

(2014) 05 DEL CK 0127
In the Delhi High Court
Case No : CS(OS) 1938/2008

Smt. Radhesh Singh

APPELLANT

Vs

Vineet Singh and Others

RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 1, Order 20 Rule 6, Order 20 Rule 6A, Order 21 Rule 11, Order 23 Rule 1(4)
Stamp Act, 1899 — Section 2(15), 2(xv)

Citation : (2015) 214 DLT 305 : (2014) 144 DRJ 143

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Prabhjit Jauhar, Advocate for the Appellant; Jeevesh Nagrath, Ms. Avsi Malik, Advocates for D-1 to 3, Mr. Naaren Nath Survaria, Advocate for D-3, Ms. Anuradha Mukherjee and Ms. Shreya Som, Advocates for D-4, Advocate for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.

IA No. 13523/2008 (of D-1 to 3 u/O 7 R-11 CPC)

1. The plaintiff, on 15th September, 2008 has filed this suit, (i) for declaration that the Compromise Decree dated 31st May, 1984 in Suit No. 335/1982 of this Court has become unexecutable and unenforceable in law and is of no consequence; (ii) for partition of property No. 17, Rajdoot Marg, Chanakyapuri, New Delhi, claiming a 50% share therein; and, (iii) for permanent injunction restraining the defendants from dealing with the said property or disturbing the possession of the plaintiff thereof, pleading:

(a) that the father of the plaintiff and the defendant No. 4 Smt. Ravinder Kumari and of the predecessor of the defendants No. 1 to 3 was the owner of property No. 17, Rajdoot Marg, Chanakyapuri, New Delhi admeasuring 375 sq. yds. and died intestate leaving the plaintiff, the defendant No. 1 and the predecessor of

the defendants No. 1 to 3 as his only legal heirs;

(b) that the plaintiff instituted Suit No. 335/1982 in this Court for partition of the aforesaid property and of the other estate left by the father, claiming 1/3rd share therein and impleading the defendant No. 4 and predecessor of the defendants No. 1 to 3 as defendants thereto;

(c) that though initially the predecessor-in-interest of the defendants No. 1 to 3 (who was the brother of the plaintiff) contested the said suit, ultimately a compromise application was filed therein and the said suit was disposed of on 31st May, 1984 in terms of the compromise;

(d) that under the said compromise, the predecessor of the defendants No. 1 to 3 got 2/3rd share in the said property and defendant No. 4 got the remaining 1/3rd share in the said property, as the plaintiff released her 1/3rd share in the property and it was also agreed that the stamp duty for the decree shall be borne by the parties equally;

(e) that the statement of the plaintiff in the aforesaid suit relinquishing her 1/3rd share in the property in favour of the predecessor of the defendants No. 1 to 3 could not have extinguished the claim to the extent of 1/3rd share of the plaintiff in the said property as neither the said compromise was ever got registered nor any final decree upon stamp paper was ever prepared or registered; in fact, no stamp papers for passing the decree were filed;

(f) that the plaintiff had agreed to relinquish her 1/3rd share in the property on the assurance of the predecessor of the defendants No. 1 to 3 that the property would be sold and 1/3rd sale proceeds would be paid to the plaintiff but the same was not done inspite of repeated requests and reminders of the plaintiff;

(g) that the predecessor-in-interest of the defendants No. 1 to 3 expired on 9th December, 2005 and though the plaintiff called upon the defendants No. 1 to 3 also to fulfil the promise and assurance made by their predecessor, but they refused;

(h) that the property though was in occupation of a tenant after the consent order dated 31st May, 1984 but fell vacant in the year 2008;

(i) that the defendant No. 4 is crippled and is not able to manage her 1/3rd share in the said property and to protect herself against the defendants No. 1 to 3 appointed the plaintiff as her attorney in respect of her 1/3rd share;

(j) that in the meanwhile 12 years lapsed from the consent order dated 31st May, 1984, without the stamp papers for engrossment of the decree thereon being deposited and the decree became unexecutable and unenforceable in law as held in Dr. Chiranji Lal (D) by LRs. Vs. Hari Das (D) by LRs., ;

(k) that the defendant No. 4, in order to compensate the plaintiff, vide Relinquishment Deed dated 26th August, 2008 relinquished half of her 1/3rd share in favour of the plaintiff vide registered Relinquishment Deed dated 26th

August, 2008;

(l) that the plaintiff is in actual and legal possession of the property;

(m) that the plaintiff is now the owner of 50% share of the property i.e. her own 1/3rd share and half of the defendant No. 4's 1/3rd share.

2. The suit came up before this Court first on 16th September, 2008 when it was prima facie observed that the 1/3rd share of the defendant No. 4 in the property, being her separated share in a partition suit, 50% thereof could not be "relinquished" in favour of the plaintiff who had under the partition no share in the property and tantamounted to transfer of immovable property which could be either by gift or sale, by paying ad valorem stamp duty and not by relinquishment. It was further prima facie observed that notwithstanding the decree in pursuance to compromise in the earlier partition suit being not drawn up, the plaintiff would remain bound thereby and cannot reclaim partition. Summons of the suit were nevertheless issued.

3. The defendants No. 1 to 3 have applied for rejection of the plaint, on the grounds:

(I) that the consent order dated 31st May, 1984 binds the parties;

(II) that the suit is barred by Section 11 of the CPC (CPC), 1908 owing to the consent order dated 31st May, 1984 supra;

(III) that the plaintiff herein was the plaintiff in Suit No. 335/1982 also in which also she had claimed 1/3rd share in the property; the plaintiff in the compromise in the said suit abandoned her claim for 1/3rd share in the property and cannot file a second suit claiming a share in the property;

(IV) that the consent order dated 31st May, 1984 had attained finality;

(V) that the rights of the parties under the Courts' order dated 31st May, 1984 cannot be extinguished on technicalities as non-stamping;

(VI) that the judgment dated 31st May, 1984 was not required to be stamped inasmuch as only the shares in the property were ascertained/declared, with the defendant No. 1 and the predecessor of the defendants No. 1 to 3 continuing as owners and no separation or division of the property by metes and bounds was effected;

(VII) that the consent judgment dated 31st May, 1984 was passed on a family settlement arrived at between the parties, to put an end to litigation, and the parties have acted in consonance therewith for 24 years and it is the settled law that family settlements have to be given effect to and have to be enforced and ought not to be negated and nullified on technicalities;

(VIII) that even if the judgment dated 31st May, 1984 were to be held to be required to be stamped, the said technicality would not defeat the substantive settlement between the parties and cannot disturb the rights of the parties;

(IX) that even in the lifetime of the father, the predecessor-in-interest of the defendants No. 1 to 3 had filed a suit against the father and in which a decree dated 29th April, 1981 was passed by the Additional Senior Special Judge, Patiala, Punjab declaring the predecessor of the defendants No. 1 to 3 to be the owner of 2/3rd share in the property and the father to be the owner of the 1/3rd share in the property; the said decree had also attained finality;

(X) that the suit impugning the consent order dated 31st May, 1984, filed after expiry of more than 24 years therefrom, is barred by time;

(XI) that there could be no relinquishment by the defendant No. 1 of her 50% share in the property.

4. Before proceeding further, certain subsequent events may be noticed, only to complete the narrative. In view of the doubts raised in the order dated 16th September, 2008 supra as to the relinquishment by the defendant No. 4, the plaintiff has produced a Gift Deed dated 21st October, 2008 executed by defendant No. 4, gifting half of her 1/3rd share in the property in favour of the plaintiff. The defendant No. 4 (who at the time of institution of the suit was defendant No. 1 in the suit) was also transposed as the plaintiff No. 2 in the present suit and was being represented by the same Advocate as the plaintiff. However since then, the defendant No. 4 has filed CS(OS) No. 1912/2012 for cancellation of the Relinquishment Deed and Gift Deed aforesaid and for other reliefs and has also refused to join the plaintiff in the present suit and has disengaged the Advocate for the plaintiff and has been re-transposed as the defendant No. 4 in the suit.

5. Before proceeding further, another aspect may be clarified. Though the plaintiff in the plaint has also pleaded that she had agreed to the compromise in the earlier suit on the representation of the predecessor of the defendants no. 1 to 3 that the property will be sold and 1/3rd sale proceeds shall be given to the plaintiff but no relief in the suit has been claimed on the said basis and in fact the said claim even if any of the plaintiff would also be barred by time. The plaintiff as aforesaid has sought declaration that the compromise decree dated 31st May, 1984 in the earlier suit for partition has become unexecutable and unenforceable as per the dicta of the Supreme Court in Dr. Chiranjilal supra and is of no avail for the reason of neither party thereto filing the stamp paper for engrossing of the decree for partition and the same being not registered. As a consequence of the said declaration, the plaintiff has claimed the relief of partition of the property and the ancillary relief of injunction. The defendants no. 1 to 3 seek rejection of the plaint contending that the judgment dated 31st May, 1984 continues to bind the parties and non-engrossing on stamp paper of the compromise decree in the earlier suit for partition and/or non-registration thereof does not take away the efficacy thereof.

6. The question, whether the judgment dated 31st May, 1984 in the earlier suit for partition continues to bind the parties or not is a pure question of law. Neither

counsel has argued that the determination of the effect of,

- (i) no decree in terms of judgment dated 31st May, 1984 having been drawn up;
- (ii) no stamp duty on the decree having been thus paid;
- (iii) no registration of the decree having been effected; and,
- (iv) the execution of the judgment dated 31st May, 1984 being barred by time as per Dr. Chiranji Lal supra,

on the judgment dated 31st May, 1984 requires the recording of any evidence. If it were to be held that owing to all or either of the aforesaid factors, the judgment dated 31st May, 1984 is of no consequence and the parties have to be relegated to the original position of the plaintiff and the defendant No. 4 having 1/3rd share each and the defendants No. 1 to 3 together having remaining 1/3rd share, the plaintiff would be entitled to maintain this suit for partition. In such situation, the claim of the plaintiff to another 50% of the defendant No. 4's 1/3rd share will have to await the outcome of CS(OS) No. 1912/2012. However if it were to be held that the parties continue to be governed and bound by the judgment dated 31st May, 1984 under which the plaintiff has no share in the property, the plaintiff would have no right to claim partition thereof on that basis. The claim of the plaintiff in such eventuality to 50% share out of defendant No. 4's 1/3rd share will again be dependent on outcome of CS(OS) No. 1912/2012. Thus, in my opinion, the outcome of the suit itself is dependent on the findings in this application under Order VII Rule 11 CPC and no triable issue is found to arise.

7. The counsel for the defendants no. 1 to 3 in his written submissions has contended:-

(i) that the compromise decree dated 31st May, 1984 was not required to be stamped in as much as the same only declared the predecessor of the defendant no. 1 to 3 to be the owner of 2/3rd share and the defendant no. 4 to be the owner of 1/3rd share in the property and nowhere provided for separation or division of the property by metes and bounds; reliance in this regard is placed on Section 2(15) of the Indian Stamp Act, 1899 defining an instrument of partition and on para 7 of Manjeet Kaur and Another Vs. Amarjeet Kaur and Others of K.N. Khanna Vs. B.K. Khanna, ;

(ii) that the compromise decree is based on a Family Settlement and has been accepted and acted upon for 24 years and such Family Settlements have to be given effect to and are not to be defeated on technicalities; reliance is placed on paras 9,10,18,19 &24 of Kale and Others Vs. Deputy Director of Consolidation and Others, and on paras 11 & 13 of Hansa Industries Pvt. Ltd. and Others Vs. Kidarsons Industries Pvt. Ltd., ;

(iii) that even if it were to be held that the decree was required to be stamped, even then the failure to do so will not render the decree invalid as Stamp Act is a fiscal measure and substantive rights of the parties under the said decree cannot

be defeated on account thereof; reliance in this regard is placed on para 5 of Hindustan Steel Ltd. Vs. Messrs Dilip Construction Company, of Dr. Chiranjilal supra, paras 18,20,28&29 of Dhanraj Gupta Vs. Savitri Malhotra and Others, and on para 15 of Savitri Malhotra Vs. Ram Nath Malhotra, ;

(iv) that the plaintiff never claimed any share in the rent of the property from the year 1984 till September, 2008;

(v) that the compromise decree dated 31st May, 1984 did not require registration; reliance in this regard is placed on para 2 of Bachan Singh Vs. Kartar Singh and Others, of Som Dev and Others Vs. Rati Ram and Another, of Uma Devi Yadav and Another Vs. Lt. Col. Gaj Singh Yadav (Retd.) and Others, , para 6 of P.K. Nangia Vs. The Land and Development Officer, New Delhi and Another, and on paras 36 to 38 of K. Raghunandan and Others Vs. Ali Hussain Sabir and Others, ;

(vi) reference is also made to para 31 of Amteshwar Anand Vs. Virender Mohan Singh and Others, to contend that a decree is not required to be registered, being a composition deed;

Though the counsel for the defendants No. 1 to 3 has also referred to judgments on the bar of Section 11 of the CPC and Order XXIII Rule 1(4) of the CPC but need is not felt to refer thereto as it is felt that if the challenge to the compromise judgment/decreed dated 31st May, 1984 is accepted and it is held that the same is of no avail and the parties are relegated to the original position, the said provisions cannot then come in the way of the plaintiff seeking remedies with respect to her right in the property. Similarly need is not felt to refer to the judgments referred to by the counsel for the defendants No. 1 to 3 on the aspect of the Courts' powers to strike out vexatious, frivolous claims/pleadings and to summarily dismiss frivolous and vexatious litigation.

8. In spite of the question of law having been framed in the order dated 16th September, 2008 while issuing summons of the suit itself, neither counsel during the hearing on 21st April, 2014, argued on the effect of a judgment not followed by a decree i.e. what is to be the effect of the consent judgment in which the plaintiff has given up a share in the property but in terms of which no decree was drawn. The counsel for the defendants no. 1 to 3/applicants has however thereafter filed additional written submissions referring to:-

(a) paras 14,15 & 16 of S. Hadit Singh Obra Vs. S. Daljit Singh, laying down that it is for the Court to draw up a decree and no application is required to be made by either party for the same and the failure of the Court to draw up a decree will not prejudice the rights of the parties to a decree and that a decree holder is entitled to execute the executable part of the decree irrespective of whether a decree is drawn up or not;

(b) paras 1,2, 13 & 16 of Shri G.C. Kumar and others Vs. Shri Ashok Kumar and others, also to the same effect;

(c) para 6 of Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others, also observing that drawing up of a decree is a duty of the Court and is beyond the litigants control;

(d) paras 5 & 6 of Sh. Abdul Saliq Khan Vs. Shri. Nahid Khan and Others, laying down that a compromise is binding inter se the parties as an agreement/contract, the decree notwithstanding and no claim contrary thereto can be made; and,

(e) paras 10,11 & 17 of S. Jaswant Singh (deceased by L. Rs.) Vs. S. Darshan Singh (deceased by L. R.) and others, to buttress the bar of Order XXIII Rule 1(4) of the CPC.

9. The counsel for the plaintiff in his written submissions has contended:-

A. that a second suit for partition of a property is maintainable; reliance in this regard is placed on Kamala and Others Vs. K.T. Eshwara Sa and Others, ;

B. that the compromise decree dated 31st May, 1984 extinguished 1/3rd share of the plaintiff in the property and thus created new rights for the first time in the property and was required to be stamped and registered; the parties also contemplated stamping thereof and the compromise application provided that the stamp duty will be payable by the predecessor-in-interest of the defendants no. 1 to 3 and the defendant no. 4;

C. reliance is placed on Vijai Kumar Sawhney Vs. Inder Dev Sawhney and Others, to contend that stamp duty is payable under Article 45 r/w Section 2(xv) as well as Article 15 of the Stamp Act, 1899 as applicable to Delhi on a partition decree;

D. reliance is also placed on B.S. Goel and Others Vs. The Registrar, High Court of Delhi, as laying down that where the stamp duty required to be paid for drawing up of a compromise decree has not been paid and the decree is not drawn up, it is a nullity in the eyes of law;

E. that a document required to be stamped and not stamped is inadmissible in evidence; reference is made to Jamunabai and Another Vs. Sharadabai and Others, and Hari Singh Vs. Shish Ram and Others, ;

F. reliance is placed on Rakesh Kumar Gupta and Another Vs. Umesh Kumar Gupta and Another, as laying down that a partition decree is required to be stamped;

G. reliance is placed on Bhoop Singh Vs. Ram Singh Major and others, to contend that the compromise decree dated 31st May, 1984 was compulsorily registrable and in the absence of registration cannot be looked at for any purpose; and,

H. that since the plaintiff in any case has acquired 50% of the 1/3rd share of the defendant no. 4, the suit is maintainable and partial rejection of the plaint is not permissible; reliance in this regard is placed on D. Ramachandran Vs. R.V. Janakiraman and Others, and Roop Lal Sathi Vs. Nachhattar Singh, .

10. Before dealing with the rival contentions, the essential ingredients of the compromise arrived at in the earlier suit for partition may be noticed. The compromise application admittedly signed and filed by the plaintiff herein as well as the predecessor of the defendants no. 1 to 3 and the defendant no. 4 recorded:

(i) that they had arrived at an amicable settlement regarding accounts and partition of joint Hindu family left by their father late Sh. Rit Mohinder Singh who had acquired the same from ancestral nucleus;

(ii) that they were seeking a final decree in terms of the "Family Settlement";

(iii) the details of the family settlement were described as;

(a) that upon payment of Rs. 1,00,000/- by the predecessor of the defendants no. 1 to 3 to the defendant no. 4, the plaintiff and the defendant no. 4 shall cease to have any right, title or interest in the residential house No. B-58, Model Town, Patiala which thereupon shall be solely owned and possessed by the predecessor of the defendants no. 1 to 3 and the defendant no. 4 who was residing with her family in the portion of that house shall vacate the same within two months of the receipt of the said amount;

(b) that the subject property will be owned by the predecessor of the defendants no. 1 to 3 with 2/3rd share and the defendant no. 4 with 1/3rd share respectively with effect from 11th July, 1981 and the plaintiff shall have no interest therein and the predecessor of the defendants no. 1 to 3 and the defendant no. 4 shall continue as joint co-owners of the property till such time that they may or may not like to divide the same by metes and bounds;

(c) that the plaintiff released all her right, title or interest in respect of both, the property at Patiala and the subject property in favour of the predecessor of the defendants no. 1 to 3 and the defendant no. 4 and was left with no claim or right in any of these properties;

(d) that all other accounts of the estate has been settled;

(e) that the liability of the properties to the estate duty had already been met by the predecessor of the defendants no. 1 to 3 and future liability if any accruing will also be met by him only;

(f) that the said settlement also superseded the decree of the Court of the Sub-Judge, First Class, Patiala.

(iv) The parties thus sought a final decree of declaration-cum-partition and agreed that the stamp duty thereon shall be borne between the predecessor of the defendants no. 1 to 3 and the defendant no. 4 equally;

Statements of the parties in support of the aforesaid compromise application were recorded and vide order dated 31st May, 1984, a final decree in terms of the compromise was passed with the compromise application forming part of the

decree.

11. The aforesaid judgment/order dated 31st May, 1984 putting its imprimatur to the compromise between the parties and disposing of the suit for partition in terms thereof has attained finality, though undoubtedly the decree ordered to be passed has not been drawn.

12. I have wondered, what is the difference between a judgment and a decree. Section 2(9) of the CPC defines "judgment" as the statement given by the judge on the grounds of a decree or order and Section 2(2) defines a "decree" as a formal expression of an adjudication which so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all and any of the matters in controversy in the suit. Section 33 of the CPC provides that the Court, after the case has been heard, shall pronounce judgment and on such judgment, a decree shall follow. Similarly, Order XX Rule 1 provides that the Court, after the case has been heard shall pronounce judgment and Rule 6 of Order XX provides that the decree shall agree with the judgment and besides containing the number of the suit, the name and description of the parties their address and particulars of the claim, shall specify clearly the relief granted or other determination of the suit. Rule 6A of Order XX, as it stood prior to the amendment with effect from 1st July, 2002, provided that every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and in any case within 15 days from the date on which the judgment is pronounced and further provided that so long as the decree was not drawn up, the last paragraph of the judgment shall be deemed to be the decree for the purpose of execution. After the amendment, the same provides that as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose. Order XXI Rule 11 provides that where a decree is for the payment of money, the Court may on the oral application of the decree-holder, at the time of passing of the decree, order immediate execution thereof by arrest of the judgment-debtor.

13. Though the first impression from the aforesaid provisions of the CPC may be that the judgment and the decree are two different things with, what is pronounced and signed by the Judge being a judgment and what is subsequently prepared by the Office/Registry of the Judge in terms of Order XX Rule 6 of the CPC is the decree but on deeper consideration it is found that what is pronounced and signed by the Judge is a judgment as well as decree with the factual position, issues arising, analysis of the evidence, findings based on the reasons on the issues, being the judgment and the result thereof being the decree. It cannot be ignored that it is the Judge who passes the decree. Drawing up thereof within the meaning of Order XX Rule 6 of the CPC is a separate and independent act which is subsequent to the passing of the decree. Else, the final order in the judgment amounts to passing of a decree by the Judge. It is for this reason only that there is no hiatus between the judgment and the decree. It is again for this reason only that the judgment, under Order XX Rule 6A and under Order XXI

Rule 11, is executable even prior to the drawing up in the form provided under Order XX Rule 6 of the decree. My understanding thus is that a decree is passed by the Court even if for the time being there is no decree drawn up in the form provided under Order XX Rule 6 of the CPC. The passing of the decree is therefore independent and earlier to the drawing up of a decree. I draw support in holding so from an old judgment of the High Court of Gujarat in Bai Vasanti Vs. Suryaprasad Ishvarlal Patel, , and have been unable to find anything to the contrary. Reference in this regard can also be made to the judgment of the Full Bench of the High Court of Allahabad in Gopal Singh Visharad and Others Vs. Jahoor Ahmad and Others, where also it was observed that almost all the High Courts are unanimous with the view that decree comes into existence on the date of judgment even though it is signed later; as soon as the judgment is pronounced, decree is there; in law it comes into existence though it is not formally prepared and signed on the same date. Though Special Leave Petitions against the said judgment have been granted but it appears, not on the said aspect.

14. Reference in this regard can also be made to West Bengal Essential Commodities Supply Corporation Vs. Swadesh Agro Farming and Storage Pvt. Ltd. and Another, to the effect that the decree becomes enforceable the moment the judgment is delivered and merely because there is a delay in "drawing up of the decree", it cannot be said that the decree is not enforceable till it is prepared; this is so because an enforceable decree in one form or another is available to a decree holder from the date of the judgment. The same view was reiterated in Dr. Chiranji Lal (supra) also. I have in Manoranjana Sharma Vs. Naresh Kumar Manshani, held that though the amendment with effect from 1st July, 2002 to Rule 6A of Order XX of the CPC was not noticed in Dr. Chiranji Lal (supra) but the said amendment would not make any difference inasmuch as though the amended Rule 6A does not contain the express provision as earlier contained "that so long as the decree is not drawn up, the last paragraph of the judgment shall be deemed to be the decree for the purpose of execution, but still provides that as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose". It was held that the same implies that till the decree is drawn up, the judgment shall have the effect of a decree for the purpose of execution also.

15. From the aforesaid, it follows that it is not as if there is no decree dated 31st May, 1984 in existence. The decree is very much in existence having been passed on 31st May, 1984 itself. The only thing which has not happened is that the decree is not drawn up in terms of Order XX Rule 6 of the CPC.

16. Dr. Chiranji Lal supra basing whereon the suit is filed, was only concerned with the aspect of limitation for execution of a decree and in that context held that such limitation prescribed under the Limitation Act, 1963 could not be made unilaterally dependent upon the action of the parties of not taking steps for having the decree drawn up. The question as to what is to be the effect of such a

decree being not drawn up in terms of Order XX Rule 6 or the execution of the decree becoming time barred, on the rights of the parties which were adjudicated by the judgment and decree, did not come up for discussion or adjudication in Dr. Chiranji Lal. I am in this lis concerned with the said aspect.

17. Before proceeding to examine the legality of the said aspect, it may be noticed that the plaintiff herein, under the compromise judgment dated 31st May, 1984, gave up her rights, claims, title and interest in the subject property and in the Patiala property and confirmed settlement of other accounts with respect to the joint Hindu family and estate left by the father. The plaintiff under the said judgment was left with no surviving claim/interest and was thus not a decree-holder in any way and was not to get anything under the said judgment or in execution of the decree which was to follow the same. In fact, as far as the defendant no. 4 was concerned, she also did not have any need for execution of that decree. The defendant no. 4 though was entitled to a sum of Rs. 1,00,000/- from the predecessor of the defendants no. 1 to 3 under the said decree but was not required to execute the decree for recovery of the said amount as the cessation of the rights of the defendant no. 4 in the Patiala property and vacation of the portion thereof in occupation of the defendant no. 4 was made dependent upon the said payment; if the predecessor in interest of the defendants no. 1 to 3 was not to make the said payment, the defendant no. 4 was to continue in occupation of the portion of the Patiala property in her possession and continue to have 1/3rd right in the Patiala property. As far as the subject property is concerned, the predecessor of the defendants no. 1 to 3 and the defendant no. 4 were left with 2/3rd and 1/3rd undivided share respectively therein and there was no need for execution by either party of the compromise with respect to the subject property also. The occasion for the predecessor of the defendants no. 1 to 3 to seek execution of the compromise judgment dated 31st May, 1984 would have accrued only if the defendant no. 4 inspite of receiving Rs. 1,00,000/- did not vacate the portion of the property. It would thus be seen that there was nothing executable in the judgment dated 31st May, 1984. That explains perhaps the conduct, of neither of the parties bothering to have the decree in accordance with the judgment dated 31st May, 1984 prepared.

18. In my opinion the non-drawing up of a decree in terms of Order XX Rule 6 of the CPC, for whatsoever reason and whether attributable to the parties or to the Court or its administration cannot obliterate the judgment and the decree which has already been passed and cannot be said to revive the rights which have been settled and adjudicated by the judgment and decree. I am unable to digest a proposition to the contrary. Judgment which is the result and outcome of the toil of the parties to prove their case which is disputed by the other and of sweat of the brow of the Judge cannot in my opinion be permitted to be wasted by the administrative lapse of preparing a decree in terms thereof, particularly when as aforesaid, from the tenor of the judgment and decree there is no need for execution thereof. I am therefore of the opinion that though non drawing up of the decree or non applying for the execution thereof may bar execution if was

required of the judgment but cannot revive the rights which have been settled/created/extinguished by the judgment. What becomes barred is only the right of the party entitled to something under/as per the judgment from another party to the lis to seek the assistance of the Court therefor. In my opinion, the position is the same as what has been held qua the statute of limitation. What becomes barred is the remedy and not right. Thus, if in the judgment and decree, it has been held that a person has no right in the property and such person is not required to do anything further in favour of the party who may have been found entitled to the property, non drawing up of the decree or non execution thereof cannot in my opinion entitle that person to re-agitate the right which has been negated.

19. As far back as in *Mahomed Hossein Vs. Kokil Singh and Others*, , a Division Bench of the High Court of Calcutta held that merely because the right to take out execution upon a decree is barred by limitation, does not mean that the decree itself has ceased to subsist. It was held that the decree remains and will ever remain in full force as an adjudication of the rights of the parties, whether execution can be taken out upon it or not. It was yet further held that a decree subsists forever unless it is set aside or reversed by some competent authority.

20. To the same effect is the judgment of the Division Bench of the High Court of Kerala in *Velayudhan Vs. Receiver and Others*, . Relying on several earlier judgments of the High Courts of Allahabad, Bombay and Calcutta, it was held that even though the execution of the decree may be statute barred, the judgment debt is not thereby extinguished and that because the right to take out execution upon a decree is time barred, it does not follow that the decree itself has ceased to subsist. The decree was held to remain in full force as an adjudication of rights of the parties, whether execution can be taken out upon it or not.

21. Reference may lastly be made to the judgment of the Division Bench of our own High Court in *Union of India Vs. Syed Shah Nasir Hussain*, . In this case, the Government had brought out a suit for possession of certain lands. A consent decree was passed therein which provided that a perpetual lease would be granted in favour of the defendant with respect to a portion of the said land and with respect to rest of the land, it was agreed that possession thereof will be taken over by the Government. However, the Government did not execute the decree and the execution thereof became barred by time. Thereafter, when the Government attempted to take possession of the land, a suit for permanent injunction was filed averring that the Government having not executed the earlier decree, had lost the right to possession of the said land. The Division Bench of this Court held that the non execution will bar the remedy of execution at best and would not create any rights in the land in favour of the judgment-debtor, execution of the decree for recovery of possession whereof had become barred by time. It was yet further held that non execution of the decree did not affect the Government's title to the land and the said title would not extinct by the

remedy of execution of decree for recovery of possession thereof becoming barred by time. It was yet further held that once the judgment-debtor in the compromise had renounced his title to the remaining land, the title thereto vested in the Government.

22. Reference at this juncture may also be made with benefit to the judgment of the High Court of Patna in *Md. Sanjer Ali and Others Vs. Bibi Hasina Khatoon and Others*. The facts were, that in a suit for declaration of a gift deed as void, a compromise was arrived at, at the appellate stage and a compromise application was filed and was allowed and the suit ordered to be decreed in terms thereof and as per which the property was agreed to be partitioned between some of the parties with one of the parties being not allotted any share therein. After nearly two decades, the original decree of the first Court was sought to be executed on the ground that no decree in terms of the compromise having been prepared, the decree of the first Court was executable. It was held that when a compromise petition records the disposal of the entire properties in the suit amongst the parties to the suit and the said compromise is accepted by the Court, then the order of the Court amounts to a final decree.

23. Similarly, the High Court of Gujarat also in *Bai Vasanti (supra)* held that the Court's statement expressing its satisfaction that there is an agreement or compromise adjusting the suit amounts to a judgment because it provides the ground to the Judge for making an order to record the compromise and that upon said judgment as directed by the provisions of Order XXIII Rule 3, a decree has to be passed and which is passed as aforesaid at the time of the judgment itself. It was further held that even if the judgment did not contain any specific direction for passing a decree, a direction to the office to prepare a decree necessarily implies the recording of compromise and passing a decree. It was yet further held that the order to draw up a decree necessarily implies that the judge has passed a decree and as aforesaid a decree comes into existence immediately when a judgment is pronounced, in terms of Section 33 of the CPC.

24. From the aforesaid discussion it follows that the order dated 31st May, 1984 in the earlier suit for partition accepting the compromise arrived at between the plaintiff and the defendant no. 4 and the predecessors of the defendants no. 1 to 3 and decreeing the suit in terms of the compromise amounts to a judgment and decree which continues to bind the parties notwithstanding a decree in terms of Order XX Rule 6 of the CPC having not been drawn and notwithstanding neither party having applied for execution thereof and the said execution having become barred by time.

25. The next question for consideration is whether the aforesaid judgment and decree dated 31st May, 1984 was required to be stamped and registered and if so what is the impact thereof-whether owing to being not stamped and not registered it can be said that the rights claimed by the plaintiff in the earlier suit in the subject property, notwithstanding the same having been extinguished under the judgment and decree dated 31st May, 1984 stand revived.

26. As far as the question of stamping is concerned the Division Bench of this Court in K.N. Khanna supra held that it is not every decree in a partition suit which would be required to be drawn up on a stamp paper. It was held that only those decrees will be required to be drawn up on a stamp paper which divide any property in severalty amongst co-owners. Finding in the facts of that case that the decree only defined the shares of the parties in the property, it was held that the same was not required to be drawn on a stamp paper. It was clarified that only such of the decrees are required to be drawn on a stamp paper, which allot and vest particular share in each co-sharer. The same view was reiterated by another Division Bench in Sushil Kumar Gupta Vs. Smt. Prem Gupta and Others, .

27. The decree dated 31st May, 1984 also does not divide the property by metes and bounds and merely provides that the predecessor of the defendants no. 1 to 3 will have 2/3rd share therein and the defendant no. 4 would have 1/3rd share therein. The same thus did not require to be stamped and cannot be said to be suffering from any deficiency of stamp duty.

28. As far as the aspect of registration is concerned, the same is also no longer res integra. The Division Bench of this Court in Uma Devi Yadav (as also other judgments aforesaid cited by the counsel for the defendants no. 1 to 3) supra has reiterated that a compromise decree, if found to be bona fide in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In that case also, one of the parties to the compromise decree had given up his share in the property. It was still held that the same was not registrable. It was further held that a compromise decree or a decree based on family settlement operates as an estoppel and such a decree is binding on the parties and must be given effect to unless it is proved that the same was obtained by fraud, misrepresentation, coercion or undue influence. The compromise decree dated 31st May, 1984 in the present case also is based on a family settlement and it is not the case of the plaintiff that the compromise was not bona fide or that the compromise was a device to obviate payment of stamp duty and frustrate the law relating to registration. Similarly, as aforesaid, the plaintiff has not approached this Court for setting aside of the compromise decree dated 31st May, 1984 on the ground of the same having been obtained by fraud, misrepresentation or undue influence.

29. It thus follows that the compromise decree dated 31st May, 1984 was not compulsorily registrable and cannot be said to be of no avail for the reason of being not so registered.

30. In view of the aforesaid discussion it follows that the plaintiff is bound by the compromise decree dated 31st May, 1984 and the factum of the same having not been executed or the execution thereof being barred by time has no consequence on the efficacy thereof. The plaintiff is thus not entitled to the relief sought of declaration. Under the said compromise decree dated 31st May, 1984 the plaintiff has no share in the subject property No. 17, Rajdoot Marg,

Chanakyapuri, New Delhi. The plaintiff is thus not entitled to maintain a suit for partition of the said property on the plea of having 1/3rd share therein as the plaintiff claimed in the suit in which the compromise decree dated 31st May, 1984 was passed. The plaintiff not having 1/3rd share in the said property is also not entitled to the relief of injunction with respect to the said property.

31. As far as the claim of the plaintiff to 50% out of 1/3rd share of the defendant no. 4 in the said property is concerned, as aforesaid the defendant no. 4 has filed CS(OS) No. 1912/2012 challenging the same. Though the plaintiff filed an application for rejection of the plaint in that suit but the said application was dismissed vide order dated 21st April, 2014. The claim of the plaintiff for partition on the basis of the said 50% out of 1/3rd share of the defendant no. 4 cannot be, as aforesaid, adjudicated till the decision of CS(OS) No. 1912/2012.

32. In this context another interesting facet may be noted.

33. The plaintiff claims 50% out of the 1/3rd share of the defendant no. 4 on the basis of a Relinquishment Deed executed by the defendant no. 4 in favour of the plaintiff prior to the institution of this suit and also on the basis of a Gift Deed executed by the defendant no. 4 with respect thereto in favour of the plaintiff. A perusal of both i.e. the Relinquishment Deed as well as Gift Deed and to both of which the plaintiff is a party shows that the plaintiff therein also admitted that the said 1/3rd share of the defendant no. 4 in the property is in accordance with the compromise decree dated 31st May, 1984. Though the plaintiff in this suit was claiming the decree dated 31st May, 1984 to be of no consequence but still in the Gift Deed executed after the institution of the suit still recited that the 1/3rd share of the defendant no. 4 was in accordance with the compromise decree dated 31st May, 1984. The plaintiff has clearly been approbating and reprobating and which shows the mala fides and abuse of the process of the Court by the plaintiff. The plaintiff is liable to be non-suited on this ground as well.

34. The Full Bench of this Court in Rajneesh Kumar Singhal Vs. The State (National Capital Territory of Delhi), held that it is an elementary rule that a party litigant cannot be permitted to assume inconsistent positions, to play fast and loose, to blow hot and cold, to approbate and reprobate, to the detriment of the opponent. The plaintiff herein, while on the basis of the Relinquishment Deed and Gift Deed claiming 50% out of the 1/3rd share of the defendant No. 4, is relying on the defendant No. 4 having got the said 1/3rd share under the judgment and decree dated 31st May, 1984 and on the other hand challenging the said judgment and decree dated 31st May, 1984. The same is impermissible.

35. The application thus succeeds and is allowed. The claim of the plaintiff in the suit, for the relief of declaration and for partition of property No. 17, Rajdoot Marg, Chanakyapuri, New Delhi to the extent of having 1/3rd share therein as a heir of her father who was the owner of the said property and consequently for injunction qua the property is rejected as barred by law.

The application is disposed of.