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

\+ CM(M) 321/2015 & Crl. M.A. No.18370/2015

KULDEEP SINGH

..... Petitioner

Through Mr. Ashok Kumar Mahajan, Adv.

versus

RAJINDER SINGH & ORS

..... Respondents

Through Ms. Geeta Luthra, Sr. Adv. with Mr. Jamol Joy, Adv.
Mr. Umesh Sharma, Adv. for UOI.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% **17.03.2016**

The petitioner is aggrieved by the finding returned by the Appellate Court wherein his application under Order 7 Rule 11 of the CPC which had been allowed by the Civil Judge, had been declined by the first Appellate Court. The impugned judgment (dated 23.02.2015) had remanded the matter back to the Civil Judge for the disposal of the suit.

Record shows that a suit had been filed by Rajinder Kumar. This was suit No. 1481/1981. His contention was that the disputed property (9, Sunder Nagar, New Delhi) was inherited by him also in part and he was not a signatory to the agreement to sell (dated 30.07.1980) propounded by the non-applicant/petitioner (Kuldeep Singh). Further contention being that he had 1/24th share in his property and the agreement to sell dated 30.07.1980 admittedly not having been signed by him and he being not a party to that agreement, the subsequent permissions sought for by the non-applicant/respondent from the L & DO be declined null and void qua the share of the petitioner.

Record discloses that Nand Lal, the original owner of this property had died in 1953. He had left behind four legal heirs Banarsi Dass, Dhanpat Rai, Deen Dayal and Gando Devi (widow of his predeceased son). Each of them had inherited a $1/4^{th}$ share in the suit property. The plaintiff/non-applicant/ Rajinder Kumar was the son of Deen Dayal. He was born in 1975. Deen Dayal expired in 1977. After the death of Deen Dayal,, all his legal heirs (except Rajinder Kumar) had been impleaded. The contention of Rajinder Kumar that he was a minor and his right in the suit property which had devolved upon him through his father (Deen Dayal) could not have been taken away and being prejudicial to the interest of the minor, the purported agreement to sell dated 30.07.1980 could not bind him.

The agreement to sell dated 30.07.1980 had been executed between the petitioner/Kuldeep Singh and all other legal heirs of Nand Lal except Rajinder Kumar. This is an admitted position.

Armed with this agreement to sell, Kuldeep Singh had filed a suit for specific performance (suit No. 280/1982). This suit was decreed on 30.04.1984. Appeal filed against this judgment was also dismissed by the Division Bench of the High Court on 22.03.1985. Decree dated 30.04.1984 thus become final. Execution proceedings were filed. Objections were filed in this objection petition by Mahender Kumar. These objections stood dismissed on 01.02.2002 by the Executing Court and this order was endorsed by the Division Bench on 19.02.2010.

In this judgment the High Court on 19.02.2010 had observed that the execution of the sale of the share of Rajinder Kumar would be the subject matter of the outcome of the present suit.

Relevant extract of this judgment reads as under:-

"The consequence of restoration of Suit No.1428/1981 filed by Rajinder Kumar is that he will now have to establish his right and claim over 1/24 share in the suit property in that suit. In so far as the present appeal being EFA (OS) No.4/2002 is concerned, it has been overtaken by subsequent developments, as a result of which we have no option but to allow it and hold that the execution petition filed against Rajinder Kumar was not maintainable. However, we make it clear that the allowing of this appeal and dismissal of the execution petition filed against Rajinder Kumar will not come in the way of Kuldeep Singh contesting Suit No. 1428/1981 filed by Rajinder Kumar, nor will it prejudice his rights in any manner in that suit or come in the way of the execution of the sale deed by the Judgment Debtors in terms of the order made by us above. In other words, due to subsequent developments, the right claimed by Rajinder Kumar in the suit property is preserved for the time being but he will have to establish it in the suit filed by him."

The petitioner in the course of these proceedings pending before the Trial Court had moved an application under Order 7 Rule 11 of the CPC. His submission was that the suit no longer survives in view of the order passed by the Apex Court on 07.02.2014 wherein the Supreme Court after hearing the parties had held that the purchaser (having deposited the amount and as directed by the Apex Court), the execution proceedings qua the suit property will be finalized within one month. Contention of the learned counsel for the petitioner being that this order of the Supreme Court dated 07.02.2014 sets the matter to rest and accordingly no cause of action now survives in the present suit.

As noted supra, the order passed by the Division Bench in FAO (OS) No. 66/2002 & EFA (OS) No.4/2002 on 19.02.2010 has become a final order. The Division Bench in this judgment had observed that the execution of the sale of the non-applicant/Rajinder Kumar would be the subject matter of the present suit. The Apex Court in its order dated 07.02.2014 had also noted that the Division Bench in its judgment dated 19.02.2010 in FAO (OS) No. 66/2002 & EFA (OS) No.4/2002 had held that the execution against Rajinder Kumar (present plaintiff) cannot be pursued as there is no decree against him. This order has not been set aside.

The plaint has also been perused. The averments in the plaint are largely to the effect that the plaintiff (Rajinder Kumar) has 1/24th share in the suit property and he not being a signatory to the transaction entered into qua this suit property by his other legal heirs, the same being prejudicial to his interest, he is entitled to 1/24th share which cannot be taken away. Prayer to the said effect had also been made.

There is no gainsaying to the settled legal proposition that an application under Order 7 Rule 11 of the CPC is to be decided only in view of the averments which are contained in the plaint. The defences raised by the petitioner are not to be examined. The impugned order had correctly noted that the order passed by the Division Bench in FAO (OS) No. 66/2002 & EFA (OS) No.4/2002 had in fact kept the suit of the plaintiff Rajinder Kumar alive. While disposing off the FAO (OS) No. 66/2002 & EFA (OS) No.4/2002, it had specifically been observed that the rights of Rajinder Kumar will be decided in the course of the proceedings pending before the Trial Court in the said suit.

The impugned order had noted all these facts in the correct perspective. The question of rejection of the plaint did not arise as whether Rajinder Kumar is entitled to $1/24^{th}$ share in the suit property is a right which is available to him or not is yet to be decided. The plaint did not call for any rejection as the Apex Court had not dealt with this aspect of the matter in its order dated 07.02.2014.

In this background, impugned order calls for no interference. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

MARCH 17, 2016
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