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

+ CM(M) 244/2013 and CM No.3575/2013 (Stay)

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Decided on: 21st February, 2015

MOHINDER PAL SINGH

..... Petitioner

Through: Mr. M.L. Bajaj, Advocate.

versus

KAMALPREET KAUR LAMBA AND ANR

..... Respondents

Through: Mr. Sunil K. Mittal, Mr. Rohit K.
Nagpal and Mr. Anuj Arora,
Advocates for Respondent No.1.
Mr. Manjeet Singh Bhamra, Advocate
for Respondent No.2.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Matrimonial disputes between the Respondent Nos.1 and 2 have led to multiple litigations between the parties and the present petition arises from the same. Petitioner is the father-in-law of respondent No.1 and father of respondent No.2.

2. A brief exposition of the facts necessary for the adjudication of the present petition is that the Respondent No.1 had filed civil suit before this Court being CS No.205/2006 wherein on an undertaking by the Petitioner and the Respondent No.2 the suit was disposed of. The undertaking given is as under:

*“Smt. Kamal Preet Lamba wife of Sh. Harmindar Singh
Lamba R/o A-1/205 Janak Puri aged about 28 years*

hereafter called the 1st party and Sh. Harminder Singh, S/o Sh. Mohinder Pal Singh Lamba, Mohinder Pal Singh both resident of A1/205 Janak Puri, New Delhi hereafter called the 2nd and 3rd party respectively.

Now the matter has amicably settled between the parties and both the parties and both the parties will withdraw their cases and shall not fill any complaint or what so ever against each other in future. That the 1st party is residing along with the 2nd and 3rd party at her matrimonial house that is A-1/205, Janak Puri, New Delhi as peacefully and the 2nd and 3rd party undertake that they shall not dispossess the 1st party from matrimonial house and in future both parties live peacefully.

The 1st Party withdraw her case no.205/2006 pending in the Hon'ble High Court of Delhi at New Delhi without any condition. All parties have signed this paper without any pressures and out of there owns free will.

Thanking you

*S/d
1st Party (Kamal Preet Lamba)*

*S/d
2nd Party (Harminder Singh Lamba)*

*S/d
3rd Party (Mohinderpal Singh Lamba)''*

3. Pursuant thereto the Petitioner filed a civil suit before the learned District Judge being CS No.105/2008 titled 'Mohinder Pal Singh vs. Harmider Singh' wherein he impleaded only his son as the Defendant. In the said suit the Plaintiff/Petitioner herein prayed for possession of the premises from his son. The son of the Petitioner did not contest the said suit and thus judgment and decree was passed in view of the compromise application and on statements of the Plaintiff/Petitioner herein and

Defendant/Respondent No.2. As per the settlement the Defendant/Respondent No.2 herein agreed to vacate the first floor of the Property No.A-1/205, Janak Puri, New Delhi and handed over its physical and vacant possession to the Plaintiff/Petitioner herein on 22nd September, 2008. Apparently the suit was a collusive suit for the reason that the possession had not been handed over and the respondent No.1 who is the wife of the Respondent No.2 and Defendant in Suit No.632/2008 was not a party and she had never vacated the premises.

4. Aggrieved by the judgment and decree, the Respondent No.1 herein filed an application before the Executing Court which application was dismissed. The appeal against that execution application was also dismissed by this Court in Ex.F.A. No.8/2012 vide order dated 6th January, 2012 wherein the following order was passed:

“The limited issue in this Execution First Appeal against the order dated 29.1.2011 is with respect to the entitlement of the appellant to continue in the suit premises, which belongs to her father-in-law. In the suit, a decree was passed against the husband of the appellant, viz., Sh. Harminster Singh, and the decree therefore binds all persons who claim through Sh. Harminster Singh. A wife / appellant ordinarily claims through the husband, unless, she establishes independent rights in the property. I am informed that the appellant has already filed a suit claiming such independent rights in the suit property and that she is not entitled to be evicted pursuant to the judgment and decree dated 19.9.2008 passed in the Suit No.105/2008 titled as Mohinder Pal Singh v. Harminster Singh. I am informed that there is an interim order protecting the possession and hence the dispossession of the appellant from the suit property in the said civil suit. Accordingly, this appeal is disposed of with the direction that the respondent / decree holder will be entitled to execute the judgment and decree dated 19.9.2008, subject

however to any interim orders which are passed in any civil proceedings including CS(OS) No.205/2006 titled as Kamal Preet Kaur Lam v. Harminster Singh and Anr. It is clarified that in case the interim orders in any civil proceedings are vacated, then the respondent / decree holder will be entitled to take possession of the suit property from the appellant in execution of the judgment and decree dated 19.9.2008. While disposing of the appeal, the orders dated 2.5.2011 and 19.5.2011 are made absolute. Appeal is disposed of accordingly.”

5. The order of this Court dated 6th January, 2012 itself notices that the Respondent No.1 had filed a suit before the Competent Court seeking declaration of the decree and judgment as null and void. On the basis of these orders and the order of the learned Metropolitan Magistrate in CC No.1106/1 filed by Respondent No.1 against the Petitioner and Respondent No.2 wherein the learned Metropolitan Magistrate held that the admitted case of the parties is that the property belongs to the Petitioner herein exclusively being his self acquired property and thus cannot be termed as a shared house property, the Petitioner in the present petition contends that the Respondent No.1 had no cause of action in filing the suit, i.e. CS No.65/2012.

6. The Petitioner filed an application under Order VII Rule 11 CPC before the learned Trial Court in CS No.65/2012 filed by the Respondent No.1 on the ground that the suit was not maintainable and all questions with regard to the validity of the judgment and decree passed by the Competent Court of law can be adjudicated upon by the same Court and not by virtue of a separate suit. Thus the suit filed by Respondent No.1 herein was barred by law being without any cause of action and thus the suit deserves to be

rejected.

7. Vide the impugned order dated 15th September, 2012 the learned Additional District Judge noted all the contentions and came to the conclusion that the suit filed by the Respondent No.1 could not be rejected as the claim in the present suit is that the judgment and decree dated 19th September, 2008 was obtained by concealment of material facts and the question of validity of decree being obtained by fraud could not be decided under the provisions of Order 21 CPC.

8. As noted above there is no admission of the Respondent No.1 that the suit property is a self acquired property of the Petitioner, it is the case of the Respondent No.1 in the plaint that the said property has been acquired by disposing of the ancestral property. A bare perusal of the judgment and decree dated 19th September, 2008 would show that the consent decree was arrived at between the Petitioner herein and the Respondent No.2 who stated that he had handed over the vacant and physical possession of the suit property to the Petitioner which was factually incorrect.

9. In Ramji Gupta and another vs. Gopi Krishan Agarwal (D) and others, 2013 (9) SCC 438 while dealing with the issue relating to exercise of inherent powers and right to a person in a party to the suit, the Supreme Court laid down the following legal issues:

“20. In view of the above, the legal issues involved herein, can be summarised as under:-

(i) An application under Order IX Rule 13 Code of Civil Procedure cannot be filed by a person who was not initially a party to the proceedings;

(ii) Inherent powers under Section 151 Code of Civil Procedure can be exercised by the Court to redress only

such a grievance, for which no remedy is provided for under the Code of Civil Procedure;

(iii) In the event that an order has been obtained from the Court by playing fraud upon it, it is always open to the Court to recall the said order on the application of the person aggrieved, and such power can also be exercised by the appellate court;

(iv) Where the fraud has been committed upon a party, the court cannot investigate such a factual issue, and in such an eventuality, a party has the right to get the said judgment or order set aside, by filing an independent suit.

(v) A person aggrieved may maintain an application before the Land Acquisition Collector for reference under Section 18 or 30 of the Act, 1894, but cannot make an application for impleadment or apportionment before the Reference Court.”

10. As the Respondent No.1 in the plaint has claimed fraud having been played on her which is prima facie evident from the consent decree dated 19th September, 2008 wherein Respondent No.2 claimed to have handed over vacant and peaceful possession to the Petitioner, it cannot be said that there is no cause of action in the suit filed by the respondent No.1.

11. I find no infirmity in the impugned judgment. Consequently the petition and the application are dismissed.

MUKTA GUPTA)
JUDGE

FEBRUARY 21, 2015

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