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

% *Date of Decision : February 12, 2016*

+ **FAO(OS) 347/2015**

KRISHAN KUMAR SHARMA Appellant
Represented by: Mr.Rakesh Tikku, Sr.Advocate
instructed by Mr.Nalin Tripathi and
Mr.Sandeep Kumar, Advocates

versus

UMA SHANKAR SHARMA & ORS Respondents
Represented by: Mr.I.D.Tyagi, Advocate (Respondent
No.3)

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.11655/2015

Allowed subject to just exceptions.

FAO(OS) 347/2015

1. Though at first blush the impugned order seems to be fair and just, but a deeper penetrative look warrants the same to be set aside.
2. We are not concerned in the appeal with the first part of the order which holds that statement recorded of a litigating party under Order 10 of the Code of Civil Procedure has to be on oath because said part of the order is not under challenge.
3. The challenge is to the second part of the order disposing of IA No.10097/2015 filed by the plaintiffs, issuing directions to the legal

representatives of deceased defendant No.3 to deposit the rent realized by them from property bearing Municipal No.Y-17, Hauz Khas Enclave, New Delhi. The reason given by the learned Single Judge is that having sold the property on June 21, 2003 to plaintiff No.1 defendant No.1 could not sell the same subsequently to defendant No.2 who in turn sold it to defendant No.3. A reasoning which at first blush appears to be correct.

4. But, it is settled law that while exercising a discretion a Trial Judge has to look at all the relevant facts and not one fact in isolation.

5. The relevant facts would be that both parties agree that Rajesh Sharma was the owner of property bearing Municipal No.Y-17, Hauz Khas Enclave, New Delhi.

6. Plaintiff No.1, Uma Shankar Sharma, claims that on June 21, 2003 Rajesh Sharma sold the property to him under a registered sale-deed, and we find that one relevant fact which has not been noted by the learned Single Judge is that the sale-deed shows a sale consideration of ₹5 lakhs. This sale-deed has been challenged by Rajesh Sharma by filing a separate suit No.1559/2011, pleading fraud and deception and as per him he had taken a loan and Uma Shankar made him sign the sale-deed.

7. Defendant No.2 in the suit, Syed Mohammad Ali, claimed a right under an agreement to sell dated October 17, 2003 executed in his favour by Rajesh Sharma and to enforce the same he had to sue for specific performance thereof. Stated sale consideration recorded in the agreement to sell is ₹70 lakhs. This relevant fact has also been overlooked by the learned Single Judge. It is stark that a property which had value of ₹5 lakhs in June, 2003 was valued at ₹70 lakhs four months later in October, 2003.

8. Pursuant to this agreement to sell possession was handed over to Syed

Mohammad Ali who was compelled to file a suit for specific performance against Rajesh Sharma and which suit registered as CS (OS) No.1407/2007 was decreed and an officer appointed by the Court had to execute a sale-deed in his favour in August 13, 2009. Being in possession Syed Mohammad Ali sold the property to deceased defendant No.3 on August 17, 2009. The deceased defendant No.3 then let out the property to a tenant. The possession with defendant No.3 has not been given due weightage by the learned Single Judge.

9. Three plaintiffs of the suit : Uma Shankar Sharma (plaintiff No.1), Ravinder Verma (plaintiff No.2) and I.D.Tyagi (plaintiff No.3) claimed that plaintiff No.1 entered into an agreement to sell in their favour on March 30, 2011. They challenged the sale-deed executed by an officer of this Court in favour of Syed Mohammad Ali on August 13, 2009 and claimed damages.

10. Conscious of the fact that the three plaintiffs had to explain possession being with defendant No.3 who not only got the property mutated in his name but even let it out, a plea has been taken in paragraph 2 of the plaint that after defendant No.1 sold the property to plaintiff No.1 he let it out to defendant No.1 at a monthly rent of ₹15,000/-, and for which it is admitted that there is no proof with the plaintiffs. There is no document evincing a lease. There is no document showing any rent paid by defendant No.1 to plaintiff No.1.

11. This relevant fact is the third in the series of relevant facts overlooked by the learned Single Judge.

12. The agreement to sell dated March 30, 2011 which plaintiffs claim was executed by plaintiff No.1 in favour of plaintiffs No.2 and 3 does not record that plaintiff No.1 has let out the property to Rajesh Kumar Sharma.

13. This is the fourth relevant fact overlooked by the learned Single Judge.

14. The trinity of the first three relevant facts and added on thereto the fourth relevant fact which have been overlooked by the learned Single Judge compels us to hold that the impugned order suffers from an erroneous exercise of jurisdiction, coupled with one more fact that there is no averment in the plaint that the tenancy right in favour of Rajesh Shrama which plaintiff No.1 claims to have created after Rajesh Sharma sold the property to him has been determined, to be substituted with the direction that the legal heirs of deceased defendant No.3 would deposit only ₹15,000/- per month in Court from the date when IA No.10097/2013 was filed till disposal of the suit. Deposit would be made by the 10th day of each month. The amount deposited would be invested in a fixed deposit and would be disbursed at the time of the final adjudication of the suit.

15. We set aside the impugned order dated May 27, 2015 and dispose of IA No.10097/2013 directing the legal heirs of deceased defendant No.3 to deposit @ ₹15,000/- per month in Court from the date when IA No.10097/2013 was filed; past amounts shall be deposited within 8 weeks. Amounts from the months of March, 2016 shall be deposited by the 10th day of each calendar month, and since the suit has been transferred to the District Court with a direction to be listed before the learned District Judge (South) Saket on April 28, 2016, there may be some administrative issues in making the deposit due to file movement and thus we direct that the deposit for the month of March and April, 2016 could be made along with the deposit for the month of May, 2016.

16. No costs.

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Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

FEBRUARY 12, 2016
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