognized that an oral family settlement, when reduced in writing in the form of a Memorandum of Settlement, the said Memorandum does not by itself create or extinguish any rights in immovable properties, but only records for information/reference pre-existing rights of the parties as created by oral settlement and does not require compulsory registration. On the same analogy, any decree drawn by the Court recognizing an oral settlement between the members of a family which had taken place earlier and subsequently concretized in a Memorandum of Family Settlement, does not require execution on a stamp paper or require compulsory registration.

7. Applying the aforesaid legal position to the facts of the present case, I find merit in the prayer made in the present application. The present suit was decreed on 27.4.2012 in terms of the Memorandum of Family Settlement dated 26.4.2012 and joint application filed by the parties under Order XXIII Rule 3 CPC. The Registry was directed to draw up a decree sheet incorporating the contents of the aforesaid Memorandum and the said application. The joint application bearing IA No. 7789/2012, filed by the parties under Order XXIII Rule 3, praying for passing of a decree in terms of the settlement, contains the parties' contention that the parties had amicably resolved all their disputes during the pendency of the suit, and the said settlement had been duly recorded in the Memorandum of Family Settlement dated 26.04.2012.

8. A perusal of the Memorandum of Family Settlement dated 26.04.2012 further reveals that no right of any nature whatsoever was either created or extinguished by the said Memorandum in any immovable or movable properties. The plaintiffs have in fact through an oral agreement withdrawn their objections to the Will dated 24.08.2005 of late Dr. Bhai Mohan Singh. No division of properties in any manner has been effected by the Memorandum in question, which is merely a contemporaneous record of the family settlement entered into the parties a few days prior to the recording of the same in the Memorandum. Thus, the plaintiffs have, in effect, withdrawn the allegations made in the plaint. The Memorandum in question also contains the following recital, evidencing the factum of oral settlement:-

And whereas to avoid costly and lengthy litigation and to protect and maintain the substantial assets of the BMFS Trust and to enable the BMFS Trust to use such assets to further its objectives, and also to settle the disputes and differences between BAS and BMS and their various holdings, affiliates etc., the parties had discussions to amicably resolve and settle all disputes, differences and litigations and arrived at and concluded a full and final settlement on

20.04.2012 and now desire to record the same in the present Memorandum.

9. It is, therefore, clear that the settlement between the parties does not result in any partition or in any manner creating or extinguishing any right in immovable or movable properties. Even if for the sake of argument, it is assumed that any right is created or extinguished, the settlement between the parties was arrived orally on 20.04.2012 and subsequently was reduced in writing on 26.04.2012. Accordingly, neither the Memorandum of Family Settlement nor the decree passed in terms thereof can be said to be an "instrument of partition" within the meaning of Section 2(15) of the Stamp Act, 1899 requiring payment of stamp duty as per Article 45 thereof.

10. In view of the aforesaid discussion, the Registry's letter dated 15.06.2012 can not be said to be justified. The Registry is directed to draw up a decree sheet without insisting on payment of stamp duty by the parties. The application stands disposed of in the above terms.