

(2023) 07 DEL CK 0296

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 435 Of 2022, 481 Of 2023, Civil Miscellaneous Application No. 22502, 22503, 27684 Of 2022, 14389, 14390, 17720, 37277, 37291 Of 2023, CAV 151, 152 Of 2023

Harleen Anand

APPELLANT

Vs

Bhai Sardar Singh Deceased Through Lrs & Ors.

RESPONDENT

Date of Decision : 27-07-2023

Acts Referred:

Constitution of India, 1950 — Article 227

Code of Civil Procedure, 1908 — Section 151, Order 23 Rule 1, Order 23 Rule 3, Order 1 Rule 10

Citation : (2023) 07 DEL CK 0296

Hon'ble Judges : Manmeet Pritam Singh Arora, J

Bench : Single Bench

Advocate : Jeevesh Nagrath, Arjun Gaur, Rajat Gupta, Gaurav Duggal, Humraz Bir Singh, Ramesh Singh, Akshay Ringe, Rishabh Bansal, Daksha Arora, , Gaurav Duggal, Arjun Nanda, Dhruv Wadhwa, Ramesh Singh, Megha Mukerjeet, Pawanjit Singh Bindra, Lakshay Dhamija, Sujoy Chatterjee

Final Decision : Disposed Of

Judgement

Manmeet Pritam Singh Arora, J

CM(M) 435/2022 and CM APPL. 37291/2023

CM(M) 481/2023 and CM APPL. 37277/2023

1. The petition i.e., CM(M) 435/2022 has been filed under Article 227 of the Constitution of India impugning the order dated 16.04.2022 passed by ADJ-09, Central District, Tis Hazari Court, Delhi ('Trial Court') in Civil Suit No. 5820/2018, whereby the Trial Court has dismissed the Petitioner's application, filed under Order 1 Rule 10 of Code of Civil Procedure, 1908 ('CPC'), seeking impleadment in the said civil suit.

1.1. The petition i.e., CM(M) 481/2023 has been filed under Article 227 of the

Constitution of India impugning the order dated 13.03.2023 passed by Trial Court in the aforesaid Civil Suit No. 5820/2018, whereby the Trial Court has deleted all the defendants except legal heirs ('LRs') of Late Bhai Balbir Singh.

2. The Applications bearing CM. APPL. No. 37291/2023 (in CM(M) 435/2022) and CM APPL. 37277/2023 (in CM(M) 481/2023) have been filed under Order XXIII Rule 3 read with Order XXIII Rule 1 and Section 151 of the Code of Civil Procedure, 1908 ('CPC'), for taking on record the Family Settlement Agreement dated 17.07.2023 ('Settlement Agreement'), arrived at between the Applicants.

2.1. It is stated in the Applications that the Petitioner herein has now arrived at settlement with eight (8) of the Respondents (referred to as 'Settling Respondents'), details whereof are enlisted in paragraph 1 of these Applications.

2.2. In the said paragraph no. 1 of these Applications, it is further clarified that no settlement has been arrived at with remaining seventeen (17) Respondents, whose names as well have been enlisted in paragraph no. 1 itself.

2.3. These Applications have been filed jointly by the Petitioner and the Settling Respondents (collectively referred to as 'Applicants').

3. Vide the said Applications, the Applicants pray that the Settlement Agreement executed between them be recorded and taken on record.

4. It is stated that the Petitioner herein has agreed to have the settlement recorded in the present petitions i.e., CM(M) No. 435/2022, CM(M) 481/2023 and Test Case No. 108/2008.

4.1. It is stated that the Settlement Agreement has already been recorded by the Coordinate Bench of this Court in Test Case No. 108/2008 and taken on record, earlier today.

5. The Petitioner in paragraph 5 of these Applications has set out the undertakings to the following effect:

"5. The Petitioner undertakes and affirms the following:

(i) That the Petitioner shall have no right, share, title, interest and shall neither have nor shall she ever claim any right of any nature whatsoever in the estate of Late Bhai Sundar Dass, his wife Smt. Soma Wanti and HUF of Bhai Sundar Dass;

(ii) That the Petitioner shall have no right, share, title, interest and neither have nor shall she ever claim any right of any nature whatsoever in relation to any of the below mentioned properties ('Properties'):

a. 9, Amrita Shergill Marg, New Delhi

b. 1/16-A, Asaf Ali Road New Delhi (except ground floor thereof);

c. 4/23B, Asaf Ali Road, New Delhi.

d. Funds of the Hindu Joint family and funds (constituted by Bhai Sunder Das)

lying with Bhai Mohan Singh, 15-A, Aurangzeb Road, New Delhi.

e. 27, Jor Bagh, New Delhi.

f. 71, Jor Bagh, New Delhi; and

g. 82 Kanals 21/2 marlas of Agricultural land at Jhundla, District Karnal.

(iii) That the Petitioner affirm to the terms of the Family Settlement dated 14th May 2019 and the said Memorandum of Understanding dated 14th May 2019 and that she shall not dispute, deny or challenge the Deed of Family Settlement dated 14th May 2019 and the said Memorandum of Understanding dated 14th May 2019, executed amongst the Settling Respondents and will give up all her claims contrary to the same.

(iv) That the Petitioner shall not initiate or prosecute any legal proceedings against Settling Respondents in respect of the above properties or against the Deed of Family Settlement dated 14th May 2019 and the said Memorandum of Understanding dated 14th May 2019, executed amongst the Settling Respondents.

(v) The Family Settlement Agreement dated 17.07.2023, including any document in terms of this Family Settlement Agreement, including but not limited to Relinquishment Deeds, shall be binding and irrevocable upon the Parties. The Family Settlement Agreement is already annexed as Annexure A hereto.”

5.1. In terms of the Settlement Agreement, the Petitioner has also executed relinquishment deeds, details whereof are set out at paragraph 3 and the same have been annexed to the Applications.

5.2. In addition, the undertakings of the Applicants (which includes the Petitioner and the Settling Respondents) are also duly set out at paragraph nos. 6, 7, 8, 11, 12 and 13 of the said Applications.

5.3. In view of the aforesaid Settlement Agreement, the Applicants pray that their undertakings be accepted and the present petitions be disposed of qua the Petitioner and the Settling Respondents.

5.4. In view of the Settlement Agreement, the Petitioner seeks to withdraw the present petition along with the pending applications qua, the non-settling Respondents as the Petitioner is left with no right or interest against the said Respondents.

6. The learned counsels for the Settling Respondents as well join the Petitioner in the aforesaid submissions and have confirmed the terms of the Applications.

7. In the Civil Suit no. 5820/2018 pending before the Trial Court, LRs of Respondent No. 4 i.e., Late Bhai Balbir Singh, are the sole surviving defendants.

8. All remaining Respondents in this petition i.e., the Settling Respondents as well as non-settling Respondents have been deleted by the Trial Court vide order

dated 13.03.2023 (except LRs of Respondent No. 4 i.e., Late Bhai Balbir Singh).

9. The learned senior counsel appearing for LRs of deceased Respondent No. 4 states that he has three (3) objections to the reliefs sought by the Applicants in the present Applications.

9.1. He states that the Petitioner herein is not a party to the Civil Suit no. 5820/2018 and her prayer for impleadment was dismissed by the Trial Court vide order dated 16.04.2022. He states that before a compromise is recorded with the Petitioner herein, it is necessary that she is impleaded as party to the civil suit. The learned senior counsel in support of his submission has relied upon the following commentary of Mulla, The Code of Civil Procedure, 18th Edition, 2011 ('Mulla'):

"Where the compromise comprised a share in the suit property of a person who is not a party to the suit but has applied to be impleaded as a party and his allegation finds support in the plaint, the Court must first decide the issue whether such a person has a share and only then record the compromise. This is so because inclusion in the compromise of a share of a person who is a stranger to the suit would not be legal."

9.2. He further states that there is an interim restraint order dated 14.03.1985 operating in the said civil suit and in view of the said interim order the Petitioner and the Settling Respondents herein cannot enter into any compromise with respect to the Property No. 9, Amrita Shergill Marg, New Delhi ('suit property').

9.3. He further states that the Settlement Agreement at recital clause 'R' records that the Petitioner herein for and on behalf of herself and her children has confirmed the earlier settlement agreement and Memorandum of Understanding, both dated 14.05.2019. He states that the LRs of Respondent No. 4 have challenged the said settlement agreement and Memorandum of Understanding both dated 14.05.2019 and therefore, the LRs of Respondent No. 4 are opposed to this settlement.

9.4. He states that the Settling Respondents have been deleted by the Trial Court vide order dated 13.03.2023, however, the said order as well has been impugned by the LRs of Respondent No. 4 in Civil Revision No. 516/2023. He states that recording of this settlement be adjourned until the said revision petition is decided.

10. This Court has perused the Applications and the Settlement Agreement.

10.1. This Court finds that none of the submissions made by the learned Senior Counsel for LRs of Respondent No. 4 can be the basis for not permitting the recording the settlement arrived at between the Petitioner and the Settling Respondents.

10.2. It is a matter of record that the Settling Respondents stand deleted from the array of the parties in the civil suit before the Trial Court vide order dated

13.03.2023. The Petitioner herein as well is not a party to the civil suit and in fact, the application for impleadment was dismissed vide order dated 16.04.2022. The said parties are not precluded in law from voluntarily arriving at a settlement with respect to the inter-se disputes with respect to properties and claims forming subject matter of this petition and all other properties and claims, even if they are not a subject matter of this petition.

10.3. With respect to the objection raised by the learned senior counsel for the Respondent No. 4 on the basis of the commentary of Mulla (supra) relied upon by him, in the opinion of this Court, the said proposition is not applicable in the facts of this case, as the Petitioner herein admittedly is not being granted any share in the suit property in pursuance of this Settlement Agreement.

10.4. The Settlement Agreement and the Applications clearly record that the Petitioner and her children are only receiving a sum of Rs. 13.30 Crores as set out in paragraphs 4 and 9 (i) to (iv) of the Applications. Therefore, it is evident that the Petitioner is not receiving any share in the suit property.

11. For the same reason the interim restraint order dated 14.03.1985 passed in the civil suit cannot be an impediment in the recording of the settlement for the reason that the Settling Respondents are neither alienating, mortgaging or parting with possession of the suit properties in favour of the Petitioner by entering into the Settlement Agreement. The Petitioner in any event is not a party to the civil suit.

12. With respect to the last submission of the learned senior counsel for the Respondent No. 4 that the Petitioner herein is confirming the erstwhile settlement agreement and Memorandum of Understanding dated 14.05.2019, which has not been accepted by the LRs of Respondent No. 4, this Court is of the opinion that the said objection is also of no avail, as the learned counsel for the Petitioner states that the Petitioner herein is relinquishing her rights, title and interest in the suit property (as well as the other properties enlisted at paragraph 5 (ii) of these Applications) with the execution of this Settlement Agreement and she therefore, claims no right title and interest in the suit property (as well as the other properties enlisted at paragraph 5 (ii) of these Applications) and will abide by the terms of the Settlement Agreement; and, therefore, the rights of LRs of Respondent No. 4 are not being impinged upon by the Settlement Agreement.

12.1. He further states that the Petitioner herein undertakes to the Court that the Petitioner and her children will not claim any right, title and interest in the suit properties.

12.2. In view of the aforesaid undertaking of the Petitioner, this Court also finds no merit in the last objections raised by the LRs of the Respondent No.

4. The settlement between the Petitioners and the Settling Respondents does not impinge upon the rights and pleas of the said LRs of the Respondent No. 4.

13. This Court, therefore, finds no reason in law or fact to not proceed with recording the settlement arrive between the Applicants.

14. This Court has examined Family Settlement Agreement dated 17.07.2023 and finds the same to be lawful. Accordingly, the present application is allowed and the Family Settlement Agreement dated 17.07.2023 executed between the Petitioner and Settling Respondents is taken on record.

15. It is directed that the Petitioner as well as the Settling Respondents shall remain bound by the terms and conditions of the said Family Settlement Agreement 17.07.2023.

16. Respondent No. 1 (i), Respondent No. 3 (iii), Respondent No. 3 (ii) and Respondent No.7 are present in person and have been identified by their respective counsel. Respondent No. 2 (iii) is present in person and is also power of attorney holder for Respondent No. 2 (iv); she has been identified by her counsel. Mr. Rajesh Kumar, Power of Attorney holder of Respondent No. 2 (ii) has joined through video conferencing and is identified by the counsel. The said Respondents are the Settling Respondents and confirm the terms of the Family Settlement Agreement dated 17.07.2023 and undertake to remain bound by the terms of the said Settlement Agreement. Their undertakings are accepted by this Court and they are bound down to the same.

17. Respondent No. 2 (i) is not present; however, her counsel is present and confirms that she undertakes to remain bound by the Settlement Agreement. She has duly signed this Application. He states that he will file his vakalatnama within a period of one (1) week. Her undertaking is accepted by this Court and she is bound down to the said undertaking.

18. The Petitioner, her son Mr. Dharminder Singh Anand, her daughter Mrs. Kanwal Singh are present in Court and are identified by the counsel for the Petitioner.

18.1. The Family Settlement Agreement dated 17.07.2023 has been executed by the Petitioner, Mr. Dharminder Singh Anand, Ms. Kanwal Singh and her other daughter Ms. Simran Anand. Petitioner is the Power of Attorney holder of Ms. Simran Anand.

18.2. The Petitioner on her behalf and behalf of Ms. Simran Anand states that she undertakes to abide by the terms of the Settlement Agreement. Mr. Dharminder Singh Anand and Mrs. Kanwal Singh as well state that they undertake to abide by the terms of the Settlement Agreement. The undertakings of the Petitioner, Dharminder Singh Anand and Mrs. Kanwal Singh are accepted by this Court and they are bound down to the said undertakings.

19. In view of the compliance by the Petitioners of the obligations assumed under Paragraph 10 (i) to (iii) of this application, the Respondent No. 7, who is custodian of the drafts mentioned in paragraph 9 (i) to 9 (iv) is directed to handover the said demand drafts to the Petitioner herein.

20. The Petitioner, Mr. Dharminder Singh Anand, Ms. Kanwal Singh Anand as well as the Settling Respondents who are present in Court have been directed to affix their signatures on the order sheet in acknowledgement of the settlement arrived at between the parties. The respective counsels of the parties have also been directed to sign the order sheet, identifying the said parties.

21. With the aforesaid directions, the present applications are allowed and the present petition is disposed of qua the Petitioner and the Settling Respondents.

22. Further, the Petitioner is permitted to withdraw the present petition along with pending applications qua the non-settling Respondents. It is also directed that the Petitioner is left with no right or interest against the said Respondents.

23. It is made clear that the terms recorded in the Settlement Agreement dated 17.07.2023 between the Petitioner and the Settling Respondents will have no binding effect on the right, title and interest of the LRs of the Respondent No. 4 qua the suit property or the properties mentioned in paragraph 5 (ii) of these Applications.

24. Accordingly, the present petitions stand disposed of.