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

+ **CS(OS) 1377/2009**

ASHOK KUMAR

..... Plaintiff

Through: Mr. Umesh Kumar, Advocate.

versus

RAJ KUMAR SHARMA & ORS.

..... Defendants

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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15.03.2016

I.A.Nos. 3479/2016 (for setting aside order dt. 21.5.2015) & 3480/2016 (stay)

1. These applications have been filed by the applicant, who was the defendant no.16 in the suit namely Smt. Manju whereby recall is sought of the order dated 21.5.2015 by which the subject suit for partition has been disposed of as compromised by drawing up a decree sheet. The compromise which was entered into was in terms of the settlement report of the Delhi High Court Mediation and Conciliation Centre dated 24.4.2015 and which was based upon an agreement cum family settlement and compromise deed dated 24.4.2015 entered into between the plaintiff Sh. Ashok Kumar and defendant no.6 Sh. Yashpal Sharma.

2. In law, a suit which is disposed of can be by two eventualities. One is a judgment on merits and which operates as *res judicata* between the parties to the suit and secondly the same is by compromise which is an agreement between the parties, and therefore, the agreement only binds the parties to the compromise and thus estopping a party from challenging the decree drawn on the basis of the compromise.

3. It is seen in the present case that admittedly, the applicant is not a party to the family settlement cum compromise deed dated 24.4.2015, and therefore, rights of the applicant/defendant no.16 Smt. Manju can in no manner be said to have been affected by drawing up a decree in terms of the family settlement cum compromise deed dated 24.4.2015 read with the settlement report of the Delhi High Court Mediation and Conciliation Centre of the same date.

4. Therefore, if the subject suit for partition is compromised, it can only bind the plaintiff in the suit and defendant no.6 who are parties to the compromise and no other person unless such person had given an attorney to any of these two parties to enter into a compromise on his/her behalf. Admittedly, the applicant did not give attorney either to the plaintiff or Sh. Yashpal Sharma for entering into the compromise on her behalf, and

therefore, settlement dated 24.4.2015 and decree dated 21.5.2015 will not bind the applicant/defendant no.16.

5. In view of the above, the applications are dismissed but the applicant is at liberty to file appropriate proceedings to assert her rights, and it is also made clear that the decree passed in this suit on 21.5.2015 will not bind the applicant/defendant no.16.

Applications are disposed of accordingly.

VALMIKI J. MEHTA, J

MARCH 15, 2016

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