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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) 259/2014 & C.M.No.9178/2014

SH.JATINDER NATH BAJAJ

..... Appellant

Through: Mr.Sudhanshu Batra, Sr.Adv. with
Mr.S.N.Choudhri, Ms.Shruti Choudhri
and Ms.Ruby Singh, Advocates

versus

SHRI UPENDER NATH BAJAJ & ANR.

..... Respondents

Through: Mr.Arun Vohra, Adv. for R-1
Mr.Saurabh Chadda, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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16.09.2015

1. The present appeal impugns order dated 25.03.2014 in CS (OS) 2025/2010 with connected matter Test.Cas.85/2011.
2. This court had on 05.08.2015 recorded the parties' submissions with respect to tentative terms of settlement. Thereafter the parties had sought adjournments to arrive at the final terms. It appears that an acceptable mode of settling the dispute within the foreseeable future is not possible. Consequently, the said order is hereby recalled.
3. The counsels for the parties have been heard. The only grievance which the appellant articulated is with regard to the observation made by the learned Single Judge in para 15 of the impugned order vis-à-vis applicability of the Benami Transactions (Prohibition) Act, 1988. The context of the observations was the appellant's claim in respect of a property at Ramesh Nagar. The appellant had claimed that the said property belongs to his father by virtue of an agreement to sell executed by the father's sister in favour of the father. The appellant relies upon a

Will allegedly executed by the father. Apparently, the appellant's aunt who is the recorded owner of the property had also executed another Will which is also pending in separate probate proceedings. The learned Single judge in para 15 of his order states as follows:

“15. I may notice that the plea, of the deceased Sh.I.D.Bajaj being the owner of Ramesh Nagar flat for the reason of having paid the purchase consideration thereof, though the said flat is admittedly in the name of his sister, is also barred by the Benami Transactions (Prohibition) Act, 1988.”

4. We notice that the CS (OS) 2025/2010 filed by the respondent is only in regard to a property at Punjabi Bagh. The connected Test.Cas.85/2011 for probate of Late I.D.Bajaj's Will is concerned with numerous properties, one of which is the Ramesh Nagar property. Given the state of law that the probate court is only concerned with the validity of Will and the testator's capacity (*Chiranjilal Shrilal Goenka vs. Jasjit Singh and Others* (1993) 2 SCC 507 and *Ishwardeo Narain Singh vs. Kamta Devi & Others* AIR 1954 SC 280), we are of the opinion that the question of title to the said property is kept open to be adjudicated in an appropriate manner. Save and accept this modification, no interference with the order of the learned Single Judge is called for. Appeal and the pending applications are consequently disposed of.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 16, 2015/rb