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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA 235/2014, CMs No.27593/2015 (u/O XXIII R-3 CPC) &
9891/2014 (for stay)

MS. MANJU TANWAR

..... Appellant

Through: Mr. P.D. Gupta & Mr. Atul Gupta,
Advs.

Versus

SH. SARANAJIT RANA & ORS

..... Respondents

Through: Mr. B.K. Srivastava, Adv. for R-1.
Mr. Kamal Chaudhary, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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14.03.2016

1. The appeal impugns the judgment and decree dated 29th April, 2014 of the Court of Additional District Judge (ADJ)-I, South-West District, Dwarka Courts, Delhi in Civil Suit No.605/2012 bearing Unique I.D. No.02405C0361702010 filed by the respondent no.1 against the appellant and the respondents no.2&3. By the impugned judgment and decree, i) a decree for possession in respect of half undivided portion of the land ad-measuring 2 Bighas 2 Biswas in Khasra No.83 (1 Bigha 1 Biswa) and 84 (1 Bigha and 1 Biswa) in the revenue estate of village Dindarpur, Najafgarh, New Delhi has been passed in favour of respondent no.1 / plaintiff and against the appellant and the respondent no.3 Ms. Yagya Rathore; ii) a decree for mandatory injunction directing the appellant and the respondent no.3 Yagya Rathore to remove boundary wall and construction existing on half undivided portion of the said property has been passed; iii) a decree for permanent injunction restraining the appellant and the respondent no.3

Yagya Rathore from creating any third party interest in respect of the half undivided portion of the property has been passed; and, iv) documents Ex.DW1/1 to DW1/7 have been declared null and void to the extent they transfer 1 Bigha and 1 Biswa comprising of the aforesaid land and belonging to the respondent no.1 / plaintiff in favour of the appellant.

2. Notice of the appeal was issued and as a condition for stay of execution, the appellant directed to pay a sum of Rs.25,000/- per month.

3. CM No.27593/2015 under Order XXIII Rule 3 CPC has been filed by the appellant and the respondent no.1 bearing their signatures and supported by their affidavits. The appellant and the respondent no.1 / plaintiff have arrived at a settlement under which the respondent no.1 / plaintiff has, in consideration of a sum of Rs.20,00,000/- to be paid by the appellant to the respondent no.1 / plaintiff agreed to withdraw his challenge to the sale of his undivided half portion of the land made by his brother respondent no.2 herein Col. Prahlad Rana and has admitted to the sale of his half share of the property also to the appellant vide documents Ex. DW1/1 to DW1/7.

4. The counsel for the appellant and the counsel for the respondent no.1 state that though in the application under Order XXIII Rule 3 it has been mentioned that the said sum of Rs.20,00,000/- has been paid vide demand draft dated 18th November, 2015 but the parties have now agreed that the said amount shall be paid on or before 2nd April, 2016.

5. This application under Order XXIII Rule 3 has been coming up before this Court for the last three dates and the counsel for the respondent no.2 Col. Prahlad Rana has been stating that he will file objections thereto; however no objections have been filed.

6. The counsels for the appellant and the respondent no.1 / plaintiff state that the matter be adjourned to after 2nd April, 2016.
7. I am however of the opinion that once the parties have arrived at a settlement, the appeal need not be kept pending.
8. As far as the respondent no.2 Col. Prahlad Rana is concerned, I am informed that the respondent no.2 had not contested the suit and rather was called as a court witness and in his deposition had supported the respondent no.1 / plaintiff.
9. I have enquired from the counsel today appearing for the respondent no.2 Col. Prahlad Rana and who is today also seeking adjournment to file “reply to the appeal” as to what is the objection of the respondent no.2 to the compromise. The counsel then states that he is the proxy counsel for Mr. Rakesh Sehrawat, Advocate and is not aware of any facts. Mr. Rakesh Sehrawat, Advocate has chosen not to appear.
10. The compromise arrived at between the respondent no.1 / plaintiff and the appellant cannot be so allowed to be scuttled.
11. The appeal is disposed of in the following manner,
 - i) by accepting the undertaking of the appellant to this Court, to on or before 2nd April, 2016 pay the compromise amount of Rs.20,00,000/- to the respondent no.1 / plaintiff and by ordering the appellant to be bound thereby and by making the appellant aware of the consequence of breach thereof;
 - ii) by ordering that upon the said payment being made, the decree under appeal shall stand set aside in terms of the compromise

application which shall form part of the decree sheet to be drawn, leaving the parties to bear their own costs;

iii) by further ordering that if the amount is not so paid, the appeal shall stand dismissed, again leaving the parties to bear their own costs;

iv) by clarifying that the amount of Rs.20,00,000/- shall be paid by demand draft in the name of the respondent no.1 / plaintiff and the said demand draft shall be handed over to the respondent no.1 / plaintiff if available personally (he is informed to be resident of Germany) on or before 2nd April, 2016 and if not present personally will be filed before this Court on or before 6th April, 2016.

12. Unless the respondent no.1 / plaintiff applies in this appeal complaining of non payment on or before 8th April, 2016, it shall be presumed that payment has been made and the decree shall be drawn up accordingly.

13. The amount lying deposited in this Court as per the compromise arrived at between the parties be refunded to the appellant after 8th April, 2016.

RAJIV SAHAI ENDLAW, J.

MARCH 14, 2016

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