
(1997) 08 DEL CK 0104

In the Delhi High Court

Case No : Suit No. 1124 of 1987 and Interim Application No. 8638 of 1996

Sushil Kumar

APPELLANT

Vs

Pran Nath Mehta and Others

RESPONDENT

Date of Decision : 27-08-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 151

Citation : (1997) 5 AD 198 : (1997) 68 DLT 907

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : B.N. Nayar, Sudha Srivastava and Tarun Dua, for the Appellant;

Judgement

K.S. Gupta, J.

(1) Defendants have filed I.A. No. 8638/96 alleging that Suit No. 1124/87 was decided in terms of compromise between the parties but the decree sheet has not been prepared till date as the plaintiff has failed to deposit the requisite Court fee and stamp papers. It is prayed that necessary direction be issued to the plaintiff to deposit the requisite Court fee and file the stamp papers. Registry is also sought to be directed to prepare the decree/sheet.

(2) plaintiff has contested the application by filing reply. It is not denied that the suit was disposed of in terms of the settlement arrived at between the parties. However, it is alleged that the plaintiff's suit for partition of property No. B-36, Nizamuddin East, was not decreed and the matter was compromised on payment of Rs. 4 lakhs to the plaintiff by the defendants. It is denied that any Court fee/ Stamp duty is payable by the plaintiff.

(3) I have heard the learned Counsel for both the parties.

(4) During the pendency of the suit I.A. No. 1769/96 under Order Xxiii, Rule 3 read with Section 151, CPC dated February 20, 1996, was filed jointly by the plaintiff and defendants 1 to 6. Para 5 of the application, which is relevant for

deciding the controversy at hand, reads thus;

(5) "THE plaintiff has agreed to withdraw the suit and pray that the same be dismissed as withdrawn without any order as to costs subject to the following ;

A. Defendants No. 1 to 6 have agreed to pay Rs. 4 (four) lacs to the plaintiff within two months beginning from 1st December, 1995 to January 31, 1996. These defendants Nos. 1 to 6 will make the payment to the plaintiffs at the time of recording the settlement.

B. That the heirs, successors; assigns and legal representatives of the plaintiff shall be bound by the settlement and they will not have any other claim, interest or right in the suit property or any other claim against any other property against the defendants in future.

C. That the parties inter-se undertake not to indulge into any civil or criminal proceedings between themselves pertaining to any property including the suit property. The party committing default of this settlement will be liable to damages for a liquidated sum of Rs. 10 (ten) lacs.

D. That the plaintiff here shall have no objection to the grant of Probate/ Letter of Administration pending regarding the estate of late Smt. Krishna Devi Mehta. The objection filed by Shri Sushil Kumar Sardana, defendant in the probate proceeding bearing Case No. 120/87 filed by Shri P.N. Mehta and others in the Court, be treated dismissed as withdrawn. He has given no objection certificate/ application with a supporting affidavit separately which are annexed herewith.

E. The plaintiff undertakes to give no objection for all the concerned authorities/ written consent or the transfer of property bearing "Cottage Plot No. 8 (New No. B-36), Nizamuddin East, New Delhi, to defendants No. 1 to 6. Sh. Pran Nath Mehta and others will be competent and at liberty to effect the mutation/transfer of their property i.e. Cottage Plot No. 8 (New No. B-36), Nizamuddin East, New Delhi, in their own names in the record of Land and Development Office, Nirman Bhavan, New Delhi and M.C.D., Delhi for House Tax and Desu for the change of name of electricity meter and other Department/Authority irrespective of any objection raised by the plaintiff or by any person in this respect to this property. He will give no objection affidavit in this regard separately. All the applications filed by the defendant Shri Sushil Kumar Sardana in the office of the L. & D.O. shall be treated as withdrawn.

F. The plaintiff will give letter in the name of Manager, UCO-Bank, Nizamuddin West, withdrawing the objection raised by him.

G. That, on the fulfillment of the terms and conditions of this compromise the present Suit No. 1124/87 will stand dismissed and all interim orders stand vacated including the stay granted in this case on February 17, 1989, Justice G.C. Jain may also be vacated. The compromise is lawful and is not prohibited in law."

(6) By the order dated February 22,1996, after recording the statements of the plaintiff, defendant No. 1 and Madan Krishan Handoo, Attorney of defendants 2 to 6, aforesaid I.A. 1796/96 which was to form part of the decree was allowed and the decree was ordered to be drawn in terms of the compromise.

(7) Indisputably by the time the statement of the plaintiff was recorded on February 22,1996, he had received two Bank drafts for Rs. 2.50 lacs and Rs. 1.50 lacs from the defendants. As is evident from the terms of compromise noted in I.A. 8633/96, aforesaid amount was received by the plaintiff for this giving no objection to the grant of probate in Case No. 120/87 in favor of P.N. Mehta and others and to their getting property No. B-36, Nizamuddin (East), mutated/ transferred in their name by the L. & D.O/MCD etc. This payment was not towards the claim for partition and rendition of accounts of the said property. That be so, plaintiff is not liable to pay any Court fee/Stamp duty further and the Registry ought to have prepared the decree without raising objection, in terms of the Court's order dated February 22, 1996. Let decree sheet be drawn within two weeks by the Registry. Application is disposed of accordingly.