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

24+ CS(OS) 1474/2008

SAMARJIT CHAKRAVARTY AND ANR ..... Plaintiffs

Through: Mr. Prithu Garg, Adv.

Versus

M/S TEJ PROPERTIES PVT. LTD. AND ANR …..... Defendants

Through: Mr. Manoj Goel, Mr. Shuvodeep Roy and Ms. Sabika Ahmed, Advs. for D-1.
Mr. Rajesh Gupta & Ms. Harpreet Singh, Advs. for D-3&4.

AND

28+ CS(OS) 1523/2009

M/S TEJ PROPERTIES PVT LTD & ANR. ..... Plaintiffs

Through: Mr. Manoj Goel, Mr. Shuvodeep Roy and Ms. Sabika Ahmed, Advs.

Versus

SAMARJIT CHAKRAVARTY & ORS ..... Defendants

Through: Mr. Prithu Garg, Adv. for D-1&2.
Mr. Rajesh Gupta & Ms. Harpreet Singh, Advs. for D-3&4.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **15.04.2014**

1. The files are taken up today as 14th April, 2014 was declared a holiday.

2. The two suits, vide order dated 5th March, 2014, were ordered to be consolidated for the purposes of trial and decision and are listed today for framing of consolidated issues.

3. Though the counsel for Samarjit and Arati and the counsel for Tej and Prabhjit handed over proposed issues but while the issues proposed by counsel for Samarjit and Arati are found to be suit-wise and not consolidated, from the issues proposed by counsel for Tej and Prabjit, no clarity emerged. Owing to cases of two days being listed, there was no time to peruse the voluminous pleadings in the Court, accordingly, the files were sent to chamber, for framing appropriate issues after perusing the pleadings.

4. The position of the parties and the two suits is as under:

Sl. No.	Name	Status in CS(OS) No.1474/2008	Status in CS(OS) No.1523/2009
1.	Samarjit Chakravarty (Samarjit)	Plaintiff No.1	Defendant No.1
2.	Arati Chakravarty (Arati)	Plaintiff No.2	Defendant No.2
3.	Tej Properties Pvt. Ltd. (Tej)	Defendant No.1	Plaintiff No.1
4.	Prabjit Singh, Director, Tej Properties Pvt. Ltd. (Prabjit)	Defendant No.2	Plaintiff No.2
5.	Sunil K. Chakravarty (Sunil)	Defendant No.4	Defendant No.3
6.	Arun Chakravarty (Arun)	Defendant No.3	Defendant No.4

5. The position which emerges upon going through the pleadings in the two suits is as under:

(i) the suits concern land admeasuring 8 bighas and 5 biswas situated in Village Chattarpur, Tehsil Mehrauli, New Delhi;

(ii) the said land was owned by Sushil K. Chakravarty who had mortgaged the same to New Bank of India succeeded by Punjab National Bank (PNB);

(iii) Sushil K. Chakravarty was a bachelor and had no heirs within the meaning of Class I of the Schedule to the Hindu Succession Act, 1956;

(iv) Sunil and Arun are brothers and were related to Sushil K. Chakarvarty;

(v) Arati is the wife of Sunil and Samarjit is the brother of Arati;

(vi) Sushil K. Chakravarty, Sunil and Samarjit were partners in the partnership firm M/s ESPI Industrial Corporation Ltd.;

(vii) that Sushil K. Chakravarty, Samarjit and Arati were partners in another partnership firm M/s ESPI Trading Company;

(viii) disputes and differences arose with respect to the aforesaid partnerships and the following three legal proceedings were filed:

(a) Arbitration Suit under Section 20 of the Arbitration Act, 1940 being CS(OS) No.1479A/1989 was filed by Samarjit against Sushil K. Chakravarty;

(b) Sushil K. Chakravarty filed CS(OS) No.1964/1989 against Samarjit; and,

(c) Sunil filed CS(OS) No.1275/1990 against Sushil K. Chakravarty;

(ix) vide order dated 12th June, 1989 in CS(OS) No.1479A/1989 aforesaid, Sushil K. Chakravarty was restrained from alienating or transferring in any manner or creating any third party interest in the aforesaid land;

(x) Sushil K. Chakravarty vide Agreement to Sell dated 17th March, 1992 agreed to sell the aforesaid land to Tej for a consideration of Rs.60 lakhs of which Rs.22 lakhs was paid as advance and Rs.38 lakhs was payable subsequently;

(xi) disputes and differences arose between Sushil K. Chakravarty and Tej also with respect to the said Agreement to Sell;

(xii) Sushil K. Chakravarty instituted CS(OS) No.1348/1996 for declaration that the Agreement to Sell stood terminated and for

recovery of possession of the said land from Tej;

(xiii) Tej instituted CS(OS) No.2501/1997 for specific performance of the Agreement to Sell;

(xiv) Sushil K. Chakravarty died on 3rd June, 2003 without leaving any Class-I heirs and Sunil and Arun claimed to be the Class-II heirs of Sushil K. Chakravarty;

(xv) Sunil and Arun got themselves substituted as legal heirs of Sushil K. Chakravarty in the three legal proceedings aforesaid relating to the partnership businesses;

(xvi) a compromise dated 11th November, 2005 was arrived at in the three suits aforesaid relating to the partnership businesses, between Sunil and Arun as legal heirs of Sushil K. Chakravarty on the one hand and Samarjit and Arati on the other hand, whereunder it was agreed that the said land will be sold and the sale proceeds thereof, left after discharging the dues of PNB, will be distributed between Samarjit, Arati and Sunil and Arun;

(xvii) however Sunil and / or Arun as legal heirs, did not take any steps for substitution in the two suits aforesaid between Sushil K. Chakravarty and Tej;

(xviii)resultantly CS(OS) No.1348/1996 filed by Sushil K. Chakravarty was dismissed for non-prosecution and in CS(OS) No.2501/1997 an *ex-parte* decree dated 25th July, 2007 of specific performance of the Agreement to Sell was passed in favour of Tej;

(xix) that in execution of the *ex-parte* decree for specific performance, Tej paid off the dues of the PNB and got the aforesaid land freed from mortgage;

(xx) Samarjit and Arati filed CS(OS) No.1474/2008 contending that neither they nor Sunil or Arun knew of the disputes of Sushil K. Chakravarty with Tej and of CS(OS) No.1348/1996 and/or CS(OS) No.2501/1997 and learnt of the same for the first time, after compromise dated 11th November, 2005, upon approaching the PNB for discharging the mortgage;

(xxi) CS(OS) No.1474/2008 has been filed only for the relief of declaration that the *ex-parte* decree of specific performance in favour of Tej is a result of fraud, concealment, misrepresentation, procedural irregularity etc. and is null and void and not binding on Samarjit and Arati and liable to be set aside;

(xxii) Tej is contesting CS(OS) No.1474/2008 and has also filed

CS(OS) No.1523/2009 contending that the compromise arrived at between Samarjit and Arati on the one hand and Sunil and Arun as legal heirs of Sushil K. Chakravarty on the other hand relating to partnership businesses and on the basis whereof Samarjit and Arati claim rights in the land aforesaid, is fraudulent and null and void.

6. Tej in its written statement in CS(OS) No.1474/2008 was also found to have taken a plea that Sunil and Arun had also made applications in CS(OS) No.1348/1996 and CS(OS) No.2501/1997 for setting aside the order of dismissal for non-prosecution and *ex-parte* decree respectively therein, on the same grounds as urged by Samarjit and Arati and in CS(OS) No.1474/2008.

7. However, during the hearing on 15th April, 2014, neither counsels informed the fate of the said applications.

8. Being *prima facie* of the view that the claim of Samarjit and Arati to the subject land depends upon the rights of Sunil and Arun thereto as legal heirs of Sushil K. Chakravarty, and that if Sunil and Arun in the applications filed by them in CS(OS) No.1348/1996 and CS(OS) No.2501/1997 have not met with any success, Samarjit and Arati also can have no right to continue with CS(OS) No.1474/2008, I on my own, started enquiring about the fate

of the applications aforesaid.

9. It is found that the said applications being I.A. Nos.4531/2008 and 4532/2008 filed by Sunil and Arun for restoration of CS(OS) No.1348/1996 and for condonation of delay in applying for restoration and I.A. No.3391/2008 filed by Sunil and Arun for setting aside of the *ex-parte* decree of specific performance in CS(OS) No.2501/1997 were dismissed by a learned Single Judge of this Court vide order dated 24th August, 2009.

10. My enquiries have further revealed that Sunil and Arun preferred FAO(OS) Nos.516/2009 & 517/2009 against the aforesaid order of dismissal of their applications and which appeals were also dismissed by the Division Bench of this Court vide judgment dated 17th October, 2011.

11. It is yet further found that Sunil and Arun filed SLP(C) Nos.3307-3308 of 2012 against the aforesaid, which were converted into Civil Appeals No.2600-2601 of 2013 and which were dismissed vide judgment dated 19th March, 2013 of the Supreme Court.

12. Thus, the challenge by Sunil and Arun to the *ex-parte* decree of specific performance aforesaid in favour of Tej and which challenge, upon reading of the judgments of the learned Single Judge, Division Bench and of the Supreme Court, is found to be more or less on the same grounds as

urged by Samarjit and Arati, has failed till the Supreme Court and has attained finality.

13. I have wondered the effect of the aforesaid judgments on the suits.

14. I am of the *prima facie* opinion that once the challenge by Sunil and Arun as legal heirs of Sushil K. Chakravarty to the decree for specific performance in favour of Tej has failed, the claim of Samarjit and Arati to the said land, again through Sunil and Arun as legal heirs of Sushil K. Chakravarty does not survive and need not be put to trial. The claim of Sarmarjit and Arati to the said land is on the basis of the compromise dated 11th November, 2005 with Sunil and Arun, whereunder Sunil and Arun agreed to sell the property and to share the sale proceeds with Samarjit and Arati. Once, Sunil and Arun have been held to be not entitled to sell the property, Samarjit and Arati cannot derive any title to the said property and cannot have any locus to challenge the decree for specific performance and which tantamounts to a second round of challenge to the said decree.

15. I am also of the *prima facie* opinion that if Samarjit and Arati are so found to be having no right to challenge the decree for specific performance in favour of Tej, there is no need for Tej also to in CS(OS) No.1523/2009 challenge the compromise dated 11th November, 2005 relating to the

partnership businesses; after all, Tej has challenged the said compromise only to strike at the root of the claim of Samarjit and Arati in CS(OS) No.1474/2008.

16. It is thus felt that there is no need to put the suits to trial.

17. Unfortunately, neither the counsel for Tej has bothered to consider the matter in the said perspective and has mechanically proposed issues, nor have the counsel for Sunil and Arun who though appearing have informed the Court of the aforesaid subsequent developments having vital impact aforesaid on these two suits. Of course, Samarjit and Arati, though closely related to Sunil and Arun and thus deemed to be in the knowledge of aforesaid developments, being interested in keeping the suits alive, have also suppressed the aforesaid facts.

18. I am further of the view that if CS(OS) No.1474/2008 is to ultimately fail for the aforesaid reasons and owing thereto CS(OS) No.1523/2009 is to be rendered infructuous, no purpose will be served in blindly and mechanically putting these suits to trial, taking valuable time, which can be devoted to deserving cases.

19. However, since the counsels have not been heard on the aforesaid aspect, though have been found to be totally lacking, I still deem it

appropriate to give them an opportunity to address on the said aspect.

20. However at the same time, having gone through the pleadings, it is also deemed expedient to frame issues.

21. On the pleadings in the two suits, the following consolidated issues (in which the parties are referred to by their nomenclature in CS(OS) No.1474/2008) are framed:-

(i) Whether the plaintiffs in CS(OS) No.1474/2008, on the basis of the compromise dated 11th November, 2005 with the defendants no.3&4 in the said suit have any locus to challenge the decree dated 25th July, 2007 for specific performance of the Agreement to Sell by the predecessor-in-interest of the defendants no.3&4 in favour of the defendant no.1, especially when the said decree against the defendants no.3&4 has attained finality? OPP

(ii) Whether the compromise dated 11th November, 2005 between the plaintiffs and the defendants no.3&4 is collusive and intended to defeat the Agreement to Sell executed by the predecessor of the defendants no.3&4 in favour of the defendant no.1 and if so to what effect? OPP

(iii) What is the effect if any of the discharge by the defendant no.1 of the mortgage in favour of PNB and whether the defendant no.1 had no locus to so discharge the mortgage? OPPr

(iv) Whether CS(OS) No.1474/2008 has been correctly valued for the purposes of Court Fees and jurisdiction and appropriate Court Fees has been paid thereon and if not to what effect? OPPr

(v) Whether the defendants no.1&2 are tenants in possession w.e.f. 1st March, 1989 of the property and if so to what effect (while deciding this issue regard shall be had to the provisions of the Delhi Land Reforms Act, 1954 on the effect of letting out of the land)? OPPr

(vi) Whether the Agreement to Sell by the predecessor-in-interest of the defendants no.3&4 in favour of the defendant no.1 was in violation of interim injunction dated 12th July, 1989 in any proceedings initiated by the plaintiff no.1 against the said predecessor and if so to what effect? OPP

(vii) Whether the defendant no.1 was aware of suit No.1479A/1989 filed by the plaintiff no.1 against the predecessor of the

defendants no.3&4 and of the defendants no.3&4 being the legal representatives of the agreement seller and if so what is the effect if any of the defendant no.1 in the suit for specific performance filed by him not disclosing the said fact and not substituting the defendants no.3&4 as legal representatives? OPP

(viii) Whether the defendants no.3&4 were unaware of the Agreement to Sell and the proceedings in relation thereto between their predecessor and the defendant no.1 and if so to what effect? OPP

(ix) Whether the defendant no.1 was aware of the Suit No.1479A/1989 and the compromise dated 11th November, 2005 therein and concealed the said fact from the suit for specific performance and if so to what effect? OPD

(x) Whether the decree dated 25th July, 2007 in the suit for specific performance is liable to be set aside? OPP

(xi) What is the effect if any of the plaintiffs inspite of being aware of the proceedings for specific performance filed by the defendant no.1 against the predecessor of the defendants

no.3&4 not taking any steps therein and whether the claim of the plaintiffs is within time? OPP

(xii) What is the effect of the rights under the compromise dated 11th November, 2005 claimed by the plaintiffs in the property being subsequent to the rights claimed by the defendant no.1 under an Agreement to Sell of an earlier date? OPP

(xiii) Whether no compromise dated 11th November, 2005 could have been recorded in Section 20 of the Arbitration Act, 1940 proceeding? OPD-1

(xiv) Whether the defendant no.3&4 have inherited any rights in the property from their predecessor Sushil K. Chakravarty so as to be in a position to arrive at a compromise dated 11th November, 2005 with the plaintiffs qua the said property? OPP

(xv) Whether the claim in CS(OS) No.1523/2009 is within time? OPD-1

(xvi) Whether the document dated 8th June, 1990 is the validly executed last Will of the predecessor-in-interest of the defendants no.3&4 and if so to what effect? OPD-1&2

(xvii) Relief.

22. No other issue is found to arise.

23. The Issue No.(i) aforesaid is ordered to be treated as a preliminary issue.

24. List for hearing on the said preliminary issue on 16th May, 2014.

RAJIV SAHAI ENDLAW, J.

APRIL 15, 2014
'bs'/pp
(corrected and released on 15th May, 2014)