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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 357/2016**
SHRI NAND RAM & ORS

..... Plaintiffs

Through Mr. Sunil Chauhan, Adv
versus

SH RAMESH & ANR

..... Defendants

Through Mr. G.S. Rana, Adv for D-1.
Mr. Sudhanshu Tomar, Adv for D-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **25.04.2017**

I.A. No.11821/2016 (under Order VII Rules 10 & 10-A of the Code) & I.A. No.11481/2016 (under Order VII Rule 11 of the Code) & CS(OS) 357/2016

The first application under Order VII Rule 10 & 10-A of the Code has been filed by defendant No.1. The second application under Order VII Rule 11 of the Code has been filed by defendant No.2; he seeks a rejection of the plaint qua him.

Record shows that the present suit has been filed by the plaintiff seeking specific performance of an agreement dated 14.09.2015. Relief has been claimed only against defendant No.1. This has been conceded by the plaintiff. The prayer clause specifically seeks performance of the agreement dated 14.09.2015 directing defendant No.1 to get the sale deed qua the said property (300 square yards of land comprised in khasra No1318/802/2, Village Munirka, New Delhi) in favour of the petitioner. There is no relief which has been sought against defendant No.2. Defendant No.2 submits that there being no relief which has been sought against him,

the plaint should be rejected. The plaintiff has no objection. His submission is that defendant No.2 can be deleted from the array of parties. The prayer made in I.A. No.11481/2016 (under Order VII Rule 11 of the Code) is allowed and the plaint is rejected qua defendant No.2.

Arguments on the first application have also been heard. Submission of defendant No.1 is that this suit is not maintainable as this suit was the subject matter of a decree dated 24.09.2015 in which the aforementioned agreement/MOU dated 14.09.2015 had been exhibited as Ex P-1 and had formed a part of the decree dated 24.09.2015. Present suit seeking specific performance of a MOU which is already a part of the decree dated 24.09.2015 is not maintainable.

Submission of defendant No.1 is correct. On 24.09.2015, CS(OS) No. 116/2015 had been compromised. A joint application had been filed by the parties under Order XXIII Rule 3 of the Code. The statements of the parties to the suit had been recorded. They were Vinod Kumar Tokas, s/o Sh. Nand Ram. He was the plaintiff. Defendant No.1 was Nand Ram. Defendant No.2 was Raj Kumar. Defendant No.3 is Ramesh Kumar. The parties in the present suit are also the same. Plaintiff No. 1 Nand Ram was defendant No.1 in the said suit; plaintiff No. 2 Raj Kumar was defendant No.2; plaintiff No. 3 namely Vinod Kumar was the plaintiff in the said suit. Ramesh Kumar who is defendant No.1 in the present suit was arrayed as defendant No.3 in the said suit. Defendant No.2 in the present suit Manish Sehrawat was arrayed as defendant No.4 in the said suit. In terms of the compromise decree dated 24.09.2015, parties had agreed

to make arrangements with respect to their shares in the suit property; suit property is admittedly the same. By virtue of the said agreement, the plaintiff and defendant No.2 had extinguished / relinquished their rights in favour of defendant No.1. The MOU dated 14.09.2015 proved as Ex P-1 had formed a part of the decree dated 24.09.2015. The decree-sheet has also been drawn.

This Court is of the view that the present suit which seeks specific performance of the aforementioned agreement dated 14.09.2015 which was the subject matter of the decree drawn on 24.09.2015 is not maintainable. This MOU has already been adjudicated upon in terms of the decree passed by a competent Court on 24.09.2015. A separate suit seeking specific performance of the same agreement is not maintainable in the present form. No cause of action has arisen in favour of the plaintiff. This is clear from the averments made in the plaint. This Court is also of the view that the plaint is not liable to be returned in terms of Order VII Rule 10 of the Code. The suit itself is not maintainable. Plaint is rejected qua defendant no.1 as well being without any cause of action. The fact that suo moto proceedings under Order 7 Rule 11 of the Code can be taken up by a Court is no longer res integra in view of the judgement reported as R.F.A.(OS) No. 102/2009 Sh. Ravindra Kishore Sinha Vs. Smt. Manjula Bhushan.

Liberty is however granted to the plaintiff to take a call as what other legal remedy is available to him to seek enforcement of the decree dated 24.09.2015 of which the MOU dated 14.09.2015 is the essential part.

Plaint is rejected.

**I.A. No.8596/2016 (under Order XXXIX Rule 10 of the Code),
I.A. No.10820/2016 (under Order XII Rule 6 of the Code) & I.A.
No.11820/2016 & (under Order XXVI Rule 9 of the Code)**

The other applications have become infructuous. They are disposed of accordingly.

INDERMEET KAUR, J

APRIL 25, 2017

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