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

+ **FAO(OS) 83/2017 and C.M. Nos.10904/2017& 17404/2017**

CHANDAN RAMAMURTHI

..... Appellant

Through:Mr. Rajiv Dutta, Senior Advocate with
Mr. P.V. Raghunandan and Mr. Kumar Dushyant
Singh, Advocates

versus

THE STATE & ORS.

..... Respondents

Through: Ms. Sweety Singh, Advocate for
R-1/GNCTD.

Respondent No.2 in person.

Mr. Sachin Chopra, Mr. Shubhnit Hans,
Ms. Aastha Dhawan and Mr. Kamal Bansal,
Advocates for applicants in C.M. APPL. No.
17404/2017.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **23.08.2017**

1. The present appeal has been filed by the appellant, petitioner in Test Case No. 26/1993, against the order dated 17.11.2016, passed by the learned Single Judge, dismissing her application for seeking recall of the order dated 25.5.2012 whereby the probate petition, was disposed of on the basis of a settlement arrived at between the parties in terms of the Memorandum of Settlement dated 13.11.2009.
2. Mr. Dutta, learned Senior Advocate appearing for the appellant submits that the learned Single Judge has erred in dismissing the application

filed by the appellant for seeking recall of the order dated 25.5.2012 whereunder, taking note of the settlement arrived at between the parties and the terms and conditions of the MOU dated 13.11.2009, the said petition was disposed of as not pressed.

3. The case at hand has a fairly chequered history with several limbs of litigations between the appellant on the one hand and the respondent No.2 and his deceased mother, respondent No.3 on the other hand. During the pendency of the said litigations, the parties had arrived at a settlement that was reduced into writing on 13.11.2009. One of the terms and conditions of the said settlement was that the appellant herein would withdraw her objections in Probate Case No. 36/93 and the respondent No.2 and the deceased respondent No.3 herein shall withdraw their objections in Probate Case No. 26/93. Para 4 of the MOU dated 13.11.2009 records as below:-

“4. The Fourth and Fifth parties will withdraw their objections filed in Probate Case No. 26 of 1993 filed by the First Party and the said Probate case shall be disposed off without grant of Probate in terms of the present Settlement in respect of the Property No. A-16, Neeti Bagh, New Delhi.”

4. In view of the specific understanding between the parties that on the respondents No.2 and 3 (described as fourth and fifth parties in the MOU) withdrawing their objections in Probate Case No. 26/93, the appellant herein had agreed that the said probate case will be disposed of without grant of a probate, in terms of the settlement recorded in respect of property No. A-16, Neeti Bagh, New Delhi. Further, the respondent No.2 and 3 undertook that neither of them would have any right, title or interest in the captioned property and the appellant/petitioner and her daughter would be free to deal with the same in any manner they like. It is an undisputed

position that the respondents No.2 and 3 stuck to their part of the bargain and did not renege from the obligations cast on them in the MOU.

5. For the appellant to challenge the impugned order wherein it has been held that in view of the terms and conditions as stated in the MOU, her request for seeking recall of the order dated 25.5.2012, is not maintainable, is found to be absolutely unacceptable. Having taken the benefit of the MOU and proceeded to execute an Agreement to Sell dated 14.10.2009, in respect of the subject premises, it does not lie in the mouth of the appellant to seek recall of the order dated 25.5.2012, whereby Test Case No. 26/1993 was disposed of.

6. Even otherwise, it is the appellant's own case that she had filed a civil suit in the year 2013, on the original side of this Court, registered as CS(OS) 1992/2013 seeking the relief of declaration, for declaring the aforesaid MOU dated 13.11.2009, as null and void. The next date fixed in the said suit is 27.11.2017 wherein pleadings have yet to be completed. Contemporaneously, the appellant had filed a criminal complaint against the respondents No.2 and 3 before the learned M.M., alleging fraud. Summons were issued on the said complaint to the respondents No.2 and 3. Aggrieved by issuance of summons, the said respondents had preferred a revision petition before learned Sessions Court which was allowed with costs of Rs.1 lakh imposed on the appellant. The appellant is stated to have challenged the said order in the High Court, by filing Criminal M.C. No.3904/2013, which is at the stage of final arguments and is listed on 01.12.2017.

7. Given the aforesaid facts and circumstances, we see no reason to interfere in the impugned order. In the event, the appellant ultimately succeeds in the suit instituted by her for seeking a declaration in respect of

the MOU dated 13.11.2009, she shall be entitled to approach the court for grant of probate of the document dated 7.5.1990, propounded by her as the last will and testament of Mr. M.R. Ramamurthi, Senior Advocate, which is the subject matter of the said MOU.

7. The appeal is dismissed as devoid of merits along with the pending applications, with no orders as to costs.

HIMA KOHLI, J

DEEPA SHARMA, J

AUGUST 23, 2017
ap

