

(2014) 02 DEL CK 0046

In the Delhi High Court

Case No : CS (OS) No. 879 of 2004

Lt. Col. (Retd.) Munishwar Dev Bakshi

APPELLANT

Vs

Parshottam Dass Bakshi and Others

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 23 Rule 3, Order 47 Rule 1, Order 6 Rule 17 114
Hindu Succession Act, 1956 — Section 14(1)
Limitation Act, 1963 — Section 14 5

Citation : (2014) 4 AD 102

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : D.V. Khatri, for the Appellant; Rajesh Tyagi for D-1(1 to 5), Mr. Hari and Mr. Sanjeev Tyagi for D-2 to 6, for the Respondent

Final Decision : Disposed Off

Judgement

Kailash Gambhir, J.

I.A. No. 14534/2012 (condonation of delay)

1. By this application filed u/s 5 read with Section 14 of the Limitation Act 1963 and Section 151 of Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), the applicant/defendant No. 1 seeks condonation of delay of 8 days in filing the accompanying Review Application. For the reasons stated in the application, the same is allowed and the delay in filing the accompanying review application is condoned.

2. Application stands disposed of.

Review App. 443/2012

3. By this review application filed under Order 47 Rule 1 read with Section 114 and Section 151 of CPC, the applicant/defendant no. 1 seeks to recall/review the

order dated 23.04.2012.

4. Addressing arguments in support of the present application, Mr. Rajesh Tyagi, learned counsel for Defendant No. 1/applicant submits that the applicant was the executor and beneficiary of the Will left by the Testator and the probate was granted by the court of Sh. M.A. Khan, the then District judge vide order dated 04.12.1998, whereby the applicant was entrusted/authorised to administer estate of the Testator to the exclusion of all. The contention raised by learned counsel for the applicant is that the applicant was not present in court on 23rd April 2012 and he is not a party to the compromise which was arrived at between the counsel for the applicant/Defendant No. 1, counsel representing the Plaintiff and the counsel representing Defendant No. 5 and 6. Counsel further submitted that the applicant/Defendant No. 1 has already expired on 29.05.2013 and the legal heirs left by him have already been brought on record.

5. Mr. Rajesh Tyagi, learned counsel representing the legal heirs of deceased defendant no. 1 submits that the said consent was given by the counsel, Mr. Anil Kumar Bakshi on behalf of the deceased defendant no. 1 without obtaining any instructions from him. He further submits that in essence the compromise arrived at between the parties was in contravention of the Will of the testator where under the testator had expelled his daughters from any share in the said property. Counsel also invites attention of this Court to the order dated 23.04.2012, which reflects that when the matter was argued by the respective counsels on that date, during the course of argument parties had arrived at a mutual consensus between them. Counsel for the applicant further raised a contention that in the said consensus, no consent was obtained by the deceased defendant no. 1 by his counsel representing him before the Court. Counsel also submits that after the said consent was brought to the notice of the deceased defendant no. 1, he sought a legal advice and then found that the said consent order is against the legal position as envisaged u/s 14(1) of the Hindu Succession Act, 1956 under which the right of estate could vests with the wife of the testator, which creates exception to the general rule. Counsel also submits that the order dated 23.04.2012 was also challenged by the defendant no. 1 before the Division Bench of this Court and the said appeal was withdrawn by the counsel representing the deceased defendant no. 1 in order to take proper legal recourse to file a review application before an appropriate court. Counsel also submits that in the application moved by the counsel for the defendant no. 1 before the Division Bench he also took a stand that no such consent as was recorded in the order dated 23.04.2012 was given and nor such a consent could be given by the deceased defendant no. 1. Counsel also submits that the party can always retract from the alleged consent which was never given by him. Counsel also submits that such consent is also hit by the provisions of Order 23 rule 3 of CPC. Counsel also submits that even the defendant nos. 2, 3 and 4 were not the parties to the said consent order and therefore, the said consent order was not enforceable in law.

6. In support of his arguments, counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Tripura Goods Transport Association and Another Vs. Commissioner of Taxes and Others, and B.S. Bajwa & Anr. V. State of Punjab & Anr., (1998).

7. On the contrary, Mr. Hari, learned counsel for defendant nos. 2 to 6 submits that he has already filed his power of attorney on behalf of all these defendants. Counsel on instructions from these defendants also submits that they are not aggrieved by the consent order dated 23.04.2012 passed by this court and therefore, these defendants do not render their support to the review application filed by the deceased defendant no. 1. Counsel also submits that Mr. Anil Kumar Bakshi is the son of the deceased defendant no. 1-Shri. Parshotam Das Bakshi and in fact, he has been representing him in the present case. Counsel also submits that the consent order dated 23.04.2012 was passed by this Court in the presence of the counsel for the defendant no. 1 and the counsel representing the defendant nos. 5 and 6 as well as the counsel for the plaintiff. He further submits that before the said order was passed by this Court, the parties and their respective counsel had deliberated to the said matter in the court premises itself and in fact, which party would what share was reduced into writing which is a part of the Court record. Counsel has drawn the attention of this Court to the said hand written paper-Mark-A, which is duly signed by one of the legal heirs-Col. Sanjiv Kumar Bakshi, plaintiff as well as counsel Mr. D.V. Khatri, for Mr. Anil Kumar Bakshi-defendant no. 1, who is now legal heir of deceased defendant no. 1 and Mr. Hari-counsel for defendant nos. 5 and 6. Counsel further submits that in fact vide order dated 09.05.2012, a joint request was made by the counsel for the parties for adjourning the matter so that in the meanwhile the parties can decide the modalities to partition the subject property. Counsel states that on 09.05.2012 also the deceased defendant no. 1 was duly represented by his advocate Mr. Rajesh Tyagi and the counsel for other parties were also present. Based on these submissions, Mr. Hari, learned counsel for defendant nos. 2 to 6 strongly urges that the present application seeking review of the order dated 23.04.2012 is not only misconceived but is an abuse of the process of the Court as through this application, the applicant seeks to resile from the said consent order.

8. Mr. D.V. Khatri, learned counsel for the plaintiff has already given his statement that he stands by the said order and he also has no objection even if the said order is reviewed by this Court on the application moved by the deceased defendant no. 1.

9. I have heard learned counsel appearing for the respective parties and given my conscious consideration to arguments advanced by them.

10. The said consent order dated 23.04.2012 was passed by this court when the counsel representing the respective parties informed the court that a consensus had reached between the parties to resolve their disputes. Before I deal with the legality of the said compromise arrived at between the parties, it will be

appropriate to give a brief background of the controversy involved between the parties. The Plaintiff Lt. Col. Munishwar Dev Bakshi had filed a suit for partition against his brother Shri Parshottam Dass Bakshi seeking partition of the residential house built on Plot Nos. 26/47 and 26/48, measuring 100 sq. Yards each, total measuring 200 sq. Yds. situated at West Patel Nagar, New Delhi by metes and bounds in two equal shares. The Plaintiff in the suit averred that Late Shri Bakshi Ram Rakha Mal father of the parties was a sole and absolute owner and in physical possession of residential properties built on Plot bearing No. 26/47 and 26/48, measuring 100 sq. yds. Yds each, situated at West Patel Nagar, New Delhi. It was also averred that Late Shri Bakshi Ram Rakha Mal executed a Will dated 3.3.1976 in respect of the said two properties in favour of the Plaintiff, Defendant and his wife Smt. Lila Wati in equal shares. It is further averred that Shri Bakshi Ram Rakha Mal had died on 31.5.1978 and after his death, his wife Lila Wati had also expired on 18.10.1990. A probate case was filed by the Defendant in respect of the aforesaid Will before the Probate Court and vide orders dated 4.12.1998, the then District Judge had granted a probate in respect of the said Will and by virtue of the said judgment dated 4.12.1998 and a probate order dated 8.1.1999, the plaintiff and the defendant became owners in equal shares and obtained the possession in respect of the aforesaid two properties. Thereafter, the plaintiff had made repeated requests to the defendant to partition the said two properties so that he could avail exclusive possession of any of the said properties but in vain and hence the Plaintiff filed a suit for partition.

11. During the pendency of the said case, the Plaintiff had moved an application under Order 6 Rule 17 read with Order 1 Rule 10 of CPC, vide I.A. No. 10565/2005 to seek impleadment of the other legal heirs left by Late Bakshi Ram Rakha Mal and vide order dated 9.3.2006, the impleadment of defendant Nos. 2 to 5 was allowed.

12. The original Plaintiff expired during the pendency of the case and vide order dated 9.2.2010, passed by learned Joint Registrar of this court, the legal heirs of the deceased Plaintiff were ordered to be brought on record. Defendant No. 4 had also died and his legal heirs were also brought on record. After filing of this application, even Defendant No. 1/applicant had also died and after his death the legal heirs left by him were also brought on record.

13. Mr. Anil Bakshi is a practising advocate and he has been representing his deceased father Shri Parshottam Dass Bakshi in the present matter. Mr. Anil Bakshi now represents the estate of the deceased Defendant No. 1 as one of his legal heirs.

14. The main controversy which requires consideration is whether the two daughters could claim any right in the subject properties despite the fact that they were excluded by the Testator in the Will dated 3.3.1976 left by him. On the other hand, contention raised by Defendant Nos. 5 and 6 was that after the demise of Smt. Lila Wati, the daughters at least became entitled to their

respective shares in the 1/3rd share of Late Smt. Lila Wati, their mother. Vide orders dated 11.4.2012, passed by learned Joint Registrar, parties had agreed to place the matter before the court with an only question to be decided by the court relating to the interpretation of the Will and nothing more.

15. This matter was accordingly listed before the court on 21.04.2012, when some arguments were advanced by counsel representing various parties. But during the course of the arguments, the consensus had reached between the parties and the parties had agreed to finally settle their disputes. The terms of the compromise which were arrived at between the parties forms part of the order dated 23.4.2012. In what manner the shares would be divided amongst the legal heirs were separately reduced into writing on a hand written paper which forms part of the record as well and was marked as "Mark A" at the time of hearing of this application. This document was duly signed by one of the legal heirs of the Plaintiff, Lt. Col. Munishwar Dev Bakshi and his counsel Mr. D.V. Khatri, by Mr. Anil Kumar Bakshi counsel for defendant No. 1, who also happened to be one of the sons of the deceased defendant No. 1 and Mr. Hari, counsel representing defendant Nos. 5 and 6. The party present in person was only Col. Sanjiv Kumar Bakshi, one of the legal heirs of the deceased Plaintiff. Defendant Nos. 2, 3 and 4 were not present in the court at the time of the said consent order. These defendants have now caused their appearance through Mr. Hari, Advocate and they have already given their consent to the said consensus reached between the parties in terms of order dated 23rd April 2012.

16. The present application was moved by Defendant No. 1 when he was alive and he was being duly represented by his son-Mr. Anil Kumar Bakshi, Advocate. It is a stand of Defendant No. 1 that he never gave his consent to his counsel Mr. Anil Kumar Bakshi for the devolution of shares in the said properties in favour of other parties in violation of the terms of the Will dated 3.3.1976. Now the said advocate is representing the deceased Defendant No. 1 as one of his legal heirs.

17. The court with dismay and disgust take exception to the conduct of Mr. Anil Bakshi who belongs to this noble profession of advocates. He has not disputed the fact that he was duly constituted attorney of Defendant No. 1 and therefore, in his said capacity of a recognised agent, he was duly competent to take a decision on behalf of his client who in the present case was none else but his own father.

18. It is a settled legal position that if the consent terms are signed by the recognised agent of the party including his advocate or counsel, the consent terms will have to be treated as if signed by the party himself. It is not the case of defendant No. 1 that he was not being duly represented by Mr. Anil Bakshi, Advocate on the date of the said consent order dated 23rd April 2012. The separate hand written note which was signed by Mr. D.V. Khatri, on behalf of the deceased Plaintiff, Mr. Anil Bakshi, representing Defendant No. 1 and the counsel representing Defendant Nos. 5 and 6, clearly goes to show that due deliberations were done by the counsels after the matter was once been passed over.

Therefore, it cannot be ruled out that Mr. Anil Bakshi was in contact with his own father before recording his consent in the hand written note dated 23.04.2012, at the time of his appearance in the court on the same date. It is also a settled legal position that nothing can come in the way of the parties to forego or surrender their respective rights in favour of the other parties even if one of the parties may have an enhanced right under any court decree as the compromise arrived at between the parties must receive judicial recognition because such a compromise permanently brings an end to their ongoing disputes. Compromise decree or consent order is vitiated and set aside if the same is obtained by fraud, coercion or misrepresentation, or such a compromise is opposed to public policy or in a case where such a compromise is forbidden by any law. None of these circumstances exists in the present case. Therefore, in my view the application moved by Defendant No. 1 is highly misconceived and it was not expected of a lawyer at least to take such a fraudulent stand, deviating from the compromise on the alleged ground of not having obtained the consent of his deceased father before entering into such compromise.

19. In view of the aforesaid discussion, I find no merit in the present review application, therefore the same is dismissed with costs of Rs. 1 lac to be deposited with Advocates Welfare Fund within a period of four weeks from the date of this order. The Review application is accordingly disposed of in above terms.