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

+ **CS(OS) 3364/2015**

VIDUR IMPEX & TRADERS PVT LTD & OTHERS..... Plaintiffs

Through: Mr. J.P. Sengh and with Mr. Dinesh Agnani, Sr. Advs. with Mr. Pradeep Kumar, Mr. Javed Ahmed, Mr. M.T. Reddy, Ms. Vanessa Singh, Ms. Sana Ansari and Mohd. Ovais, Advs.

versus

MRS POONAM KHANNA & ORS Defendants

Through: Mr. Sanjay Anand, Mr. Yakesh Anand and Ms. Sonam Anand, Advs. for D-1 to D-3.

Mr. Jayant Bhushan, Sr. Adv. with Mr. Mandeep Singh Vainaik, Mr. Deepak Bashta and Ms. Geeta Mohanty, Advs. for D-4.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% 24.11.2015

1. Plaintiff has filed this suit for declaration and permanent injunction, inter alia, praying therein that compromise decree dated 1st September, 2015 passed in CS (OS) 425/1993 tilted Tosh Apartments vs. Pradeep Kumar Khanna, be declared as null and void. Relief of permanent injunction is consequential to the relief of declaration.
2. Briefly stated, facts of the case, as emerging from the plaint and the documents annexed therewith, are that Late Shri Pradeep Kumar Khanna (husband of defendant no. 1 and father of defendant nos. 2 and 3) entered

into an Agreement to Sell dated 13th September, 1988 with defendant no. 4, in respect of property bearing no. 21, Aurangzeb Road, New Delhi. However, sale deed was not executed, resulting in filing of a suit by the defendant no. 4 against Late Shri Pradeep Kumar Khanna being CS (OS) 425/1993. During the pendency of the said suit Shri Pradeep Kumar Khanna died and defendant nos. 1 to 3 were brought on record as his heirs.

3. In CS (OS) 425/1996, vide order dated 18th February, 1993, defendants were restrained from transferring, alienating, parting with possession or creating third party interest in the suit property. This injunction order was subsequently confirmed. After passing of the injunction order, it appears that Shri Pradeep Kumar Khanna entered into an Agreement to Sell with the plaintiffs herein, on 19th February, 1997. Thereafter, Shri Pradeep Kumar Khanna executed six sale deeds in favour of the plaintiffs all dated 29th May, 1997. However, prior to the execution of the sale deed plaintiffs entered into an Agreement to Sell with defendant no. 5, in respect of the suit property. During the pendency of CS (OS) 425/1993, plaintiffs filed an application under Order 1 Rule 10 CPC for their impleadment on the ground that they had purchased the suit property from Late Shri Pradeep Kumar Khanna. The applications, however, were

dismissed by a learned Single Judge of this Court vide order dated 26th May, 2008. Plaintiffs challenged this order before the Division Bench but without any success. Plaintiffs thereafter approached Supreme Court by filing appeals which were dismissed vide judgment Bhagwati Developers Private Limited vs. Tosh Apartments Private Limited & Others (2012) 8 SCC 384, wherein, in para 42 to 44, it has been held thus :-

“42. In the light of the above, we shall now consider whether the learned Single Judge and the Division Bench of the High Court committed an error by dismissing the appellants’ application for impleadment as parties to Suit No.425/1993. At the cost of repetition, we consider it necessary to mention that respondent 1 had filed suit for specific performance of agreement dated 13.9.1988 executed by respondent No.2. The appellants and Bhagwati Developers are total strangers to that agreement. They came into the picture only when respondent 2 entered into a clandestine transaction with the appellants for sale of the suit property and executed the agreements for sale, which were followed by registered sale deeds and the appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were in clear violation of the order of injunction passed by the Delhi High Court which had restrained respondent No.2 from alienating the suit property or creating third party interest. To put it differently, the agreements for sale and the sale deeds executed by respondent 2 in favour of the appellants did not have any legal sanctity. The status of the agreement for sale executed by the appellants in favour of Bhagwati Developers was no different. These transactions did not confer any right upon the appellants or Bhagwati Developers. Therefore, their presence is not at all necessary for adjudication of the question whether respondent Nos.1 and 2 had entered into a binding agreement and whether respondent No.1 is entitled to a

decree of specific performance of the said agreement. That apart, after executing the agreement for sale dated 18.3.1997 in favour of Bhagwati Developers, the appellants cannot claim to have any subsisting legal or commercial interest in the suit property and they cannot take benefit of the order passed by the Calcutta High Court for appointment of an arbitrator which was followed by an order for appointment of receiver because the parties to the proceedings instituted before that Court deliberately suppressed the facts relating to Suit No.425/1993 pending before the Delhi High Court and the orders of injunction passed in that suit.

43. We are in complete agreement with the Delhi High Court that the application for impleadment filed by the appellants was highly belated. Although, the appellants have pleaded that at the time of execution of the agreements for sale by respondent No.2 in their favour in February 1997, they did not know about the suit filed by respondent No.1, it is difficult, if not impossible, to accept their statement because the smallness of time gap between the agreements for sale and the sale deeds executed by respondent No.2 in favour of the appellants and the execution of agreement for sale by the appellants in favour of Bhagwati Developers would make any person of ordinary prudence to believe that respondent No.2, the appellants and Bhagwati Developers had entered into these transactions with the sole object of frustrating the agreement for sale dated 13.9.1988 executed in favour of respondent 1 and the suit pending before the Delhi High Court. In any case, the appellants will be deemed to have become aware of the same on receipt of summons in Suit No.161/1999 filed by respondent 2 for annulment of the agreements for sale and the sale deeds in which respondent 2 had clearly made a mention of Suit No.425/1993 filed by respondent No.1 for specific performance of the agreement for sale dated 13.12.1988 and injunction or at least when the learned Single Judge of the Delhi High Court entertained IA No.625/2001 filed by respondent No.1 and restrained respondent 2 and 4 from transferring possession of the suit property to the appellants. However, in the application for

impleadment filed by them, the appellants did not offer any tangible explanation as to why the application for impleadment was filed only on 4.2.2008 i.e. after 7 years of the passing of injunction order dated 22.1.2001 and, in our considered view, this constituted a valid ground for declining their prayer for impleadment as parties to Suit No.425/1993.

44. The ratio of the judgment in *Kasturi v. Iyyamperumal* (supra), on which heavy reliance has been placed by the learned senior counsel for the appellants, does not help his clients. In the present case, the agreements for sale and the sale deeds were executed by respondent No.2 in favour of the appellants in a clandestine manner and in violation of the injunction granted by the High Court. Therefore, it cannot be said that any valid title or interest has been acquired by the appellants in the suit property and the ratio of the judgment in *Surjit Singh v. Harbans Singh*(supra) would squarely apply to the appellants' case because they are claiming right on the basis of transactions made in defiance of the restraint order passed by the High Court. The suppression of material facts by Bhagwati Developers and the appellants from the Calcutta High Court, which was persuaded to pass orders in their favour, takes the appellants out of the category of bona fide purchaser. Therefore, their presence is neither required to decide the controversy involved in the suit filed by respondent 1 nor required to pass an effective decree."

4. Subsequently, a settlement was arrived at between the defendant nos. 1 to 3 on the one hand and defendant no. 4 on the other in CS (OS) 425/1993 and on an application filed under Order 23 Rule 3 CPC impugned decree was passed.

5. Plaintiffs have alleged that decree was obtained by the defendant nos. 1 to 4 by perpetuating fraud on the Court. Plaintiffs were neither impleaded

in the said application nor any notice was issued to them prior to passing of the decree. Factum of sale of suit property by Late Shri Pradeep Kumar Khanna vide registered sale deeds all dated 20th May, 1997, was not disclosed. Defendant nos. 1 to 3 did not disclose that they were divested of all their rights in the suit property, in view of the sale deeds. Defendants did not disclose in the compromise application that plaintiffs had filed CS (OS) 3195/2012 praying therein that they be declared owners of the suit property in view of the sale deeds, despite the fact that they were party to the said suit. It is further contended that plaint in CS (OS) 3195/2012 was rejected under Order 7 Rule 11 CPC by the learned Single Judge but in the appeal the said order was set aside, with the consent of the parties.

6. In nutshell, case of the plaintiffs is that decree was obtained by perpetuating fraud. Defendants have appeared through senior counsel/counsel and have contended that plaint does not disclose any cause of action. Grounds, on which, it is alleged that decree was obtained by perpetuating fraud, does not disclose any cause of action.

7. As regards, plea of plaintiffs, as taken in the plaint, that they were not made a party to the compromise application nor were issued any notice before passing the decree, in my view, does not disclose any cause of action.

In CS (OS) 425/1993 plaintiffs had sought impleadment on the ground that they were owner pursuant to the six sale deeds, but their impleadment was found not necessary. Supreme Court categorically observed that sale deeds were entered in a clandestine manner. It has been further held that the transaction being in violation of injunction order had no legal sanctity. Agreement was entered into by the appellant with Bhagwati Developers to frustrate the agreement to sell dated 13th September, 1988 (specific performance of what was sought in suit no. 425/1993). Suppression of material facts in Calcutta High Court takes the plaintiffs herein out of the category of bonafide purchaser. Accordingly, in my view, once the impleadment of plaintiffs in CS (OS) 425/1993 was declined, there was no requirement of impleadment of plaintiffs at the time of recording the compromise nor any notice was required to be issued to them. As regards plea of non-disclosure of sale deeds is concerned, same has no force. It is on the basis of these sale deeds, application for impleadment was made and this fact was already on record of CS (OS) 425/1993 at the time of passing the compromise decree. Disclosure of other suits was also not necessary as same are independent of CS(OS) 425/1993, which was in respect of prior agreement to sell between the defendant no. 4 and Late Shri Pradeep Kumar

Khanna.

8. For the foregoing reasons, suit is not maintainable and is dismissed.

A.K. PATHAK, J.

NOVEMBER 24, 2015/ga