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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CS(OS) 60/2021

Date of Decision**: 12.02.2025**

IN THE MATTER OF:

JINESH JAIN

..... PLAINTIFF

Through: None.

Versus

AMIT JAIN & ORS. .... DEFENDANTS

Through: Mr.Hitesh Chopra and Mr.Rahul Kumar, Advocates for D-1.
Ms.Harshita, Advocate for Mr.Sameer Vashisht, SC (Civil), GNCTD.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

I.A. 45899/2024 (*under Section 151 of CPC, 1908)*

1. The instant application has been filed by applicant-defendant No.1, seeking a refund of the stamp duty amounting to INR 6,00,000/-.

2. It is apparent from the record that a preliminary decree was passed on 28.03.2022, declaring that the plaintiff and the defendants were each entitled to a 1/5th undivided share in the suit property. Thereafter, a final decree dated 11.10.2022 was passed, directing the

distribution of the sale proceeds conforming to the shares determined in the preliminary decree. The Registrar informed the parties that they were required to deposit INR 6,00,000/- towards the stamp duty to draw the final decree.

3. The applicant-defendant No.1, i.e., Amit Jain, deposited the stamp duty on behalf of all the parties on 18.05.2023, and the final decree was prepared on 25.05.2023. Subsequently, applicant-defendant No.1, filed an execution petition for execution of the final decree.

4. Learned counsel appearing on behalf of applicant-defendant No.1 submits that during the pendency of the execution proceedings, defendant No.2, sold his undivided 1/5th share in the property to applicant-defendant No.1 against consideration and a stamp duty amounting to INR 6,01,124/- was paid to the Stock Holding Corporation of India for the registration of the sale deed dated 21.02.2024. Similarly, the plaintiff, also sold his undivided 1/5th share in the property to applicant-defendant No.1. With respect to the aforesaid sale as well, besides consideration, stamp duty amounting to INR 6,01,124/- was paid to the Stock Holding Corporation of India for registration of the sale deed dated 11.06.2024.

5. It is also a matter of record that *vide* order dated 02.07.2024, this Court keeping in mind the terms of the Memorandum of understanding (MoU) dated 17.06.2024 disposed of the execution petition.

6. The applicant-defendant no.1 has relied upon the decision of the Supreme Court in ***Mukesh v. State of Madhya Pradesh and Anr***[1] and the decision of this Court in CS COMM No. 469/2019 titled ***Proud Securities and Credits Private Limited v. Urshila Kerkar and Anr.***

7. The Court on an earlier date directed for issuance of notice to the State's counsel. Ms. Harshita, learned counsel appearing on behalf of Mr.Sameer Vashishth, SC for GNCTD appeared today.

8. The registration of any conveyance or document of transfer has been mandated by the Registration Act of 1908 (the Act). The rigors of Section 17 of the Act are of a disabling provision and unless a document is brought within the ambit of sub-section 2, registration of a conveyance transferring any right in an immovable property is a mandate. However, Section 17(2) carves out exceptions, detailing specific documents that do not require compulsory registration. Amongst these, Section 17(2)(vi) provides an exemption for Court decrees and orders. The provision stipulates that, in general, a decree or order passed by a Court does not necessitate registration unless it is a compromise decree that incorporates immovable property beyond the subject matter of the *lis*.

9. Furthermore, under the Indian Stamp Act of 1899 (Stamp Act) also, an order or decree passed by a Court is not inherently subject to stamp duty, as it does not fall within the scope of chargeable

[1] 2024 SCC OnLine SC 3832

instruments enumerated in Schedule I or I-A, read in conjunction with Section 3 of the Stamp Act.

10. This position has been explained by the Supreme Court while discussing the interplay between two abovementioned statutes in the case of ***Mukesh v. State of Madhya Pradesh and Anr***[2] and it has been held as under:-

> *"..From the above, it is apparent that stamp duty is not chargeable on an order/decree of the Court as the same do not fall within the documents mentioned in Schedule I or I-A read with Section 3 of the Indian Stamp Act, 1899. Though the Collector of Stamps determined the stamp duty for the subject land as per Article 22 of Schedule IA of the Indian Stamp Act, 1899, which states about conveyance, in this case, we have already held that the compromise decree does not fall under the instruments mentioned in the Schedule and that it only asserts the pre-existing rights. Therefore, in the facts of the case, the consent decree will not operate as conveyance as no right is transferred and the same does not require any payment of stamp duty. Since the appellant has only asserted the pre-existing right and no new right was created through the consent decree, the document pertaining to mutation of the subject land is not liable for stamp duty"*

11. This Court, in ***Himani Walia v. Hemant Walia & Ors***[3], while reiterating the decision of the Division Bench of this Court in ***Nitin Jain v. Anuj Jain*** [4], has unequivocally held that family settlements are neither required to be compulsorily registered nor are subject to mandatory stamp duty when the settlement originates as an oral partition and is subsequently documented in writing solely for

[2] 2024 SCC OnLine SC 3832
[3] 2022 SCC OnLine Del 5232
[4] 2007 SCC OnLine Del 582

informational purposes. The relevant paragraphs of the aforementioned decision read as under:-

> ***"8.*** *The issue of registration of family settlements is no longer res integra. If an understanding has been arrived at between the parties previously, and it is only written down in a document after the settlement has been arrived at, the same would not require registration. This is the settled position of law as is clear from Kale v. Deputy Director of Consolidation [3 (1976) 3 SCC 119]. Taking into account the decision in Kale (supra), the Supreme Court in a subsequent judgment in Sita Ram Bhama v. Ramvatar Bhama [(2018) 15 SCC 130 : AIR 2018 SC 3057] has settled this position of law by holding as under:*
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> > *"10. The only question which needs to be considered in the present case is as to whether document dated 09.09.1994 could have been accepted by the trial court in evidence or trial court has rightly held the said document inadmissible. The Plaintiff claimed the document dated 09.09.1994 as memorandum of family settlement. Plaintiff's case is that earlier partition took place in the life time of the father of the parties on 25.10.1992 which was recorded as memorandum of family settlement on 09.09.1994. There are more than one reasons due to which we are of the view that the document dated 09.09.1994 was not mere memorandum of family settlement rather a family settlement itself. Firstly, on 25.10.1992, the father of the parties was himself owner of both, the residence and shop being self-acquired properties of Devi Dutt Verma. The High Court has rightly held that the said document cannot be said to be a Will, so that father could have made Will in favour of his two sons, Plaintiff and Defendant. Neither the Plaintiff nor Defendant had any share in the property on the day when it is said to have been partitioned by Devi Dutt Verma. Devi Dutt Verma died on 10.09.1993. After his death Plaintiff, Defendant and their mother as well as sisters become the legal heirs under Hindu Succession Act, 1955 inheriting the property being a class I heir. The document dated 09.09.1994 divided the entire property between Plaintiff and Defendant which document is also claimed to be signed by their mother as well as the sisters. In any view of the matter, there is relinquishment of the rights of other heirs of the properties, hence, courts below are right in their conclusion that there being relinquishment, the document dated 09.09.1994 was compulsorily registrable Under Section 17 of the Registration Act.*
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> > *11. Pertaining to family settlement, a memorandum of family settlement and its necessity of registration, the law has been settled by this Court. It is sufficient to refer to the judgment of this Court in Kale v. Deputy Director of Consolidation (1976) 3 SCC 119. The propositions with regard to family settlement, its registration were laid down by this Court in paragraphs 10 and 11:*

10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

***11.** The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of this Court as also those of the Privy Council and other High Courts, which we shall discuss presently.*

***12.** We are, thus, in full agreement with the view taken by the trial court as well as the High Court that the document dated 09.09.1994 was compulsorily registrable. The document also being not stamped could not have been accepted in evidence and order of trial court allowing the application Under Order XII Rule 3 Code of Civil Procedure and the reasons given by the trial court in allowing the application of the Defendant holding the document as inadmissible cannot be faulted."*

9. *The Division Bench of this Court has held in Nitin Jain v. Anuj Jain [ILR (2007) 2 Del 271] that a memorandum recording an oral family settlement which has already taken place is not an instrument dividing or agreeing to divide property and is therefore, not required to be stamped. The relevant observations from the said judgment have been extracted below:*

> *"6. A Partition Deed is an instrument of partition and has been defined in Section 2(15) of the Stamp Act. The said investment is chargeable to duty as per Schedule 1. Article 45 of the Stamp Act. Stamp duty payable on an instrument of partition is @ 1% of the value of the property. A decree of partition passed by a Court is also an instrument of partition as defined in Section 2(15) of the Stamp Act, which reads as under:*
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> *"2(15). "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue-authority or any Civil Court and an award by an arbitrator directing a partition."*
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> *7. However, Courts have recognised oral partitions in cases of joint families. An oral partition is not an instrument of partition as contemplated under Section 2(15) of the Stamp Act. Therefore, as it is not an instrument. on an oral partition no stamp duty is payable.*
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> *8. The Courts have recognised that it is legally permissible to arrive at an oral family settlement dividing/partitioning the properties and thereafter record a memorandum in writing whereby the existing joint owners for the sake of prostriety record that the property has been already partitioned or divided. The memorandum does not by itself partition the properties but only records for information what has already been done by oral partition. The memorandum itself does not create or extinguish any rights. A record of oral partition in writing is created. The writing records a pre existing right and does. not by itself partition the properties for the first time. As the memorandum only records oral partition which has already taken place but does not in praesenti create any right, it cannot be treated as an instrument creating B partition. [Refer. Tek Bahadur Bhujil v. Debi Singh Bhujil, AIR 1966 SC 292), Bakhtawar Singh v. Gurdev Singh, (1996) 9 SCC 370, Kale v. Dy. Director of Consolidation, (1976) 3 SCC 119, Roshan Singh v. Zile Singh, (2018) 14 SCC 814 : AIR 1988 SC 881 and Bachan Singh v. Kartar Singh, JT (2001) 10 SC 64.]*
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> *9. In view of the legal position explained above. it follows that a decree of partition is an instrument of partition and therefore is required to be stamped under Schedule I of Article 45 r/w Section 2(15) of the Stamp Act. However, an oral family settlement dividing or partitioning the property is not D required to be stamped. Similarly, a memorandum recording an oral family settlement which has already taken place is not an instrument dividing or agreeing to divide property and is therefore not required to be stamped."*

> *10. Thus, it is clear that family settlements are not required to be compulsorily registered, and stamp duty is not required to be compulsorily paid in respect of the same, when the settlement has been arrived at initially as an oral partition and is thereafter put into writing for the purpose of information. Considering the said position, it is clarified that there is no requirement of valuation of the suit properties in the present case. The payment of stamp duty by the legal heirs of Late Sh. S.S. Walia and Dr. Urmila Walia shall stand waived. Notices issued by the various authorities shall also stand cancelled and withdrawn, without any further orders."*

12. On the conspectus of the legal position as explicated hereinabove, it is seen that stamp duty is applicable only when an instrument creates, transfers, limits, or extinguishes any right, title, or interest in immovable property.

13. In the instant case, applicant-defendant No.1 asserts that the property in question was already subject to pre-existing ownership rights held by the parties involved in the dispute who were Class 1 legal heirs of Late Shri Hem Chand Jain. Late Shri Hem Chand Jain died intestate on 09.10.2009 and therefore, the present suit was filed claiming that the plaintiff and the defendants have become the joint owners of the suit property to the extent of having 1/5th share each. Therefore, since no new right, title, or interest was created through the compromise decree and the same merely crystallized the pre-existing rights of the parties in the form of a formal decree, the transaction, therefore, does not fall within the scope of a conveyance under Schedule IA of the Stamp Act.

14. Additionally, it is also a matter of record that the parties mutually resolved their dispute through a MoU dated 17.06.2024,

leading to the withdrawal of the execution proceedings for execution of the final decree dated 02.07.2024.

15. The aforesaid fact also copiously establishes that no new rights in the suit property were created through the final decree or the subsequent MoU, but rather, pre-existing ownership of applicant-defendant No.1 was merely affirmed.

16. So far as the acquisition of the share of other parties by the applicant-defendant No.1 is concerned, two sale deeds were executed and applicable stamp duty had been duly paid. It is, thus, seen that when the transfer of the rights over the property or creation of new rights had taken place, the necessary stamp duty has been duly paid, therefore, in the instant case, the plaintiff is found entitled to a refund of the stamp duty of INR.6,00,000/-.

17. The Registry is directed to take up appropriate steps in relation thereto. Ordered accordingly.

18. The instant application stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

FEBRUARY 12, 2025
Nc/mjo

Click here to check corrigendum, if any