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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.555/2016, IA.No.4954/2017 (u/O XII, R-6 CPC) and IA
No.13525/2016 (under Order XXXIX Rules 1&2 CPC).
BHAGWAN Plaintiff

Through: Mr. R.K. Solanki, Adv. along with
plaintiff in person.

Versus

DPW HOUSING ORGANISATION & ORS Defendants
Through: Counsel for the defendant no.4.
Defendant no.5 in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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18.05.2017

1. The plaintiff has instituted this suit for the reliefs of, as per prayer paragraph as under of the plaint:-

- “(a) *decree of declaration and thereby declare the Sale Deed dated 08.01.2016 registered vide Regn. No.157, Book No.1, Vol No.8572, page No.75 to 82, with the office of Sub-registrar-09, Delhi regarding the property of the plaintiff i.e. farm house, area measuring 13 Bigha 4 Biswa bearing Mustakil No.20, in Khata No.151/146 Khasra No.15//22 Min 2 (0-8), 20//5/2 (2-19), 26 (0-5), 21//1 (4-16), 2(4-16), situated in village Rewla Khanpur, New Delhi, is null & void.*
- (b) *decree of permanent injunction in favour of the plaintiff and against the defendants and thereby restrain the defendants, their legal heirs and any person acting on behalf of the defendants from creating 3rd party interest in the property of the plaintiff i.e. farm house, area measuring 13 Bigha 4 Biswa bearing Mustakil No.20, in Khata No.151/146*

Khasra No.15//22 Min 2 (0-8), 20//5/2 (2-19), 26 (0-5), 21//1 (4-16), 2(4-16), situated in Village Rewla Khanpur, New Delhi, on the basis of the aforesaid Sale Deeds dated 08.01.2016 registered vide regn. No.157, Book No.1, Vol No.8572, page No.75 to 82, with the office of Sub-registrar-09, Delhi, and also awarded the cost of the suit to the plaintiff.

Or pass any or further order, which this Hon'ble Court may deem fit and proper, along with the cost of the suit and litigation, in the interest of justice."

2. The suit was entertained and summons thereof ordered to be issued, though no interim relief granted.
3. On 24th January, 2017 the counsel for the defendants no.1,2&3 namely DPW Housing Organisation, K. Ponniah and P. Shanthi and the defendant no.5 Jamna Prasad in person appeared.
4. None appeared for defendant no.4 Inductwell software Pvt. Ltd. despite service.
5. On 20th April, 2017, the counsel for the plaintiff and the counsel for defendant no.4 stated that the matter had been settled; the defendant no.5 appearing in person on that date also confirmed. The counsel for the defendants no.1,2&3 stated that they had no instructions. The defendants no.2&3 were directed to appear in person on 24th April, 2017.
6. On 24th April, 2017 the counsel for the plaintiff, the counsel for the defendants no.1,2&3, the counsel for the defendant no.4 and the defendant no.5 in person sought reference to Mediation Cell of this Court and which was allowed.

7. Mediation has been successful with the efforts of Mr. Atul Bhuchar, Advocate / Mediator and a Settlement Agreement dated 9th May, 2017, purported to be signed by the plaintiff, on behalf of defendant no.4 Inductwell Software Pvt. Ltd. and defendant no.5 Jamna Prasad as well as by the counsel for the plaintiff and the counsel for defendants no.4 and the Mediator, has been received.

8. The counsel for the plaintiff and the counsel for the defendant no.4 Inductwell Software Pvt. Ltd. and the defendant no.5 Jamna Prasad in person affirm the Settlement Agreement and state that the suit of the plaintiff insofar as against the defendant no.4 Inductwell Software Pvt. Ltd. and defendant no.5 Jamna Prasad be decreed in terms of the Settlement Agreement.

9. None appears for the defendants no.1,2&3.

10. The counsel for the plaintiff states that the defendants no.1,2&3 DPW Housing Organisation, K. Ponniah and P. Shanthi be proceeded against *ex parte*.

11. As per the Settlement Agreement, the defendant no.4 Inductwell Software Pvt. Ltd. on receipt of Rs.3,85,00,000/- from the plaintiff has agreed to execute and register Deed of Cancellation of “Agreement to Sell dated 5th January, 2016” and it has further been agreed that if the post dated cheque of Rs.3,85,00,000/- handed over by the plaintiff to the defendant no.4 Inductwell Software Pvt. Ltd. for Rs.3,85,00,000/- is not encashed, the plaintiff shall execute the Sale Deed in pursuance to the Agreement to Sell in favour of defendant no.4 Inductwell Software Pvt. Ltd.

12. The relief claimed in the suit being with reference to a Sale Deed dated 8th January, 2016 and the Settlement Agreement referring to an Agreement to Sell dated 5th January, 2016, I have enquired from the counsels about the discrepancy.

13. The counsel for the plaintiff and the counsel for the defendant no.4 state that the word “Sale Deed dated 8th January, 2016” has been erroneously mentioned in the plaint; else this suit is with respect to the Agreement to Sell dated 5th January, 2016 with respect whereto the settlement aforesaid has been arrived at.

14. Subject to the aforesaid clarification, the compromise arrived at between the plaintiff and the defendant no.4 Inductwell Software Pvt. Ltd. and defendant no.5 Jamna Prasad is found to be lawful and is allowed. A decree is passed in favour of the plaintiff and against the defendant no.4 Inductwell Software Pvt. Ltd. and defendant no.5 Jamna Prasad in terms of Settlement Agreement which shall form part of the decree sheet, leaving the parties to bear their own costs.

15. Decree sheet be prepared.

16. The defendants no.1,2&3 are proceeded against *ex parte*.

17. After the compromise aforesaid with the defendants no.4&5, relief claimed in prayer paragraph (a) in the plaint does not survive. Insofar as the relief claimed in prayer paragraph (b) of the plaint is concerned, the same insofar as against the defendant no.4 Inductwell Software Pvt. Ltd. and defendant no.5 Jamna Prasad will be governed by the decree against the defendant no.4 Inductwell Software Pvt. Ltd. and defendant no.5 Jamna Prasad in terms of Settlement Agreements. Insofar as the defendants

no.1,2&3 DPW Housing Organisation, K. Ponniah and P. Shanthi are concerned, once they are *ex parte*, and the relief against them being only of permanent injunction and in which no enquiry as to the title is required to be done, it is not deemed necessary to relegate the plaintiff to lead *ex parte* evidence against the defendants no.1,2&3.

18. Accordingly, a decree is passed in favour of the plaintiff and against the defendants no.1,2&3 DPW Housing Organisation, K. Ponniah and P. Shanthi of permanent injunction restraining the said defendants from creating third party interest in farm house, area measuring 13 Bigha 4 Biswa bearing Mustakil No.20, in Khata No.151/146 Khasra No.15//22 Min 2 (0-8), 20//5/2 (2-19), 26 (0-5), 21//1 (4-16), 2(4-16), situated in village Rewla Khanpur, New Delhi.

19. The counsel for the plaintiff seeks refund of court fees.

20. Out of the court fees reported to have been paid of Rs.4,18,000/- a certificate entitling the plaintiff to refund of Rs.2,00,000/- (because for the decree against defendants no.1,2&3 to remain, the plaintiff will have to pay that much court fees) be prepared and issued and be handed over to the counsel for the plaintiff.

21. Decree sheet qua the defendants no.1,2&3 be also prepared.

RAJIV SAHAI ENDLAW, J.

MAY 18, 2017

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