

(2008) 07 DEL CK 0056

In the Delhi High Court

Case No : IA No. 8321 of 2008 in CS (OS) 1914 of 2003

Shri Gurjeet Singh

APPELLANT

Vs

Shri Sarabjeet Singh and Others

RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 7
Registration Act, 1908 — Section 23

Citation : AIR 2009 Delhi 29 : (2008) 153 DLT 12

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Nem, for the Appellant; Geeta Dhingra, for Defendant No. 1, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The suit was instituted for partition of property No. E-I/23, Lajpat Nagar, New Delhi. Vide order dated 2.8.2005 a preliminary decree for partition was passed declaring the plaintiff Gurjeet Singh and defendant No. 1 Sarabjeet Singh to be holding equal share in the property. On 8.8.2005 a final decree of partition was passed and decree sheet was ordered to be drawn up. The record reveals that the Registrar of the Court thereafter called upon the parties to file the valuation report from government approved valuer so that stamp duty for drawing up the decree may be calculated. The parties filed a valuation report but the Registrar was not satisfied with the same. Notice was issued to the Chief Revenue Controlling Authority (CCRA) Delhi, for furnishing the valuation of the property. The valuation report appears to have been received from CCRA in January, 2008, which was accepted by the Registrar and parties were asked to deposit the stamp papers in accordance with the said valuation report given by CCRA. Upon deposit of stamp papers, draft decree was drawn, and after requisite approvals final decree was engrossed on the stamp papers. In accordance with Order 20 Rule 7, the decree, even though drawn up in or about March, 2008, bore the date of judgment i.e. 8.8.2005.

2. The defendant No. 1 thereafter applied for release of original decree for enabling its registration. Following the practice direction contained in order dated 24.9.2007 in CS(OS) 206/2006, the original decree engrossed on stamp papers was ordered to be released to the Defendant No. 1 and was finally delivered to defendant No. 1 on 3.5.2008.

3. The defendant No. 1 presented the decree for registration to the Sub Registrar V, Mehrauli, New Delhi, on 20th June, 2008, but the Registrar has refused to register the same since the decree bore the date of 8th August, 2005 and the presentation was beyond four months of the said date. Defendant No. 1 has filed this application seeking the directions against the Sub Registrar-V, Mehrauli, New Delhi.

4. Section 23 of the Registration Act 2008, provides that no documents other than a will shall be accepted for registration unless presented within four months from the date of its execution. However, the proviso thereto makes an exception in respect of a decree. A decree can be presented within four months of the day it becomes final. It is significant that period of four months for registration u/s 23 runs from date of execution. Date of execution of a decree would be the date on which it is actually signed and is different from the date of decree. The date of decree, by a legal fiction contained in order 20 Rule 7 is the date of judgment. Thus, the time u/s 23 would in any case run from the date of actual execution and not from date of decree. Further, the proviso to Section 23 is as under:

Provided that a copy of a decree or order may be presented within four months from the date on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

Again the words used are "day on which decree or order was made" as distinct from date of decree. The day on which the decree was made would be the day of signing thereof. It was so held in Mohammad v. M. 41 CWN 945. Thus the Sub-Registrar was wrong in taking the date on which the decree was made as the date of the decree. Unfortunately, the decree in the present case does not appear to show the date of making, i.e. the date on which it was actually signed.

5. It has been held in Raj Kumar Dey and Others Vs. Tarapada Dey and Others, , applying the doctrines of ACTUS CURIAE NEMINEM GRAVABIT - An act of court shall prejudice no man and LEX NON COGIT AD IMPOSSIBILIA - The law does not compel a man to do that which he cannot possibly perform, that the period during which the Arbitral Award was lying in court and further the period during which there was an injunction with respect thereto, is to be excluded while computing the period of four months for registration.

6. This Judgment was followed by this Court in Madhukar Goel Vs. M.S. Goel, again in relation to Arbitral Award. Another Single Judge of this Court in Anurag Malik Vs. Sh. Amit Malik and Another, held that the period of four months, under the proviso to Section 23 begins to run from the date the decree becomes executable.

7. Applying the same principles to the present case, the Defendant No. 1, even after the day on which the decree was made could not have presented the decree for registration before 3rd May, 2008 when the same was released by this Court. The defendant No. 1 ought not to suffer and hence, for the purposes of Section 23 of the Registration Act, the time for registration will run only from the date of release of decree.

8. Accordingly, Sub Registrar V, Mehrauli, New Delhi, is directed to register the decree, subject to other objections, if any. Let the copy of this order be given dasti to the defendant No. 1. 9. The Registry to also, in future, while making the decree and/or releasing decree for registration, to mention endorse thereon, the date of making/signing thereof and the date of release thereof, to enable the Registrar concerned to accordingly compute the period of registration.

Application stands disposed of.