

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

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Date of decision: 24th May, 2016

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CONT.CAS(C) 196/2013

RAVINDER NATH CHOPRA

..... Petitioner

Through: Mr. Ramkishan Saini, Adv.

Versus

ANIL GUPTA AND ORS

..... Respondents

Through: Mr. A.S. Chadha, Sr. Adv. with Mr. Naveen Sharma & Mr. Sahil Mongia, Adv. for R-1&2.

Mr. S. Francis, Adv. for M/s SGGPPL.

AND

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CONT.CAS(C) 585/2014

ANIL GUPTA & ANR

..... Petitioners

Through: Mr. Ramkishan Saini, Adv.

Versus

RAVINDER NATH CHOPRA

..... Respondent

Through: Mr. A.S. Chadha, Sr. Adv. with Mr. Naveen Sharma & Mr. Sahil Mongia, Adv. for R-1&2.

Mr. S. Francis, Adv. for M/s SGGPPL.

AND

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RFA 311/2012

RAVINDER NATH CHOPRA

..... Appellant

Through: Mr. Ramkishan Saini, Adv.

Versus

ANIL GUPTA & ORS

..... Respondents

Through: Mr. A.S. Chadha, Sr. Adv. with Mr. Naveen Sharma & Mr. Sahil Mongia, Adv. for R-1&2.

Mr. S. Francis, Adv. for M/s SGGPPL.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The first appeal under Section 96 of the Code of Civil Procedure, 1908 impugns the consent judgment and decree dated 28th May, 2012 of the Court of the Additional District Judge (ADJ) (Central)-04, Delhi in CS No.29/12 filed by the respondents no.1 and 2 therein viz. Anil Gupta and Manoj Gupta against the respondent no.3 therein viz. Kamal Kumar Lamba for the reliefs of recovery of vacant, peaceful, physical possession of two rooms, tin-shed, kitchen, toilet and bathroom of properties No.3871 to 3874, Gali No.25, Reghar Pura, Karol Bagh, New Delhi as shown in red colour in the site plan annexed to the plaint and for recovery of *mesne* profits / damages for use and occupation and for permanent injunction restraining the respondent no.3 Kamal Kumar Lamba from handing over possession of the said portion of the property to anyone else.

2. The appellant Ravinder Nath Chopra was not a party to the suit from which the appeal arises; however claiming to be adversely affected by the judgment and decree aforesaid, has preferred the appeal and which came up before this Court first on 27th July, 2012 when notice thereof was issued and on the application of the appellant Ravinder Nath Chopra for interim relief, the following order was passed:

“Issue notice to the respondents, returnable on 28th September, 2012.

Till the next date of hearing, respondents are directed to maintain status quo with respect to the property which is the subject matter of the compromise decree impugned in the appeal and not to create any third party interest in respect of the same.”

3. Though the respondents no.1&2 Anil Gupta and Manoj Gupta in response to the notice issued appeared but none appeared for the respondent no.3 Kamal Kumar Lamba despite service.
4. Contempt case No.196/2013 has been filed by the appellant Ravinder Nath Chopra contending that the respondents no.1&2 Anil Gupta and Manoj Gupta in violation of the order dated 27th July, 2012 aforesaid have on 24th September, 2012 executed and registered a sale deed of the portion aforesaid of the property in favour of M/s Shree Ganpati Gold Projects Pvt. Ltd. Notice of the said contempt case was also issued.
5. Contempt case No.585/2014 has been filed by Anil Gupta and Manoj Gupta supra contending that the appellant Ravinder Nath Chopra, after obtaining the interim order dated 27th July, 2012 aforesaid, has in violation and contempt thereof ousted the aforesaid M/s Shree Ganpati Gold Projects Pvt. Ltd. (which was in possession of the property in pursuance to the sale deed executed by Anil Gupta & Manoj Gupta in its favour) from the property. Notice of the said contempt case also was issued.
6. Vide order dated 21st August, 2014 in all the aforesaid proceedings, observing that both the parties i.e. the appellant Ravinder Nath Chopra as well as the respondents no.1&2 Anil Gupta and Manoj Gupta are guilty of misleading the Court and violating the orders of the Court and that the property should be preserved, directed the keys of the property to be deposited with the Registrar (Original) of this Court.

7. I am told that the keys have been so deposited. However the counsel for the appellant Ravinder Nath Chopra states that the said keys are with respect to one room and latrine only.

8. On 27th January, 2016 when the matters came up before this Court, it was informed that the appellant Ravinder Nath Chopra has preferred an SLP to the Supreme Court with respect to the order dated 21st August, 2014 as amended on 27th August, 2014 and which was pending consideration and adjournment was sought. Thereafter when the matters came up on 10th May, 2016, again adjournment was sought. However finding that the appeal was against a consent order / decree and being of the view that the appeal was not maintainable, the matter was posted for today.

10. Today, on enquiry, the counsels inform that though notice of the SLP aforesaid has been issued but there is no stay of the present proceedings.

11. I have thus proceeded to hear the counsels.

12. The counsel for the appellant Ravinder Nath Chopra has contended that though the appellant Ravinder Nath Chopra was not a party to the suit from which this appeal arises but is entitled to maintain the appeal as he is prejudiced from the order / decree obtained by the respondents no.1&2 Anil Gupta and Manoj Gupta (plaintiffs in the suit from which this appeal arises) on the one hand in collusion with the respondent no.3 Kamal Kumar Lamba (defendant in the suit from which this appeal arises) on the other hand; reliance in this regard is placed on ***Banarsi Vs. Ram Phal*** AIR 2003 SC 1989 to contend that a non-party to the suit can also maintain an appeal.

It is argued i) that in fact the appellant Ravinder Nath Chopra is the owner of the portion of the property with respect to which the impugned judgment and decree of recovery of possession of the immovable property has been obtained by the respondents no.1&2 Anil Gupta and Manoj Gupta in collusion with the respondent no.3 Kamal Kumar Lamba; ii) that the respondent no.3 Kamal Kumar Lamba was in fact a tenant in the said property under the appellant Ravinder Nath Chopra and in the guise of the decree the respondents no.1&2 Anil Gupta and Manoj Gupta sought to recover possession of the property from the tenant of the appellant Ravinder Nath Chopra.

13. Per contra, the senior counsel for the respondents no.1&2 Anil Gupta and Manoj Gupta has contended i) that Renu Chopra and Neha Chopra being the wife and daughter respectively of the brother of the appellant Ravinder Nath Chopra vide registered sale deed dated 29th June, 2010 sold the aforesaid portion of the property to the respondents no.1&2 Anil Gupta and Manoj Gupta; ii) that the respondent no.3 Kamal Kumar Lamba was a tenant in possession of the said property; iii) that the aforesaid Renu Chopra and Neha Chopra were / are in collusion with the appellant Ravinder Nath Chopra; iv) that the appellant Ravinder Nath Chopra on 13th August, 2010 filed suit No.1679/2010 in the Court of the ADJ for cancellation of the sale deed dated 29th June, 2010 executed by the said Renu Chopra and Neha Chopra in favour of the respondent no.1&2 Anil Gupta & Manoj Gupta on the ground that the appellant Ravinder Nath Chopra is the prior purchaser of the said portion of the property from the said Renu Chopra & Neha Chopra; the said suit is still pending; v) that the appellant Ravinder Nath Chopra in or

about the year 2011 filed suit No.88/2011 in the Court of ADJ against the said Renu Chopra and Neha Chopra for recovery of possession of the aforesaid portion of the property and the said suit is still pending; vi) that the appellant Ravinder Nath Chopra on 30th September, 2011 filed eviction petition No.196/11 before the Court of the Rent Controller for eviction of the respondent no.3 Kamal Kumar Lamba; vii) that the appellant Ravinder Nath Chopra on 21st May, 2012 filed suit No.37/2012 in the Court of Civil Judge, Delhi for specific performance of agreement to sell by the aforesaid Renu Chopra and Neha Chopra in his favour; the said suit is also still pending; viii) that the respondents no.1&2 Anil Gupta & Manoj Gupta on 19th May, 2012 filed the suit from which this appeal arises for recovery of possession of the aforesaid portion of the property from the respondent no.3 Kamal Kumar Lamba; in the said suit on 28th May, 2012, an application under Order XXIII Rule 3 of the CPC was filed and a consent decree was passed and possession of the aforesaid portion of the property handed over by the respondent no.3 Kamal Kumar Lamba to the respondents no.1&2 Anil Gupta and Manoj Gupta; ix) that this appeal was instituted on 16th July, 2012 and the interim order aforesaid obtained on 27th July, 2012; x) that the respondents no.1&2 Anil Gupta and Manoj Gupta vide registered sale deed dated 24th September, 2012 transferred all their rights, title and interest under the sale deed dated 29th June, 2010 in their favour with respect to the aforesaid portion of the property in favour of M/s Shree Ganpati Gold Projects Pvt. Ltd. and in pursuance thereof put the said M/s Shree Ganpati Gold Projects Pvt. Ltd. into possession of the aforesaid portion of the property; xi) that the appellant Ravinder Nath Chopra on 15th January, 2013

filed execution No.7/2013 for execution of the eviction order aforesaid dated 4th October, 2012 in eviction petition No.196/2011 supra against respondent no.3 Kamal Kumar Lamba and on 4th February, 2013 in execution recovered possession of the aforesaid portion of the property from M/s Shree Ganpati Gold Projects Pvt. Ltd. in possession thereof.

14. The counsel for the appellant Ravinder Nath Chopra in rejoinder states i) that no suit No.88/2011 was filed by him against Renu Chopra and Neha Chopra for recovery of possession; ii) that the respondents no.1&2 Anil Gupta & Manoj Gupta on 28th May, 2012 when they obtained the collusive decree impugned in this appeal also applied for impleadment in eviction petition No.196/2011 clearly indicating that they were on the one hand seeking collusive decree for possession against the respondent no.3 Kamal Kumar Lamba and on the other hand seeking impleadment in the eviction petition filed by the appellant Ravinder Nath Chopra against respondent no.3 Kamal Kumar Lamba without disclosing the factum of the other proceeding and that had they disclosed the said factum to the appellant Ravinder Nath Chopra in the eviction petition No.196/2011, the appellant Ravinder Nath Chopra would have approached the Court which passed the impugned order and decree and / or even if they had informed the Court of the learned ADJ who passed the impugned judgment and decree of having applied for impleadment in the eviction petition, the learned ADJ would not have passed the impugned decree.

15. I have however enquired from the counsel for the appellant Ravinder Nath Chopra that even if he as a non-party to the suit from which this appeal

arises was to be entitled to maintain the present appeal, what purpose the present appeal would serve. It is not as if the facts are undisputed. As would be evident from the above, the appellant Ravinder Nath Chopra on the one hand and the respondents no.1&2 Anil Gupta and Manoj Gupta on the other hand are at issue on a large number of facts and in a number of pending proceedings. This Court, without adjudication of facts, cannot decide this appeal.

16. Even if it were to be held that the decree is collusive one, the effect thereof on the disputes between the parties will have to be seen.

17. The senior counsel for the respondents no.1&2 Anil Gupta and Manoj Gupta states that the issues as have been raised by the appellant Ravinder Nath Chopra in the appeal are subject matter of adjudication in the other pending proceedings aforesaid.

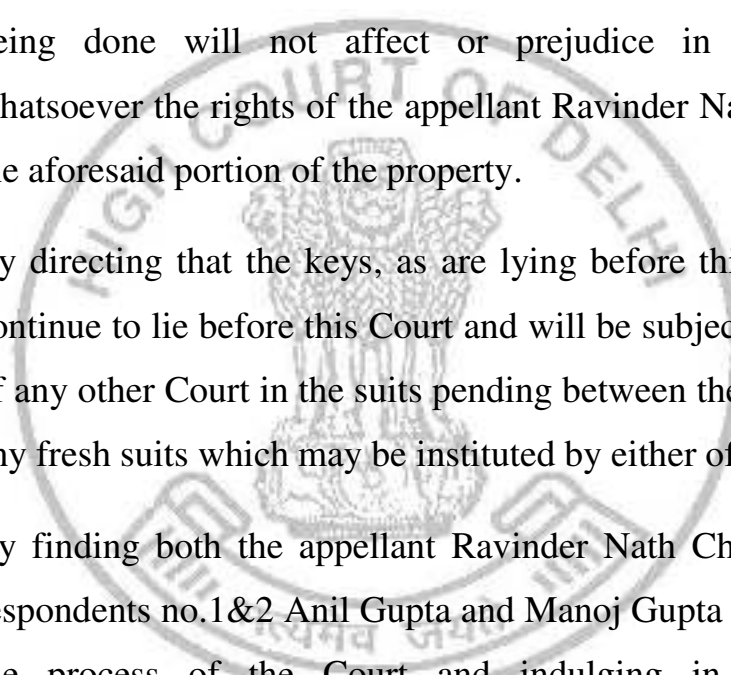
18. An inter-parties decree cannot affect the rights of non parties thereto. It is not the case of the appellant Ravinder Nath Chopra that the impugned judgment and decree is in rem. Even if it were to be the case of the appellant Ravinder Nath Chopra that it is essential for him to undo what the impugned judgment and decree has done, the appellant Ravinder Nath Chopra in my opinion ought to institute a civil suit for the said purpose impleading the respondents no.1&2 Anil Gupta & Manoj Gupta and the aforesaid M/s Shree Ganpati Gold Projects Pvt. Ltd. and if so required, the respondent no.3 Kamal Kumar Lamba as parties thereto.

19. All that I can observe is that the subject to the appellant proving in any of the aforesaid pending proceedings or in any fresh proceedings, his entitlement to the aforesaid portion of the property, the decree impugned in this appeal would not come in the way of the appellant.

20. As far as the contempt petitions are concerned, the senior counsel for the respondents no.1&2 Anil Gupta and Manoj Gupta as well as the counsel for M/s Shree Ganpati Gold Projects Pvt. Ltd. whose Managing Director Mr. Pradeep Goel is a contemnor in Contempt Petition no.196/2013 state that they have already made a statement to the Court that they are willing to reverse the transaction subject matter of sale deed dated 24th September, 2012 and have already apologised to the Court for the violation of the order of the Court.

21. The senior counsel for the respondents no.1&2 Anil Gupta and Manoj Gupta further states that the appellant Ravinder Nath Chopra ought to be proceeded against in contempt case no.585/2014 for, after having obtained an order of *status quo* in this appeal and knowing that the respondents no.1&2 Anil Gupta and Manoj Gupta are in possession of the property having abused the process of the Court in eviction petition no.196/2011 and in execution petition no.7/2013 supra to recover back possession of the property in violation of the order of the *status quo*.

22. I have considered the matter holistically and dispose of all the three proceedings with the following directions:

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- (i) RFA No.311/2012 is disposed of with liberty to the appellant Ravinder Nath Chopra to either in the already pending proceedings or in any new suit which he may choose to institute seek the relief of declaration of the judgment and decree impugned in this appeal as collusive and void and not affecting his right if any or any other relief in this regard.
- (ii) By clarifying that the disposal of this appeal in the manner as is being done will not affect or prejudice in any manner whatsoever the rights of the appellant Ravinder Nath Chopra in the aforesaid portion of the property.
- (iii) By directing that the keys, as are lying before this Court, will continue to lie before this Court and will be subject to the order of any other Court in the suits pending between the parties or in any fresh suits which may be instituted by either of the parties.
- (iv) By finding both the appellant Ravinder Nath Chopra and the respondents no.1&2 Anil Gupta and Manoj Gupta to be abusing the process of the Court and indulging in multifarious proceedings and suppressing material facts from the Court and violation of the interim order of the Court and further by punishing them with cost of Rs.1,00,000/- each i.e. Rs.1,00,000/- payable by the appellant Ravinder Nath Chopra and Rs.1,00,000/- payable by the respondents no.1&2 Anil Gupta and Manoj Gupta jointly. The said amounts be deposited with the Delhi High Court Bar Association

Lawyers' Social Security and Welfare Fund, New Delhi on or before 3rd June, 2016 and to show the proof of compliance to the Court Master. If the proof of compliance is not so furnished, the Court Master to have the matters listed immediately after the vacation for appropriate directions.

- (v) By binding the respondents no.1&2 Anil Gupta and Manoj Gupta and Pradeep Goel, Managing Director of M/s Shree Ganpati Gold Projects Pvt. Ltd. with their statement of reversing the transaction in the event the appellant Ravinder Nath Chopra succeeding and by further clarifying that the said transaction shall not again prejudice the rights if any of the appellant Ravinder Nath Chopra in the property.

No costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MAY 24, 2016

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