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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 1432/2013 & IA 10187/2016

FIROZE HAIDER & ORS

..... Plaintiff

Through: Mr. Rohit Gandhi, Advocate.

versus

ALI ADNAN & ORS

..... Defendant

Through: Mr. Avinash Sharma, Advocate for
D-1 to 4

Mr. D.N. Tripathi, Mr. Rohit Pandey, Mr. Shekhar
G. Devasa, Advocates for D-7 to 12.

Mr. Rajesh Kumar, Advocate for D- 13 to 26.

Mr. Ravichandran Iyer, Mr. APS Jadaun,
Advocates for Applicant/Defendant Narendra
Kumar Saini.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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26.08.2016

RA No. 383 of 2016

1. This review petition is filed in respect of the order dated 12th August 2016 passed by this Court to point out that the Supreme Court had by its order dated 11th April 2016 only permitted the Appellants before it to file an application for setting aside the judgment and decree dated 3rd October 2013 passed in the present suit. The Supreme Court has not, as wrongly noted by this Court, itself set aside the said judgment and decree.

2. It is further pointed out by the counsel for Review Petitioner that the Applicant Mr. Narendra Kumar Saini himself was not a party to the CS(OS)

1432 of 2013 in the Supreme Court and therefore his *locus standi* to file application for impleadment is itself in doubt. However, this aspect of the matter has been take care of by this Court by its order dated 12th August 2016 by making it clear that impleadment of Mr. Narinder Kumar Saini is without prejudice to the rights and contentions of the parties.

3. After hearing learned counsel for the parties, para 2 of the order dated 12th August 2016 is modified as under:

“In view of the order dated 11th April 2016 in Civil Appeal No. 3919 of 2016 permitting the Applicant to file an application for setting aside the judgment and decree dated 3rd October 2013 passed in the present suit CS(OS) No. 1432 of 2013, this application is allowed, without prejudice to the rights and contentions of the parties in the suit. Accordingly, the Applicant Mr. Narinder Kumar Saini is impleaded as Defendant in the suit.”

4. The review petition is disposed of.

IA No. 6988 of 2016

5. In view of the order dated 11th April 2016 in Civil Appeal No. 3919 of 2016 permitting the Applicants to file an application for setting aside the judgment and decree dated 3rd October 2013 passed in the present suit CS(OS) No. 1432 of 2013, this application is allowed, without prejudice to the rights and contentions of the parties in the suit. Accordingly, the Applicants are impleaded as Defendants in the suit.

6. The application is disposed of.

IA No. 6325 of 2016

7. The Supreme Court passed the order dated 11th April 2016 in Civil Appeal No. 3918 of 2016 filed by the legal representatives of late Shri Ganga Saran Das Saini and Civil Appeal No. 3919 of 2016 filed by Shri Bijender Singh. Both appeals were directed against the judgment and decree dated 3rd October 2013 passed by this Court in the present suit on the basis of a joint application made under Order 23 Rule 3 CPC in terms of the settlement arrived at in the Delhi High Court Mediation & Conciliation Centre. The order of the Supreme Court reads as under:

“1. Leave granted.

2. Respondent Nos. 1 to 8 herein (hereinafter referred to as the plaintiffs) has filed Civil Suit (OS) 1432 of 2013 on the original side of High Court of Delhi against Respondent Nos. 9 to 12 herein (hereinafter referred to as the Defendants). The matter was referred to mediation and in the mediation proceedings, plaintiffs and defendants settled the matter. Terms of settlement were recorded in writing, which were placed before the learned Single Judge of the High Court, who passed judgment and decree dated 3rd October, 2013, in terms of the said settlement. It was also recorded that the settlement agreement shall form part of the decree.

3. We may mention at this stage that the plaintiffs and defendants are related to each other and there were some disputes about their share-holdings in the suit land in question measuring 2808 bighas falling in Khasra No. 12 to 100, 105, 119, 121, 124, 127, 129, 131, 135, 136, 139, 144 to 171, 177 to 186, 321, 327, 328, 349 to 358, 371 to 386, 388, 393, 395, 398, 399, 400, 413, 416, 419, 424, 426, 431 to 433, 444, 445, 448 to 454, 481 to 486, 495, 950 etc. In village Ali, Molarband and Badarpur earlier forming part of Tehsil Ballabgarh, Dist., Delhi now forming part of revenue Tehsil Kalkaji, New Delhi, though it was their case that suit land belongs to these plaintiffs and defendants. As per the settlement the plaintiffs and defendants have got their respective shares on the

terms/premise that they are the owners of the land in question.

4. This Appeal (arising out of SLP (C) No. 6244/2014) is filed by one Ganga Sararan Das Saini (dead), who claimed that in fact he is the owner of the entire suit premises to the exclusion of everyone else. It is further alleged that the suit filed by the plaintiff against the defendants was a collusive suit and a decree is obtained at the back of the appellant in respect of the land which belongs to the appellant therein.

5. It is pertinent to note that IA 5 to 2014 is filed by Zaigham Hussain and others of the entire land in which those applicants claim themselves to be the real owners of the suit land.

6. Civil Appeal (arising out of SLP(C) No. 26711/2014) is filed by Bijender Singh and others wherein these appellants claim that they are the actual owners of the land in question.

7. We may also note that Shoyab Haider and few others had also filed SLP in which they claimed that they are the owners of the suit land. Though the said SLP was dismissed as withdrawn giving permission to those appellants to initiate appropriate proceedings before the competent civil court.

8. The purpose of recording the aforesaid narration is to highlight that ownership in respect of the same suit land is claimed by so many parties. In view thereof, it is agreed by all that parties concerned that issue of ownership needs to be decided and they are agreeable that the same be decided in the suit filed by the plaintiffs in the High Court in which impugned decree is passed. It is also agreed that those parties who are not plaintiffs or defendants in the suit shall be permitted to file appropriate applications in the same suit within four weeks, for setting aside of a decree and also for impleadment as defendants. The plaintiffs shall have no objection for their impleadment as defendants. It is further agreed between the parties that in those very proceedings it will be decided as to who is the actual and real owner(s) of the suit land. It is made clear that if it is ultimately found that the original plaintiffs and defendants were the owners, the settlement which was recorded in the mediation proceedings will remain binding qua them.

9. The interim order(s) passed by this Court shall remain in operation till the disposal of the suit by the trial court. The trial court shall proceed with the matter without being influenced by the said interim order.

10. The applications for impleadment and substitution are allowed. The Civil Appeals are disposed of in the terms stated in the earlier paragraphs. We request the trial court to dispose of the suit as expeditiously as possible. No costs.”

8. Consequent upon the above order, applications have been filed in this case by numerous parties seeking impleadment as Defendants in the main suit. On these applications, orders have been passed by this Court on 19th May 2016, 31st May 2016 and 12th August 2016, which are further modified by the order passed hereinabove in the review petition.

9. Since now the suit itself is a contested one with so many Defendants in the fray, for the effective resolution of the dispute, the suit will have to be taken to its next logical steps. The pleadings in the suit will have to be completed. Therefore, there is no question of the judgment and decree dated 3rd October, 2013 being allowed to remain since the suit will have to be decided afresh.

10. At this stage, counsel for the Plaintiff refers to para 8 of the above order of the Supreme Court to urge that in the event the Defendants who have been impleaded fail to establish their respective right, title and interest in the suit property, the decree passed in terms of the settlement would survive.

11. As far as the above submissions are concerned, the Court clarifies that if

the Court at the trial finds that none of the Defendants have been able to establish their respective right, title and interest in the suit property, it will be for the Court at that stage to consider passing a fresh decree in terms of the settlement arrived at between the Plaintiff and Defendant Nos.1 to 4. It is pre-mature for the Court at this stage to make any observation.

12. For the aforementioned reasons, the judgment and decree dated 3rd October 2013 is set aside and the suit is restored to file to be proceeded from the stage it was when the aforementioned order was passed.

13. The application is disposed of.

CS(OS) No. 1432 of 2013

14. Copies of the plaint be supplied to the newly impleaded Defendants who shall file their respective written statements within four weeks.

15. Given that the valuation of the suit is below Rs. 2 crores, it is directed to be transferred to the Court of appropriate jurisdiction i.e., the Court of District & Sessions Judge, South East, Saket. The matter be now listed before the appropriate Court on 19th September, 2016.

16. It will be open to the parties to request the Court concerned to expedite the matter.

17. The date of 30th September 2016 is cancelled.

S.MURALIDHAR, J

AUGUST 26, 2016/mg