

Narinder Nath Seth & Ors. Vs. Lata Seth & Ors.

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Court : Delhi

Decided On : Apr-06-2018

Appellant : Narinder Nath Seth & Ors.

Respondent : Lata Seth & Ors.

Advocate for Def. : Mr. Jatinder Kumar Sethi, Mr. Sidharth Yadav, Mr. Wasim Ashraf

Advocate for Pet/Ap. : Mr. Gaurav Puri, Mr. Vineet Pandey

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

6. h April, 2018. CS(OS) No.2658/1999 NARINDER NATH SETH & ORS. Plaintiffs Through: Mr. Gaurav Puri with Mr. Vineet Pandey, Advs. Versus LATA SETH & ORS. ...Defendants Through: Mr. Jatinder Kumar Sethi, Adv. for D-1 to 5. Mr. Sidharth Yadav and Mr. Wasim Ashraf, Advs. for D-6(a) to 6(d). CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW IA No.9138/2016 (of defendants No.1 to 5 u/O XX R-18(2) CPC for modification of the preliminary decree dated 8th February, 2012) 1. This suit was filed for partition of property No.33/5, East Punjabi Bagh, New Delhi and Shop No.48, Khursheed Market, Sadar Bazar, Delhi amongst the legal heirs of late Laxmi Narain Seth. The defendants 1 to 5 in their written statement, inter alia pleaded that besides the said two properties, Shop No.123, Khursheed Market, Sadar Bazar, Delhi was also liable to be partitioned

between the parties.

2. The defendant no.6 in his written statement, inter alia, pleaded that Shop No.17 and Shop No.123A, both at Khursheed Market, Sadar Bazar, Delhi were also liable to be partitioned.

3. Vide judgment dated 8th February, 2012, it was held that Shop No.17, 123 and 123A were not available for partition and a preliminary decree for CS(OS) No.2658/1999 Page 1 of 17 partition of property No.33/5, East Punjabi Bagh, New Delhi and of Shop No.48, Khursheed Market, Sadar Bazar, Delhi only was ordered to be passed.

4. Vide judgment dated 13th December, 2012 in RFA(OS) No.41/2012 preferred against the aforesaid judgment and decree, it was held that the deceased left behind shops No.17, 48 and 123, Khursheed Market, Sadar Bazar, Delhi and property no.3

East Punjabi Bagh, New Delhi; accordingly, the judgment and decree aforesaid was modified and shops No.17, 48 and 123, Khursheed Market, Sadar Bazar, Delhi and property No.33/5, East Punjabi Bagh, New Delhi were ordered to be partitioned, with the share of the plaintiffs together being 1/3rd, the share of the defendants No.1 to 5 together being 1/3rd and the share of defendants No.6(a) to (d) together being 1/3rd. It was further ordered that since Shop No.123, Khursheed Market, Sadar Bazar, Delhi had been sold by the plaintiffs after the institution of the suit, while partitioning the estate, the current values of the properties would be identified / determined and the value of Shop No.123 sold by the plaintiffs would be assigned to the share of the plaintiffs.

5. SLP(C) No.5208/2013 was preferred by defendants no.1 to 5 against the aforesaid judgment and vide order dated 15th February, 2013, notice thereof was ordered to be issued to explore the possibility of settlement and stating that since the matter pertained to dispute among family members, it would be in the interest of all parties that the matter was brought to an end by way of a settlement. Vide subsequent order dated 18th March, 2013, the Supreme Court Mediation Centre was directed to attempt settlement of the matter between the parties. CS(OS) No.2658/1999 Page 2 of 17 6. However, thereafter on 2nd May, 2013, the

Supreme Court disposed of SLP(C) No.5208/2013 with the following order: Learned counsel appearing for the petitioners makes a prayer to withdraw the special leave petition. Learned counsel for the petitioners is permitted to withdraw the special leave petition. Accordingly, the special leave petition is dismissed as withdrawn.

7. The defendants 1 to 5 have filed this application for modification of the preliminary decree for partition aforesaid as passed by this Court on 8th February, 2012 and as modified by the Division Bench on 13th December, 2012 and for passing of a second preliminary decree in terms of the Mutual Settlement dated 1st May, 2013.

8. It is pleaded by the applicants/defendants No.1 to 5 in this application (i) that in the mediation directed by the Supreme Court, the parties were able to arrive at a settlement on 1st May, 2013 and the Special Leave Petition was accordingly withdrawn on 2nd May, 2013 (ii) that as per the said Settlement, a) the property No.3

East Punjabi Bagh was agreed to be sold and the sale proceeds thereof agreed to be distributed, with the defendants No.1 to 5 taking 36.75 per cent, the plaintiffs taking 31.75 per cent and the defendants No.6(a) to (d) taking 31.50 per cent share therein; (b) since the defendants No.1 to 5 are carrying on business from Shop No.48, Khursheed Market, Sadar Bazar, the same was agreed to be not sold and its value was assessed at Rs.1 crore, with the plaintiffs getting Rs.31,75,000/- and defendants No.6(a) to (d) also getting 31,50,000/-; (iii) that though a buyer was identified for CS(OS) No.2658/1999 Page 3 of 17 the East Punjabi Bagh property but the plaintiffs as an afterthought stonewalled the implementation of the Settlement dated 1st May, 2013 and filed an application for execution of the preliminary decree as modified by the Division Bench and which was pending consideration. Thus, it is claimed that the preliminary decree for partition needs to be modified.

9. The defendants 6(a) to (d) have opposed the application pleading as under: (i) that no settlement was arrived at before the Supreme Court Mediation Centre, and there is no report of the Mediation Centre recording the settlement and the

settlement was not accepted by the Supreme Court; in spite of the same, the Special Leave Petition was withdrawn; (ii) that with the withdrawal of the Special Leave Petition, the preliminary decree for partition as modified by the Division Bench vide judgment dated 13th December, 2012 attained finality; (iii) that the Settlement Agreement dated 1st May, 2013 relied upon by the applicants/defendants No.1 to 5 places a pre-condition upon the parties to act expeditiously towards closure of disputes, failing which the said settlement was to be treated as void; (iv) attention is drawn to the following clause of the settlement: 4. The PARTIES shall make an effort to execute the Sale Deed for sale of property No.(i) as mentioned in Article A(8) on or before September 30, 2013 but in no CS(OS) No.2658/1999 Page 4 of 17 circumstances later than October 30, 2013. In case the Sales deed fails to be executed by October 30, 2013 then this settlement agreement will be considered null and void; (v) that admittedly, the East Punjabi Bagh property was not sold by way of execution of sale deed by 30th October, 2013 and the Settlement Agreement dated 1st May, 2013 became null and void; (vi) that another clause of the Settlement Agreement dated 1st May, 2013 stipulated that in case of any dispute or difference with regard to interpretation or implementation of the Settlement Agreement, the Courts at Delhi alone would have jurisdiction, meaning that if the applicants/defendants No.1 to 5 were aggrieved by non-compliance of any clause of the Settlement Agreement dated 1st May, 2013, the same would require to be adjudicated by independent proceedings based upon fresh cause of action and which have not been initiated; (vii) that this application for modification of the decree itself was filed after three years of the execution of the Settlement Agreement dated 1st May, 2013 on 29th July, 2016; (viii) that the Settlement Agreement dated 1st May, 2013 is nothing but an understanding and arrangement between the parties and which has failed; (ix) that this Bench is, in any case, not empowered to modify the preliminary decree for partition passed by the Division Bench; CS(OS) No.2658/1999 Page 5 of 17 10. The plaintiffs also have filed a reply opposing the application pleading, i) that the Settlement Agreement dated 1st May, 2013 stipulated that if the Sale Deed is not executed by 30th October, 2013, the Settlement will be considered null and void; since no Sale Deed was executed on or before 30th October, 2013, no settlement came into effect; ii) that during the pendency of the SLP before the

Supreme Court, the aforesaid Settlement was neither made a part of the Court record nor there was a prayer for another preliminary decree to be passed and the SLP was withdrawn simplicitor on 2nd May, 2013; and, iii) that the opportunity to amend the preliminary decree is lost and the defendants No.1 to 5 are trying to enforce the Settlement belatedly.

11. The applicants/defendants No.1 to 5 have filed a rejoinder inter alia contending that the plaintiffs, in collusion with defendants No.6(a) to (d) stonewalled the implementation of the Settlement Agreement and the present application had been filed within the prescribed time; it is further pleaded that time was not the essence of the performance of the obligation under the Settlement Agreement dated 1st May, 2013; and, that the plaintiffs and the defendants No.6(a) to 6(d) cannot take advantage of their own wrong.

12. The counsels were heard on 27th February, 2017, 20th April, 2017, 24th April, 2017 and 15th May, 2017 and orders on the application were reserved. CS(OS) No.2658/1999 Page 6 of 17 13. It was the contention of the counsel for the applicants/defendants No.1 to 5 (i) that the applicants/defendants No.1 to 5 cannot be relegated to a separate suit qua the Settlement arrived at during the pendency of the legal proceedings, (ii) that the applicants/defendants 1 to 5 are not asking for a final decree of partition in terms of Settlement dated 1st May, 2013 but are wanting modification of the preliminary decree for partition, (iii) even if the contention of the counsel for the defendants No.6(a) to 6(d) of the applicants/defendants No.1 to 5 being required to file a separate suit were to be accepted, the preliminary decree passed by the Division Bench has to go, (iv) that the Settlement dated 1st May, 2013 being a family settlement, did not require registration.

14. During the hearing, attention of the counsel for applicants / defendants No.1 to 5 was drawn to the law as has developed with respect to a money decree, that any satisfaction thereof has to be in terms of Order XXI Rule 1 and 2 CPC and not otherwise and it was enquired, whether the same would apply to the present case.

15. The counsel for the applicants/defendants No.1 to 5 contended that the said principle would not apply because of the special equities applicable to a family

settlement.

16. The counsel for the applicants/defendants No.1 to 5 has referred to: (i) Phool Chand Vs. Gopal Lal AIR 1967 SC1470 holding that there is nothing in the CPC which prohibits passing of more than one preliminary decree and if an event transpires after CS(OS) No.2658/1999 Page 7 of 17 preliminary decree, necessitating change in shares, preliminary decree can and should be varied. (ii) S. Sai Reddy Vs. S. Narayana Reddy 1991 (3) SCC647 holding that pending final decree, shares are liable to be varied on account of intervening events. (iii) Prema Vs. Nanje Gowda 2011 (6) SCC462 holding that if rights of parties change due to any reason, court is duty bound to take notice of the change and pass appropriate orders. (iv) Ganduri Koteswaramma Vs. Chakiryanadi 2011 (9) SCC788 holding that there is no impediment to amending the preliminary decree or passing other preliminary decrees redefining the rights of the parties in the changed circumstances. (v) Swaran Lata Vs. Kulbhushan Lal 2014 ILR (II) Del 1362 holding that the court, after passing the preliminary decree, is not powerless and later developments can necessitate re-adjustments of shares. (vi) Oudh Commercial Bank Ltd. Fyzabad Vs. Thakurain Bind Basni Kuer AIR 1939 PC80 to contend that if compromise is entered into after the final decree, there is nothing in the CPC which requires the decree to the contrary to be executed. (vii) Rajni Sanghi Vs. Western India State Motors Ltd. 2015 (16) SCC631 holding that if the parties amicably settle even post- arbitration award, such settlement will prevail inasmuch as the CS(OS) No.2658/1999 Page 8 of 17 arbitral award acquires the status of a decree only after the same had been made rule of the Court. (viii) Kale Vs. Deputy Director of Consolidation 1976 (3) SCC119 and Rajni Sanghi supra on law relating to family arrangements. (ix) Chand Rani Vs. Kamal Rani (1993) 1 SCC519 and Swarnam Ramachandran Vs. Aravacode Chakungal Jayapalan (2004) 8 SCC689 on Section 55 of the Contract Act. (x) Hari Shankar Singhania Vs. Gauri Hari Singhania 2006 (4) SCC658 holding that technicalities of limitation should not come in the way of implementation of a family settlement. (xi) Hansa Industries (P) Ltd. Vs. Kidarsons Industries (P) Ltd. 2006 (8) SCC531 Vikram Singh Vs. Ajit Inder Singh 2014 SCC OnLine Del 847 and Hari Shankar Singhania supra on the aspect of compulsorily registrability of the document dated 1st May, 2013.

17. The counsel for the defendants No.6(a) to 6(d), in addition to the pleas taken in the reply, argued (i) that the applicants/defendants No.1 to 5, while withdrawing the SLP, did not say that they were doing so because of the Family Settlement dated 1st May, 2013. (ii) that if the plaintiffs and the defendants No.6(a) to 6(d) were in default of their obligations under the Settlement, the defendants No.1 to 5 should have gone to court to enforce performance. (iii) that the applicants/defendants No.1 to 5 did not contest the execution applied for, on the basis of Family Settlement, but contending that preliminary decree cannot be executed. CS(OS) No.2658/1999 Page 9 of 17 18. The counsel for defendants No.6(a) to 6(d) has referred to:-

"(i) Venkata Reddy Vs. Pethi Reddy AIR 1963 SC992 Muthangi Ayyana Vs. Muthangi Jaggarao AIR 1977 SC292 and Prema Vs. Nanje Gowda AIR 2003 Karnataka 104 to contend that a preliminary decree once final, can only be amended/modified in case of diminution, death and/or assignment. (ii) Narinder Kumar Malik Vs. Surinder Kumar Malik (2009) 8 SCC743 and Rajni Sanghi supra to contend that an agreement cannot override a decree, especially when the terms of the agreement are in dispute. (iii) Gobardhan Das Vs. Dau Dayal AIR 1932 Allahabad 273 & Maharaj Kumar Mahmud Hasan Khan Vs. Moti Lal Banker AIR 1961 Allahabad 1(FB) to contend that disputes arising from an agreement have to be adjudicated by a suit. (iv) Virender Gupta Vs. Robinder Gupta 2002 (61) DRJ246(DB) to contend that there is no provision in CPC for holding a re-trial after a preliminary decree has been passed and affirmed in appeal. (v) Sanna Palaiah Vs. Soncha Boraiah AIR 1998 Karnataka 87 and Raghu Nath Sahai Anand Vs. Pushpa Devi 227 (2016) DLT415 to contend that it is the duty of the court to pass the final decree after the passing of the preliminary decree for partition.

19. I may at the outset state that though the parties, vide order dated 18th March, 2013 of the Supreme Court, were directed to appear before the Supreme Court Mediation Centre on 23rd March, 2013 but there is nothing to CS(OS) No.2658/1999 Page 10 of 17 show that the parties so appeared before the Supreme Court Mediation Centre or that the Settlement Agreement dated 1st May, 2013 was arrived at under the aegis of the Supreme Court Mediation Centre. Similarly, the order dated 2nd May, 2013 of the Supreme Court set out here-in-

above also does not record that any settlement was arrived at before the Supreme Court Mediation Centre, as would ordinarily have been recorded had it been so. On the contrary, as aforesaid the applicants/defendants No.1 to 5 simplicitor withdrew the Special Leave Petition.

20. A perusal of the document dated 1st May, 2013 titled Family Settlement also does not show that the same was under the aegis of the Supreme Court Mediation Centre and is not signed by any Mediator of the Supreme Court Mediation Centre.

21. The Family Settlement dated 1st May, 2013, after reciting the partition of the properties as ordered by the Division Bench vide judgment dated 13th December, 2012 and the pendency of the Special Leave Petition before the Supreme Court inter alia records that the parties, in order to amicably resolve the dispute and to put an end to the protracted litigation had resolved amicably to end their disputes once and for all and had hence agreed to, only the property No.33/5, East Punjabi Bagh and Shop No.48, Khursheed Market, Sadar Bazar, being available for partition.

22. The following clauses of the Family Settlement dated 1st May, 2013 (in which the East Punjabi Bagh property is described as property No.(i)) are also relevant:-

"B. DURATION FOR SALE OF PROPERTY CS(OS) No.2658/1999 Page 11 of 17

1. The PARTIES hereto agree that each party shall make an effort to locate a buyer for purchase of property no.(i) as mentioned in Article A(8).

2. The best offer received by each party shall be informed in writing to other PARTIES on or before July 30, 2013. No offer shall be received or reviewed or improved after August 1, 2013.

3. The best offer received by any PARTY shall be acceptable to the other PARTIES, unequivocally. No PARTY shall raise any objection to the offer or terms thereof, after July 20, 2013. In case any party brings no offer, then it would be considered that the said party has forfeited its right to place an offer and shall not be entitled to raise any objection to the offer brought forward by other party(s).

4. The PARTIES shall make an effort to execute the Sale Deed for sale of property no.(i) as mentioned in Article A(8) on or before September 30, 2013 but in no circumstances later than October 30, 2013. In case the Sale deed fails to be executed by October 30, 2013 then this settlement agreement will be considered null and void.

5. The FIRST PARTY who is currently in occupation of in Article A(8) property no.(i) as mentioned undertakes to hand-over vacant and peaceful possession of the same to the purchaser/buyer upon execution of the Sale deed, without any hindrance whatsoever. xxxx xxxx xxxx CS(OS) No.2658/1999 Page 12 of 17 C. COURT PROCEEDINGS1 The PARTIES hereto agree that upon execution of this Settlement Agreement, no dispute remains between the PARTIES with regard to estate of Late Lachmi Narain Seth.

2. The FIRST PARTY undertakes to withdraw the Special Leave Petition bearing no.5208 of 2013 pending before the Honble Supreme Court of India on the date of hearing immediately after the execution of this Agreement.

3. The PARTIES further agree that the terms of this AGREEMENT shall be honoured, in letter & spirit. For the said purpose and only in order ensure execution of this AGREEMENT, it is agreed that the Sale of property mentioned in Article A (2) (i) shall certainly take place on or before October 30, 2013. For the said purpose, it is agreed that the sale can be conducted by all the three PARTIES.

4. It is agreed that the decision of Sale and price at which the property is sold by all the three PARTIES shall be binding upon all. xxxx xxxx xxxx VII. The present SETTLEMENT AGREEMENT is being executed with the spirit that the PARTIES hereto intend to put an end to all disputes between them pertaining to the estate of Late Lachmi Narain Seth. 23. From the aforesaid, it becomes clear that the parties had expressly agreed to withdrawal by the applicants/defendants No.1 to 5 of the SLP preferred to the Supreme Court. It is thus not owing to a bonafide error or CS(OS) No.2658/1999 Page 13 of 17 mistake on the part of the applicants/defendants No.1 to 5 and their advocate, that the order of dismissal of the SLP as withdrawn came to be passed instead of the order of the modification

of the judgment and decree impugned in the SLP, in terms of the Settlement Agreement. The Settlement Agreement between the parties of withdrawal of the SLP by the applicants/defendants no.1 to 5 read with the clause in the Family Settlement dated 1st May, 2013 reproduced above to the effect that in case the sale deed of the East Punjabi Bagh property is not executed by 30th October, 2013, the Settlement Agreement will be considered null and void shows explicit agreement/settlement between the parties to not have the decree for partition passed by the Division Bench of this Court modified and to be bound by the same, save that if the East Punjabi Bagh property was to be sold by 30th October, 2013, then the parties were to be bound by the Family Settlement dated 1st May, 2013 and not by the decree for partition passed by the Division Bench of this Court.

24. The parties are also found to have acted in consonance with the aforesaid understanding/agreement with neither party, notwithstanding the withdrawal of the SLP, approaching the Division Bench or this Bench for modification of the decree of partition, as would have been the case had the parties intended so.

25. It is also worth highlighting that under the Family Settlement, each party was entitled to get offers on or before 30th July, 2013, for sale of the East Punjabi Bagh property and no offer was agreed to be received or reviewed or improved after 1st August, 2013 and the property agreed to be sold on the best offer received till 30th July, 2013. Clause B(4) of the Family CS(OS) No.2658/1999 Page 14 of 17 Settlement dated 1st May, 2013 also provides for the settlement to become null and void if the sale deed of East Punjabi Bagh property was not executed on or before 30th October, 2013. From the language thereof, it is clear that the Settlement dated 1st May, 2013 became null and void on sale deed of East Punjabi Bagh property being not executed on or before 30th October, 2013, irrespective of who was to blame therefor.

26. As per the averments of the applicants/defendants No.1 to 5 also, though a buyer was located of the property but was unable to pay the sale consideration on or before 30th October, 2013. No agreement to sell admittedly was executed and no advance earnest money received.

27. The intention of the parties in executing the Family Settlement dated 1st May, 2013 is quite clear. Though the plaintiffs and the defendants No.6(a) to 6(d) had 1/3rd share each in not only the East Punjabi Bagh property but also in Shops No.17, 48 and 123, Khursheed Market, Sadar Bazar, but for the sake of immediately receiving the value of their share on or before 30th October, 2013, had agreed to, instead of each of them receiving 33.3 per cent of the value of the East Punjabi Bagh property, receive 31.75 per cent and 31.50 per cent respectively of the value and to forgo their rights in Shops No.17, 48 and 123, but on the condition that their said share of sale consideration of East Punjabi Bagh property was received on or before 30th October, 2013. The parties were fully entitled to enter into such an arrangement and else be bound by the decree for partition already passed. It is only because the parties intended so, that the Special Leave Petition was agreed to be withdrawn. CS(OS) No.2658/1999 Page 15 of 17 28. It is the applicants/defendants No.1 to 5 who are in possession of all the properties and enjoying benefit thereof. None of the other parties, who for the sake of expediency, in the Family Settlement dated 1st May, 2013 had even agreed to take much less than their share, were interested in delaying. The onus thus was heavily on the applicants/defendants No.1 to 5 to ensure that the payments agreed under the Family Settlement dated 1st May, 2013 to be made to the other parties in full and final settlement of their share were tendered before the date stipulated therefor. Admittedly no tender was made, not only by the date stipulated, but till now, inspite of three and a half years having elapsed. It is now not open to the applicants/defendants No.1 to 5 to after such long delay bind the other parties, to what they had agreed to on the condition of the same being done three and a half years ago. Even if it were to be held that under the Family Settlement dated 1st May, 2013, it was open to the applicants/defendants No.1 to 5 to have the decree modified, the applicants/defendants No.1 to 5 ought to have approached therefor immediately. The conduct of the applicants/defendants No.1 to 5 having filed this application on 29th July, 2016 i.e. after 33 months i.e. two years and nine months, again shows the mala fides of the applicants/defendants No.1 to 5, of perpetuating their exclusive enjoyment of properties in which they have only 1/3rd share and depriving the owners of 2/3rd share from benefits thereof.

29. The applicants/defendants No.1 to 5 thus, on facts are not entitled to the relief claimed and thus the need to go into the legal aspects on which the counsels argued extensively and cited case law aforesaid, does not arise.

30. I may however state that if pleas of private settlements, altering the decree of the court were to be entertained and put to trial, no lis would attain CS(OS) No.2658/1999 Page 16 of 17 finality and unscrupulous litigants, even after contesting the claim against them through all tiers of Court, to deny relief to the opposite party, would set up such pleas and on which fresh adjudication would start. The principle of finality of judgments and decrees also thus does not allow the parties to any alteration/modification of the decree. The parties, if at all desirous of having the decree modified, have to jointly apply therefor. The applicants/defendants No.1 to 5 in the present case, had their agreement with the other parties been open ended, ought to got incorporated in the Family Settlement dated 1st May, 2013 that the parties will have the decree modified in terms thereof in the SLP pending before the Supreme Court and having not done so and on the contrary after agreeing to the said settlement being valid till 30th October, 2013 only, cannot now be permitted to seek to which they were unable to obtain consent of others.

31. There is no merit in the application. Dismissed. CS(COMM) 2658/1999 32. It was stated during the hearing that in execution proceedings, orders in terms of decree passed by the Division Bench have already been passed. It thus appears that no further orders are required in the suit.

33. However, to enable the counsels to address on the said aspect, list on 17th May, 2018. RAJIV SAHAI ENDLAW, J.

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