

Ashok Kumar Narang vs Man Mohan Narang & Ors on 6 November, 2020

Author: Mukta Gupta

Bench: Mukta Gupta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(OS) 1631/2014
ASHOK KUMAR NARANG Plaintiff
Represented by: Mr.Manoj Arora, Advocate with
Mr.Prabjot Hora, Advocate

versus
MAN MOHAN NARANG & ORS. Defendant
Represented by: Mr.R.K.Sachdeva, Advocate for D1
and D2

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
ORDER

% 06.11.2020 The hearing has been conducted through Video Conferencing. I.A.10204/2020 (under Order XXIII Rule 3 CPC)

1. By this joint application, plaintiff and defendant Nos. 1, 2 and 3 seek decree of the suit in terms of the settlement arrived at between the parties before the Delhi High Court Mediation and Conciliation Centre on 24 th February, 2020.

2. Taking the settlement agreement on record, application is disposed of, decreeing the suit in terms of the settlement. CS(OS) 1631/2014

1. Plaintiff and defendant Nos. 1, 2 and 3 who are all brothers and sons of Late Sh. Vishan Dass Narang have settled their disputes in respect of the suit property i.e. C-5/5, Safdarjung Development Area, New Delhi before the Delhi High Court Mediation and Conciliation Centre on 24 th February, CS(OS) 1631/2014 PageGUPTA 2020 on the following terms and conditions:-

I. All the parties acknowledged and agreed to abide by the terms of the Memorandum of Family Settlement dated 01.06.2012 and not to dispute the same ever in future and it is final and binding upon the parties and their respective legal heirs. The parties agreed that the division already made under Memorandum of Family Settlement dated 01.06.2012 (pursuant to oral settlement) has already been carried out, admitted, accepted and acted upon. The portions/floors falling to the shares of the parties under the family settlement dated 01.06.2012 (except Basement) have already

been entered upon, owned, acquired and possessed by the parties and parties are enjoying the same in severalty since December' 2013 and shall continue to own, use and occupy the same in future in the same manner without any hindrance, objection or obstruction from other parties. Therefore, the parties are already seized and possessed of and otherwise well and sufficiently entitled to their respective and distinct shares/portions in the said property in severalty being lawful owners as per Memorandum of Family Settlement dated 01.06.2012, in the following manner:

i. Mr. Ashok Kumar Narang (Plaintiff/First Party) Entire Second Floor with 1/4th undivided share/portion of Entire Basement, 1/4th undivided share in the Entire Stilt Area (Car parking space and space for Utility) and 1/4 th undivided share/portion of entire Terrace/Roof above/upon the Third Floor of the property bearing number C-5/5, Safdarjung Development Area, New Delhi, measuring 185 sq. meters, along with 25% undivided, indivisible and impartible ownership rights in the plot of land measuring 301 sq. meters underneath the building, together with rights to use/avail common areas, lift, services/facilities provided in the building.

ii. Mr. Man Mohan Narang (Defendant No. 1/Second Party):

Entire Ground Floor with 1/4th undivided share/portion of Entire Basement, 1/4th undivided share in the Entire Stilt Area (Car parking space and space for Utility) and 1/4 th undivided CS(OS) 1631/2014 Page GUPTA share/portion of entire Terrace/Roof above/upon the Third Floor of the property bearing number C-5/5, Safdarjung Development Area, New Delhi, measuring 185 sq. meters, along with 25% undivided, indivisible and impartible ownership rights in the plot of land measuring 301 sq. meters underneath the building, together with rights to use/avail common areas, lift, services/facilities provided in the building.

iii. Mr. Ghanshyam Narang (Defendant No. 2/Third Party) Entire Third Floor (without Terrace/Roof) with 1/4 th undivided share/portion of Entire Basement, 1/4th undivided share in the Entire Stilt Area (Car parking space and space for Utility) and 1/4th undivided share/portion of entire Terrace/Roof above/upon the Third Floor of the property bearing number C-5/5, Safdarjung Development Area, New Delhi, measuring 185 sq. meters, along with 25% undivided, indivisible and impartible ownership rights in the plot of land measuring 301 sq. meters underneath the building, together with rights to use/avail common areas, lift, services/facilities provided in the building.

iv. Mr. Bhupinder Narang (Defendant No. 3/Fourth Party) Entire First Floor with 1/4th undivided share/portion of Entire Basement, 1/4th undivided share in the Entire Stilt Area (Car parking space and space for Utility) and 1/4th undivided share/portion of entire Terrace/Roof above/upon the Third Floor of the property bearing number C-5/5, Safdarjung Development Area, New Delhi, measuring 185 sq. meters, along with 25% undivided, indivisible and impartible ownership rights in the

plot of land measuring 301 sq. meters underneath the building, together with rights to use/avail common areas, lift, services/facilities provided in the building.

II. It is hereby made clear that the present settlement does not create or declare on its own force any rights and interest in the property but only accepts the dictates of the Memorandum of Family Settlement dated 01.06.2012 which has been acted upon as final and binding as well as the subsequent oral settlement. The parties are the lawful owners and in possession of their CS(OS) 1631/2014 PageGUPTA respective portions in accordance with the said settlement.

III. As orally agreed upon by and between the parties during the pendency of the Suit, the Parties hereto agreed that they would own the Basement of the demised property in equal proportion of 1/4th share each. However, the possession of the Basement shall remain with Defendant No. 1 (Second Party who has exclusively spent money for construction of basement) and neither the Plaintiff nor Defendant Nos. 2 & 3 shall claim or interfere or ask for partition in the peaceful enjoyment of Second Party/ Defendant No. 1 in the Basement of demised property. The parties further agree that subject to terms & conditions (restrictive covenants) of the Memorandum of Family Settlement dated 01.06.2012, in case, any party wishes to sell his floor/portion/share in the said property after the lock-in period to any other party or to any third party, in that case he shall forfeit his share in the Basement and Terrace (both are non-transferrable to the Third Party) and the Defendant No. 1/Second Party shall reimburse/pay him an amount equivalent to 3.5% of the sale consideration of his floor (as per sale deed) within 15 days of sale of his share in the property and the ownership of the basement and terrace shall cease to vest with such party and instead shall be transferred to the Defendant No. 1/ Second Party.

IV. It is further agreed between the parties that the common area for parking shall be allocated and used in accordance with the drawing which is annexed as Schedule I to this Agreement V. The parties agreed that the Basement and terrace/roof above the Third Floor would be jointly owned by the parties in equal shares, subject to the conditions that the same could only be transferred to any of the four parties to this settlement and not to any outsider or third party. The Buyer/Third party shall have no right (ownership and usage) on the Terrace/Roof except repair/maintenance of the overhead water storage tank. VI. The Parties hereto state that there is no other litigation pending between the parties and they have no further claims against CS(OS) 1631/2014 PageGUPTA each other and all their disputes and differences have been amicably settled through the process of Mediation on compliance of the terms agreed hereinabove.

VII. The parties shall pay the maintenance charges for the lift and common areas as well as electricity charges for the common areas in equal shares. A Bank account in the joint names of Defendant No. 1 / Second Party and Defendant No. 3 / Third Party shall be opened and all parties undertake and ensure deposit of their share in such

account by 15th January of every year in advance.

VIII. The parties undertake to the Hon'ble Court to abide by the terms and conditions set out in the Memorandum of Family Settlement dated 01.06.2012 as well as the oral settlement arrived at during the pendency of the Suit and now being recorded in the present settlement and not to dispute the same in future.

IX. That the present settlement has been arrived at between the parties voluntarily in their mutual and larger interest, out of their own free sweet will, volition and choice and without any compulsion, coercion, force, fraud or misrepresentation. Therefore, the compromise/settlement so arrived at is lawful and binding upon them and their legal heirs/representatives. The parties declare and admit that they are fully satisfied with the present settlement, therefore, all differences and dispute have come to an end absolutely and forever. Further, in view of the mutual and amicable settlement so arrived at by and between the parties hereto, the Plaintiff has been left with no grievance or claim against the Defendants and shall not press any claim or initiate any legal action against them in future. X. The parties undertake not to do any acts, deeds or things, which may in any manner contravene the terms of this settlement/compromise. The parties undertake to abide by the terms and conditions set out in this settlement and not to dispute or reopen and/or challenge the same hereafter in future.

XI. That after execution of the present Settlement Agreement, the CS(OS) 1631/2014 PageGUPTA parties shall appear in-person or through their attorneys along with their Advocates before the Hon'ble High Court and pray for passing of Consent Decree/Decree of Declaration.

XII. The contents of the present Settlement Agreement have been understood by the parties in its true letter and spirit and they agreed to abide by the same.

XIII. The parties shall pray before Hon'ble High Court to pass a decree in terms of the present Settlement Agreement. The Defendants / (Second, Third and Fourth Parties) have no objection if the Plaintiff / First Party moves an appropriate application, under section 16 of the Court Fees Act, 1870 read with section 89 of CPC, 1908, for refund of the Court Fee deposited by them".

2. The settlement agreement is duly signed by the plaintiff, defendant No. 1, who is also the constituted attorney of defendant No. 2 and defendant No. 3. The settlement agreement also encloses Schedule-I which relates to the partition of the stilt area being the common area for parking amongst the four parties.

3. Considering that the parties have entered into a settlement of their own free will, volition and without any coercion, the suit is decreed in terms of the settlement as noted above. Decree sheet will incorporate the terms of settlement as also Schedule-I to the settlement agreement.

4. Since the parties have entered into a settlement before the Delhi High Court Mediation and Conciliation Centre, Court fees be refunded to the plaintiff under Section 16 of the Court Fees Act, 1870. Registry will issue a necessary certificate in this regard.

5. Order be uploaded on the website of this Court.

CS(OS) 1631/2014 PageGUPTA IA 10641/2020 (filed by the plaintiff under Sections 33,35,37 and 40 of Indian Stamps Act) Application is disposed of as infructuous.

MUKTA GUPTA, J.

NOVEMBER 06, 2020
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