
(2012) 03 DEL CK 0290

In the Delhi High Court

Case No : CM (M) 1374 of 2010 and CM No's. 19509 of 2010, 5534-35 of 2012 and 5660-61 of 2012

Gurbachan Singh Decd thr L.Rs.. and Others

APPELLANT

Vs

Jagjit Singh Sawhney and Others

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 89A

Citation : (2012) 190 DLT 623

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Shashi Bhushan Jain, for the Appellant; V.K. Verma, Markandey and Mr. Y.R. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—The delay in filing the reply is condoned. The order impugned before this Court is the order dated 03.09.2010; the application filed by the defendant under Order 23 Rule 3 of the CPC (hereinafter referred to as the Code) seeking the passing of a compromise decree had been declined.

2. Record shows that the present suit for possession and mesne profits had been filed by the plaintiffs against the defendant; contention was that the plaintiffs are the owners of the suit premises; the defendants have unauthorisedly occupied the suit premises and are liable for eviction. Suit for possession as also for damages for unauthorized use and occupation had been filed. In the course of the proceedings on 17.09.2008 the parties had been referred for a settlement before the Mediation Cell. On 21.10.2008, the Mediation Incharge Mr. O.P. Gupta had recorded the discussion between the parties and it had noted as follows:-

After discussion the parties have reached at an amicable settlement that the defendant will pay Rs. 11,000/- per sq. meter for the area in his possession as well as superstructure. The plaintiffs would execute a Sale deed in favour of LRs

of defendant. The plaintiffs No. 1, 2 and 3 will executed a Sale deed in person and plaintiff No. 4 would execute the sale deed through her attorney/mother/ plaintiff No. 2. The amount will be paid within 45 days. The house tax will be borne by half and half by plaintiffs and LR's of the defendant.

The parties would appear before the concerned Court on 25.11.2008. The court concern will appoint a LC to inspect the site and find out the area in occupation of each LR's of defendant. The expenses of LC shall be borne half by plaintiffs and half by LR's of defendant.

After the payment is made and Sale deeds are executed, the plaintiffs would withdraw the present suit for recovery of possession, mesne profits/damages for use and occupation.

3. The next date fixed before the court was 25.11.2008 on which date the plaintiffs had contended that since they were not present on 21.10.2008 and had not signed any settlement, they are not bound by the settlement recorded on 21.10.2008; this submission of the plaintiff is borne out from the record. The settlement noted before the mediator on 21.10.2008 had been signed only by Mr. Amit Singh Narang, advocate of the plaintiffs but the plaintiffs had not signed the settlement. This submission of the plaintiffs made before the Trial Court on 25.11.2008 found favour but in view of the submissions and counter submissions of the parties, the matter was again referred for mediation for 04.12.2008. On 05.12.2008, the court had been informed that no settlement has been arrived at between the parties as the plaintiffs had disowned it. Submission being that the plaintiffs had not signed this settlement. Thereafter, an application under Order 23 Rule 3 of the Code had been filed by the defendant seeking a decree on the aforementioned compromise dated 21.10.2008. This had been declined by the impugned order and rightly so.

4. Counsel for the petitioner has vehemently submitted that in view of the judgment of AIR 1975 1297 (SC) , an Advocate is also authorized to make a statement on behalf of his client and as such the compromise arrived at between the parties was binding. This judgment is wholly inapplicable to the facts of the present case since in this case a compromise decree is yet to be passed; the matter was only pending before the Mediator and the settlement arrived at between the parties on 21.10.2008 clearly shows that this settlement agreement was never signed by the plaintiffs. In this background the impugned order has correctly returned a finding that this settlement could not have been converted into a decree and there was no compromise as right from the inception of this so called settlement dated 21.10.2008 the submission of the plaintiffs is that they had not signed this settlement on 21.10.2008; this is also evident from the subsequent order dated 25.11.2008. On 05.12.2008 which was the next date after the plaintiff had clearly disowned the settlement, the contention was being reiterated that they have never signed this settlement.

5. Their submission was evident that there was no agreement entered into

between the parties on 21.10.2008 which could culminate into a compromise decree and this has been correctly appreciated by the impugned order.

6. Section 89 A of the Code stipulates that the parties can be relegated to mediation proceeding and where the mediator has settled the substantial disputes between the parties; a decree shall be passed by the court. In this case there was no compromise arrived at between the parties; the compromise proceedings dated 21.10.2008 were never signed by the plaintiffs. This is clear from the proceedings dated 21.10.2008; this has also been disputed by the plaintiff right from the said date. In spite of this having been brought to the notice of the Learned Counsel for the petitioner, he continued to vehemently argue on this count. Petition is without any merit; it is dismissed with costs of Rs. 10,000/-.