

Jaideep Seth Vs. Urmila Seth and Others

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Court : Delhi

Decided On : Dec-01-2015

Judge : Najmi Waziri

Appeal No. : IA No. 11208 of 2015 in CS(OS) No. 3917 of 2014

Appellant : Jaideep Seth

Respondent : Urmila Seth and Others

Judgement :

IA No.11208/2015 (u/O. XXIII R.3 CPC read with Section 89(2)(C) and Section 151 CPC

1. This application by plaintiff and defendant No.2 under Order XXIII Rule 3 read with Section 89(2) and Section 151 CPC seeks disposal of the suit in terms of a family settlement dated 10.05.2015 authored by a Mediator. The application has been signed by the plaintiff and defendant No.2 and is supported by their corresponding affidavits.

2. It is their case that the lis was referred to the learned Mediator for arriving at a settlement between the parties. Due consent had been given by all the parties to the suit who are claiming their shares in the estate of late Mr. Prem Seth. Relevant electronics mails from all the parties are attached to the application including the consent dated 17.03.2015 from defendant No.1 Mrs. Urmila Seth, widow of late Mr. Prem Seth, a portion of which reads as under:

.....I want to say that from my side there is an unconditional acceptance of the decision given by you for the family settlement issue. I have received a reply from Sanju which I have forwarded to you. I hope and pray very soon the family settlement will take place peacefully and fairly..... ?

3. On 10.05.2015, the learned Mediator had proposed the terms of the said family settlement, which is a part of the application. According to the applicants, in terms of the unconditional and irrevocable consent given by the parties to the litigation, the Proposed Terms of Settlement are binding upon all of them. Hence, a decree is sought in terms of the Settlement. According to the applicants, defendant Nos. 5 and 6 would not be relevant for disposal of the suit and the issues involving them also stand covered.

4. The applicants rely upon the apex court's judgment in *Manish Mohan Sharma and Ors. v. Ram Bahadur Thakur Ltd. and Ors.* (AIR 2006 SC 1690) which observes as follows:

32. It has been repeatedly emphasized in several decisions that family settlements are governed by a special equity and are to be enforced if honestly made. This would be so "even if the terms may have been agreed to on the basis of an error of the parties or originate in a mistake or ignorance of fact as to what the rights of the parties actually are, or of the points on which their rights actually depend". This is because the object of an arrangement is to protect the family from long drawn out litigation, and to bring about harmony and goodwill in the family (see *Kale v. Deputy Director of Consolidation* [1976]3 SCR 202, 122, 123, 125). The courts lean heavily in favour of family arrangements and, "matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements". ?

5. The non-applicants, in particular defendant Nos. 3 and 6 have sought dismissal of the application on the ground that the application has neither been signed by all the parties nor is supported by their corresponding affidavits. According to them, the claim that the lis stands settled is falsified by the fact that the parties are yet to give their consent to the proposed terms of the settlement, therefore, the application is not maintainable in terms of Order XXIII Rule 3 of the CPC, which

provides for a suit to be decreed only in the event of an agreement or compromise having been arrived at between all the parties.

6. The learned counsel for the non-applicant would submit that on the assumption that the learned Mediator would be fair and equitable in his approach and with a view to arrive at a settlement, the parties had agreed for a consent order had been accorded for reference and conciliation of the lis to the named Mediator for settlement of all disputes among heirs of Late Mr. Prem Seth. However, during the course of the discussions and meetings with the learned Mediator, the non-applicants developed certain reservations about the process and its objectivity. Hence, the defendant No.1 " the widow of Late Mr. Prem Seth, wrote an electronic mail to the learned Mediator expressing her reservation about the manner in which the family talks were proceeding. According to this communication, defendant No.1 had withdrawn her consent to abide by the terms of any proposed settlement. Reliance is placed upon the correspondence between the two i.e. the defendant No.1 and the learned Mediator which reads as under:

Urmilla To: Tejinder Khanna Bcc: madhav.khurana@gmail.com

Thu. May 7, 2015 at 7:11 PM

Dear Teji,

You are supposedly doing an arbitration without any participation. Please understand I have more to say than jaideep, sandeep and sanjay. In this connection I sent you a few mails to which surprisingly I have not received a reply. It seems you are doing this arbitration unilaterally.

Since you have ignored me and my mails I would suggest the following on my behalf:

(1) You have already received the accounts from Sanjay which he has forwarded to me as well. I want the accounts of Sandeep particularly Petro and Jaideep

(2) I want my flat at Sunkist back from Sandeep.

(3) I want Jaideep to move to the second floor of 17 eastern avenue, which his father has given him.

(4) I know for a fact that Jaideep has given up his rights on the shares of laffans showroom to Sandeep. Without getting into any argument I have asked Sanjay that he should pay Jaideep 10% more than what Sandeep has paid.

I don't think these points deserve any further discussion or clarification from Jaideep Sandeep and Sanjay.

I as a mother still have this discretion as to which of my children should be given what. In that I am not disputing what their father has left them in his will and codicil.

I would appreciate if you would forward this mail to BabaJi as well as for whom I have a tremendous respect and regard for.

With my best regards and affection.

Gurpiari.

.....

Tejendra Khanna To: Ipl laffans1@ysnl.com, sanjayseth@gmail.com, Jaideep Seth jssethflp@yahoo.co.in

Thu, May 7, 2015 at 9.36 PM

Dear Gurpiari Behenji,

Let me clarify that I am not ding any arbitration. You all said that as advised by Repected Babaji, you would go unconditionally by what I might apropos as a fair family settlement. If there is any reservation about this from your side or anyone else's side, I have no interest in taking this forward.

If you feel your own views have to prevail, please let me know.

I have sought inputs from everyone. Your views have been communicated to me, but there was no need for me to respond at this stage as to whether I agree or disagree without your views. You may communicate with Respected Babaji at his office email I'd : 259@rssb.net

Best Regards,

Teji Khanna

Sent from my iPhone

.....
Urmilla urmillaseth@gmail.com

To: SETHA seth sanjayseth@gmail.com

Fri, May 8, 2015 at 9.08 AM

Dear Teji,

I am conscious of the relentless efforts made by you and also have no doubts over your integrity and competence to mediate towards a possible settlement of the disputes between the Seth family, but I am sure that you will understand and appreciate that I am the eldest member of the Seth family and the direct beneficiary of the will of Prem Seth and the most affected party in all this. The present settlement cannot go through in my absence. You are aware that Prem through his will has to the best of my understanding done equity between all the beneficiaries to his estate. And despite enough wealth being provided to everyone in the family, the children have no respect for their mother be it for that matter Jaideep, Sandeep or Sanjay.

Please also see that the settlement in the family cannot be carried out in piecemeal and particularly in my absence. What I have been given to understand is that presently you are acting as a mediator in attempting to settle the issue of Jaideep only, however, it will not be out of place to mention that Sandeep has also filed a case of Laffans along with Jaideep, and also in supporting the cause of

Jaideep in this case filed for partition. You are aware that if the settlement has to happen, it shall encompass the issues concerned and connected with Sandeep and Sanjay also, as I have no faith in either of them and want to ensure my well being and security.

It is not a question of prevailing upon the views of one over the other but rather is a question concerning establishment of permanent peace and harmony in the family, which obviously includes me. No settlement can happen without addressing my views, concerns, safety and security. I have deepest regards for Respected Babaji, but as presently the issue is languishing before the Courts, and when the sons have filed criminal cases against their mother and also threaten their mother with another court case for restraining me from entering my own properties, it becomes much more important to take me into consideration. Hope you will understand my concerns as well and will inform me when I can discuss all this with you at the earliest since the next court date is 13.05.2015.

Lastly Teji I don't want to end up like Biji and Boji who after signing off their rights to their son ended up living in the Satsang Ghar.

With best regards,

Gurpiari

.....
ANSHUJ DHINGRA LAW OFFICES adlaoffices@gmail.com

To: tkukdk@gmail.com

Bcc: sanjayseth@gmail.com

Fri, May 8, 2015 at 6:21 PM

Dear Mr. Khanna,

Greetings.

At the very outset we would like to express our sincere gratitude for sparing your valuable time in attempting for settlement of the family dispute between the members of the Seth family.

I will like to bring on record, though under instructions of my Client Mrs. Urmilla Seth, that my client despite eager to participate in the family settlement process has never been afforded any opportunity for the same, and the settlement talks were being conducted and carried amongst yourself and her three sons namely Jaideep Seth, Sandeep Seth and Sanjay Seth. Indisputably, my client is the beneficiary of all the assets under the will and codicil of Late Shri Prem Seth, and as such de-facto owner of the properties mentioned thereunder, and no settlement/distribution of the properties can be decided or agreed upon by her sons except with the consent and concurrence of Mrs. Urmilla Seth. We cannot lose sight of the fact that several properties (which were subject of the settlement discussions also) including Sunkist at Mumbai are the self acquired properties of Mrs. Urmilla Seth and as such cannot be a subject of settlement unless specifically agreed upon by Mrs. Seth.

Additionally, it has also been brought to our notice that since you have concluded discussions with Mr. Jaideep Seth, Mr. Sandeep Seth and Mr. Sanjay Seth, albeit in the absence of Mrs. Urmilla Seth, and have been assured them to handover a note/write up containing your opinion on the proposed settlement, which to the information provided to us has also not been agreed upon by Mrs. Urmilla Seth as well as Mr. Sanjay Seth, consequently, the handing over of the note/write up/concludes of the settlement are beyond the tenets of mediation and as such cannot be provided either of the parties. We on behalf of our client Mrs. Urmilla Seth put on record our objections towards any possible handing over of the summarization of the discussions/finding by your goodself. Needless to state as the discussions under the mediation process are carried in strict confidence, and the summarization of the same in the form of opinion can seriously prejudice the rights of the parties before the Court in the pending litigations. However, in the event the parties would have agreed for any settlement (which certainly has not been done in the present case), the same could have been recorded/reduced in the form of an agreement, failing which nothing remains to be brought on record.

as an outcome of the mediation/settlement progression.

Also, it is pertinent to mention that since various documents, papers, financial details and information have also been passed on to your goodself by all the parties during the said process, it is also desirable that the same shall also be maintained with secrecy and should not be parted with.

We hope that you will be kind enough to appreciate the above and shall abstain from giving your opinion or for that matter any document in writing to either of the parties, including my client.

With regards,

Anshuj Dhingra

Advocate

ANSHUJ DHINGRA LAW OFFICES

ADVOCATES

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Tel: +91-11-41514922; Fax: +91-11-41514936

Email: adlawoffices@gmail.com

.....
adlawoffices@gmail.com To: Seth Maharani Bagh Client , Urmilla Seth
urmillaseth@gmail.comCc: Madhav.khurana@gmail.com
madhav.khurana@gmail.com

Fri, May 8, 2015 at 7:11 PM

Please see below the reply received from Mr. Khanna.

Sent from my BlackBerry 10 smartphone.

.....

From: Tejendra Khanna tkukdk@gmail.com

Sent: Friday, 8 May 2015 19:06

To: ANSHUJ DHINGRA LAW OFFICES

Subject: Re: About Family Settlement 0 Mrs. Urmilla Seth

Dear Shri Dhingra,

Your client is meeting me tomorrow at her request. It is upto your client to agree or otherwise to my final suggestions given in all good faith as a family well-wisher who has taken up this matter only after the unconditional voluntary consent of all family members of Shri Prem Seth's family to abide by my proposals, If there are reservations on the family settlement issues as cited by you, your client can state in the Hon'ble High Court that she would like to go in for a Court decision instead of an out of court resolution. In this scenario, even the meeting sought by her with me tomorrow morning loses relevance and will be an unnecessary call on my time. Pleae relay this appropriately to your client. I wish to engage in no further communication with you on this subject, since my role remains an informal one and I am neither a mediator or an arbitrator from a legal stand point.

Yours Sincerely,

Tejendra Khanna

.....

On 09-May-2015, at 10:12 am, Urmilla Seth wrote:Dear Teji,

Got your message last night, my lawyer wrote to you only out of concern for me. I have written out 5 points which I am going to ask Sanjay to hand over to you personally. If those can be acted upon it can resolve matters out of Court if not then I suggest you withdraw from the situation and let destiny take its course.

Please let me know if this suits you. If it is ok by you then Sanjay will be there by 11:30.

Thank you for all your efforts in trying to solve our dispute.

Regards

Gurpiari

PS please do not forward this email to anyone.

Sent from my iPad

.....
On 09-May-2015 at 10:36 am, Tejendra Khanna tkukdk@gmail.com wrote:

Dear Gurpiari Behenji,

RS

Thanks for your message.

I cannot accept any preconditions

on what I may, in my best judgment, propose

Therefore, let the matter proceed as

you mention, through the judicial

process.

Best Wishes,

Teji Khanna

Sent from my iPhone
.....

On 09-May-2015, at 10:58 am, Urmilla wrote:Dear Teji,

Since this means that you are withdrawing from the process of family settlement, I would request you not to give anything in writing to anyone.

I do hope this is an end to any further dialogues on this family dispute between us or any of my children. As they have driven me to court you to not need to be supporting them.

Thanking you

Regards

Gurpiari

.....
On 09-May-2015, at 11:21 am, Tejendra Khanna tkukdk@gmail.com wrote:

I have seen your mail.

The fact remains that

your present stand completely

contradicts your earlier commitment

to accept my decision unconditionally ?, based on

Babaji's written advice to you.

Best Wishes,

TK

Sent from my iPhone

.....
Urmilla urmillaseth@gmail.com

To: TEjendra Khanna tkukdk@gmail.com

Sat, May 9, 2015 at 12:21 PM

Dear Teji,

Just received your mail.

Teji my unconditional acceptance of any decision made by you was never with the intention that you not discuss anything with me. I am grateful to Babaji for suggesting that you would solve this matter. So I take your valued suggestion Let the courts decide. ?

I had trusted your judgment, it did not mean that you would leave me out of it altogether. And though I sent you many mails you thought it proper not to discuss anything with me. You cannot be taking one part of the family into confidence and ignoring the other part of the family totally.

During earlier meetings with you, you said, Sandeep must be out of Sunkist ?. You had also mentioned on several occasions that Sunkist is out of the ambit. One went along with you keeping that in mind. I will still put my points forward whether you agree with them or not.

1) Jaideep should live well and comfortably on the second floor of 17 eastern avenues as per his father's wishes.

2) Sandeep should give accounts of petrochemicals and of profits of the last 20 years and the sale of Laffans Petro.

3) Sandeep should vacate my flat in Bambay.

The reason I am requesting you not to forward any papers/documents to any concerned parties is that it will jeopardise my rights to a fair and unbiased trial.

Anyways I am very said that no solution has come out of this.

Thanking you

Best wishes

Gurpiari

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On 09-May-2015, at 2.07 pm, Tejendra Khanna wrote: Dear Gurpiari Behenji,

Having received your views thru'

your emails, there was no need to respond or seek any face to face meeting with you as I did not need any clarifications on the same. We have met many times to discuss these issues in the past and I have always been open to meet you

without preconditions.

Recently, I had met Jaideep, Sandeep

and Sanjay only to ascertain what

might be a fair valuation of Jaideep's

shares in Laffans India as a one time

settlement, which I had been

suggesting to you for a long time.

You have attributed some statements

to me about Sunkist which I disagree

having made.

Accepting your pre-conditions on a fair family settlement was not possible. That is why I have opted out of this exercise. However, it is uncalled for you to suggest that your getting these issues settled in Court in accordance with my advice ?. My advice is entirely to the contrary. As I see it, the course you are choosing to adopt

goes against Respected Babaji's advice. Please accept honestly that this is your own decision and has nothing to do with me.

Best Wishes and Regards

Teji Khanna

sent from my iPhone

.....

Urmilla Seth Urmillaseth@gmail.com

To: Tejendra Khanna tkukdk@gmail.com

Sat, May-09, 2015 at 3.27 pm

Dear Teji,

Radha Soami,

A meeting was held in Pune by BabaJi in the presence of Seema, Sandeep, Sanjay and myself in September 2012. His clear advice to me in the presence of my children when I asked him about the first floor, as to who it should go to, as that was causing a conflict. Babaji clearly said in everybody's presence that I should give it to whoever looks after me his exact words were, Jeda twaddi seva karey unnu dey dena. ?. This was made clear to me 3 years ago. So where is the question of any further settlements as far as the first floor is concerned, I take that as the final verdict.

Regards

Gurpiari

Sent form my iPad

.....

Tejendra Khanna tkukdk@gmail.com

To: Urmilla urmillaseth@gmail.com, Jaideep Seth , sanjayseth@gmail.com, Seema Saigol , lpl laffans1@vsnl.comSun, May 10, 2015 at 2.08 pm

Dear all,

This is to inform you that as per Respected Babaji's advice to me, I have drawn up my Seth Family Settlement proposals and handed over a closed envelope each thereof (containing signed 4 pages of the proposals and 4 sheets being copies of your consent conveyed by emails to abide by my decision) this afternoon to (1) Sanjay Seth and (2) Sandeep Seth. This closes my efforts to help with the Resolution of disputed Seth family settlement issues, which I had been invited to take up after your unconditional consents had been received.

Best Wishes and Regards,

Teji Khanna ?

.....

7. This Court would find that the correspondence of 09.05.2015 between defendant No. 1 and the learned Mediator is of much relevance. At 10.12 am, defendant No. 1 had written to the learned Mediator that if suggestions can be acted upon it can resolve matters out of Court if not then I suggest you withdraw from the situation and let destiny take its course. Please let me know if this suits you. She further wrote thank you for all your efforts in trying to solve our dispute. The learned Mediator wrote at 10.36 am Thanks for your message. I cannot accept any preconditions. On want I may, in my best judgment propose. Therefore let the matter proceed as you mention through the judicial process. At 10.58 am, the defendant No. 1 wrote since this means that you are withdrawing from the process of family settlement, I would request you not to give anything in writing to anyone. I do hope this is an end to any further dialogues on this family dispute between us or any of my children..... In a subsequent communication at 2.07 pm, the learned Mediator further wrote: accepting your pre-conditions on a fair family settlement was not possible. That is why I have opted out of this exercise. ?

8. The Court is of the view that the parties understood the mediation process to be an informal method of arriving at a settlement. Indeed, the learned Mediator too had understood it in the same manner. His reply to an email from the lawyer of Defendant No.1 ends with :If there are reservations on the family settlement issues as cited by you, your client can state in the Hon'ble High Court that she would like to go in for a Court decision instead of an out of court resolution. In this scenario, even the meeting sought by her with me tomorrow morning loses relevance and will be an unnecessary call on my time. Please relay this appropriately to your client. I wish to engage in no further communication with you on this subject, since my role remains an informal one and I am neither a mediator or an arbitrator from a legal stand point. ?

9. The parties were always at liberty to withdraw from the informal arrangement prior to the finalisation of any deed of settlement. Therefore, insofar as defendant No.1 had withdrawn her consent from the mediation, and the learned Mediator himself had acknowledged the same and stated at 2.07 pm on 09.05.2015 that he had opted out of this exercise of attempting a family settlement, it ipso facto aborted and put to an end all further endeavours towards a settlement. Consequently, the proposed terms of family settlement would at best be still born ?, redundant and without authority from defendant No.1. Hence, it cannot be said that the terms of settlement would be unconditionally binding upon the non-applicants.

10. While it is true that a family settlement ought to be accorded special consideration and the Courts would interpret in favour of the settlement in terms of the precedents cited hereinabove, it would nevertheless need to be determined whether there was settlement in the first place.

11. In the present case, the document of 10.05.2015 is only a proposal for settlement and would not be binding upon the non-applicants since defendant No.1, i.e. the widow of late Mr. Prem Seth had, during the mediation exercise itself, withdrawn her consent to be bound by any such settlement proposal.

12. Furthermore, since the learned Mediator had himself opted out of the exercise, the proposed terms could at best be a document for the parties to work upon but

not necessarily a binding agreement. Since there is no agreement or a settlement, this application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908, cannot be allowed. Accordingly, it is dismissed.

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