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

+ **CS(OS) 1572/2015**

**THE VISHWA NATH AND SANTOSH BAKSHI CHARITABLE
EDUCATIONAL TRUST (REGD) & ANR Plaintiffs**
Through Mr.Amitabh Chaturvedi, Advocate.

versus

SANTOSH KUMARI ARORA & ORS Defendants
Through Mr.Sajjan K.Singh with Mr.Vineet
Kumar, Advocates.
Mr.Vaibhav Agnihotri with
Ms.Kanika Agnihotri, Advocates for
DDA.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

ORDER
% **21.07.2017**

I.A.No.8103/2017

Present joint application has been filed under Order 1 Rule 10 CPC for deletion of defendant no.4 and for impleadment of Mr.Sanjay Jain and Mr.Ankur Arora as defendant nos. 4 and 5.

Learned counsel for the defendants, on instructions of the defendants who are personally present in Court including Mr.Sanjay Jain and Mr.Ankur Arora, states that they have no objection to the present application being allowed.

Consequently, the present application is allowed. The amended memo of parties is taken on record.

CS(OS) 1572/2015 & I.A.Nos.11874/2016, 6497/2017, 7516/2017

While CS(OS) No.1572/2015 has been filed for declaration and permanent injunction, CS(OS) No.2800/2015 has been filed for declaration, permanent injunction, recovery of possession and damages. The prayer clauses of both the suits are reproduced hereinbelow:-

(prayer clause in CS(OS) No.1572/2015)

- a) *Pass a decree of declaration in favour of the plaintiffs and against the defendants by declaring that (i) the registered conveyance deed dated 23.04.2015 in respect of the suit property in favour of defendant no.1 (ii) notarised agreement to sell dated 08.02.1999 in respect of the suit property in favour of defendant no.1, (iii) notarised general power of attorney dated 08.02.1999 in respect of the suit property in favour of Shri Sudershan Kumar Arora, husband of defendant no.1, (iv) notarised receipt dated 08.02.1999 in respect of the suit property in favour of defendant no.1, (v) letter dated 10.04.2015 issued by the defendant no.3/DDA in respect of the suit property and (vi) letter dated 16.04.2015 issued by the defendant no.3/DDA in respect of the suit property are null and void and/or stand cancelled;*
- b) *Pass a decree of declaration in favour of the plaintiffs and against the defendants by declaring that the plaintiff no.1 is the sole and exclusive owner of the suit property by virtue of Will dated 18.11.2010 read with Trust Deed dated 03.01.2012 executed by Mrs. Santosh Bakshi in her life time and also read with the probate certificate dated 22.01.2015 issued by the Court of Sh.Inderjeet Singh, Ld. Addl. District Judge, Saket Courts in Probate Case No.30 of 2013;*
- c) *Pass a decree of permanent injunction in favour of the plaintiffs and against the defendants by permanently injuncting/restraining the defendants, their agents, servants, representatives, officers, assignees, attorneys, heirs,*

managers, relatives or any other persons claiming through them or under them from directly or indirectly re-entering into the suit property to any extent and in any manner whatsoever and also from disposing, selling or alienating the suit property or any portion of the suit property and/or creating third party rights, to any extent and in any manner whatsoever, and/or dealing with the same in any manner whatsoever and/or causing damages/defacement of the suit property in any manner whatsoever and also from directly or indirectly further re-entering or seeking possession of the suit property.

d) Grant costs of the present suit and of proceedings incidental hereto in favour of the plaintiffs and against the defendants; and

e) Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

(prayer clause in CS(OS) No.2800/2015)

a) Grant a decree of declaration in favour of the plaintiff and against the defendants thereby declaring the Will dated 18.11.2010 allegedly executed by Smt. Santosh Bakshi and purportedly registered at Sr.No.6378, in Book 3 Volume No.544 at pages 162 to 164 on 29.11.2010 in the Office of Sub-registrar IX, New Delhi, as null and void ab initio, and be not given effect to, and cancel the same; and decree of probate dated 12.9.2014 passed in Probate Case No.30/2013 and the Probate Certificate dated 22.1.2015 issued thereon of said will be declared inoperative and accordingly be cancelled.

b) Grant a decree of declaration in favour of the plaintiff and against the defendants thereby declaring the Trust deed dated 03.01.2012 allegedly executed by Smt. Santosh Bakshi and purportedly registered at Registration No.44 in Book No.4, Volume No.1573 at pages 136 to 146 on 09.01.2012 in

the Office of Sub-Registrar IX, New Delhi, as null and void and direct that the same be not given effect to, and cancel the same;

c) Grant a decree of possession in favour of the plaintiff and against the defendants in respect of the suit property i.e. built up property bearing no.6/22, built on land measuring 393 sq. yds. shown in the plan of Govt. Servant Cooperative House Building Society Ltd. known as Shanti Niketan, New Delhi, more clearly depicted in the colour red in the site plan annexed with the plaint, thereby directing the defendants to handover peaceful and vacant possession of same to the plaintiff;

d) Grant of a decree of permanent injunction in favour of the plaintiff and against the defendants in respect of the suit property bearing no.6/22, built on land measuring 393 sq. yds. shown in the plan of Govt. Servant Cooperative House Building Society Ltd. known as Shanti Niketan, New Delhi, more clearly depicted in the colour red in the site plan annexed with the plaint, restraining the defendants, either through themselves or through their agents, servants or anyone else claiming title through them, from selling, transferring, alienating or creating third party right, in respect thereof;

e) Grant a decree of damages in favour of the plaintiff and against the defendants in respect of the suit property @ one lakh rupees per month thereby directing the defendants to pay the same to the plaintiff for their illegal use and occupation of the suit property, from the date of filing the suit till the time vacant peaceful possession of the suit property is handed to the plaintiff;

f) Pass such other and further orders, which this Hon'ble Court may deem fit and proper, in view of the above mentioned facts and circumstances of the present case, and in the interest of justice.

On 10th July, 2017, the present suit i.e. CS(OS) No.1572/2015 was referred to Mr.Pradeep Dewan, Senior Advocate for mediation. Mediation in the present case has been successful between the private parties through the efforts of Mr.Pradeep Dewan, Senior Advocate/Mediator. A settlement agreement dated 17th July, 2017 has been executed between the private parties.

Mr.Vaibhav Agnihotri, learned counsel for DDA states that he has objection to para 1.2(b) of the settlement agreement dated 17th July, 2017, inasmuch as, it incorporates direction to the DDA to mutate the suit property in favour of plaintiff no.1/Trust in the present suit. He submits that mutation can only be granted in favour of plaintiff no.1/Trust in the present suit if the legal requirements are complied with.

Mr.Agnihotri further raises an objection with regard to para 1.9 of the settlement agreement on the ground that DDA cannot be directed to refund the amount of Rs.11,66,828 and Rs.510/- towards conversion charges deposited by Ms.Santosh Kumari Arora. He submits that even if the conveyance deed is declared to be null and void, the said amount would have to be forfeited by the DDA.

Learned counsel for the private parties state that they have no objection if the conversion charges deposited by Ms.Santosh Kumari Arora are forfeited by the DDA. They further state that they have no objection if at the end of para 1.2(b) of the settlement agreement the expression “subject to legal requirements being complied with” is added.

Consequently, the expression “subject to legal requirements being complied with” is added at the end of the para 1.2(b) of the settlement agreement dated 17th July, 2017.

The statement made by counsel for the parties are accepted by this Court and the parties are held bound by the same.

Accordingly, both the objections raised by learned counsel for the DDA stand addressed.

It is pertinent to mention that the Supreme Court in *Afcons Infrastructure Ltd. Vs. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24* while dealing with Section 89 of the CPC observed that the settlement agreement will have to be placed before the Court for recording it and disposing of the suit in its terms and the Court should apply the principle of Order 23 Rule 3 of the CPC and make a decree in terms of the settlement in regard to the subject matter of the suit, to make such settlement effective.

Since the suit property was converted at the instance of one of the parties and the said conversion was challenged by the plaintiff in the present suit and now the parties have settled their disputes by way of a mediation agreement under which they have agreed that the underlying documents on the basis of which conversion had been carried out are null and void, this Court is of the view that DDA cannot have any objection to the cancellation of the conveyance deed.

This Court is also satisfied that the compromise between the private parties contained in the aforesaid settlement agreement is lawful and therefore, this Court does not find any impediment in decreeing the suit in terms of the aforesaid settlement agreement.

Consequently, present suit is decreed in terms of the aforesaid settlement agreement dated 17th July, 2017 as modified by the aforesaid directions, which is marked as Ex.C-1. Registry is directed to prepare a decree sheet in terms thereof as well as the aforesaid directions.

The private parties are directed to sign the order sheet as a token of acceptance of the order passed today.

MANMOHAN, J

JULY 21, 2017
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