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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 215/2017 & CM No.35456/2017 (for stay)

VINEET MITTAL

..... Petitioner

Through: Mr. Aditya Dewan, Adv.

Versus

THE STATE & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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07.11.2017

1. This order is in continuation of the earlier order dated 26th September, 2017.
2. The counsel for the petitioner states that costs have been deposited and additional documents, which on the last date of hearing were found missing, have been filed.
3. The counsel for the petitioner has been heard further.
4. The position which emerges is as under:
 - (i) that one Naresh Kumar was the owner of property No.46, Ishwar Colony, Delhi;
 - (ii) according to the petitioner, the said Naresh Kumar agreed to sell the aforesaid property to the father of the petitioner and on receipt of the entire sale consideration, also executed a Will with respect to the property in favour of the father of the petitioner;

- (iii) that though the agreement to sell and the Will state that possession of the property had been delivered by Naresh Kumar to the father of the petitioner but according to the counsel for the petitioner, it was constructive and not physical possession;
- (iv) certain other persons were also claiming right to the said property under a forged arbitral award; Naresh Kumar had instituted a Civil Suit against the said persons and which is pending;
- (v) Naresh Kumar died leaving respondent No.2 Motia Kumari as his sister and respondent No.3 Meenu Kapoor as his wife;
- (vi) the respondent No.2 Motia Kumari has filed Probate Case, from which this petition arises, seeking probate of a document claimed to be the Will of Naresh Kumar, bequeathing the property to the respondent No.2 Motia Kumari;
- (vii) that though the respondent No.3 Meenu Kapoor was earlier contesting the Probate Case but has now settled with the respondent No.2 Motia Kumari and which will result in the probate being granted;
- (viii) the father of the petitioner applied for impleadment in the civil suit filed by Naresh Kumar against the other persons aforesaid and on the death of the father of the petitioner, the petitioner has applied for substitution in the said Suit;
- (ix) that the respondent No.2 Motia Kumari has also applied in the said Suit for impleadment in place of Naresh Kumar.

5. I have still enquired from the counsel for the petitioner, as to how the same makes the petitioner a necessary or a proper party in the Probate Case. The petitioner is admittedly an agreement purchaser and either has to claim specific performance of the agreement to sell and if wants to secure title instead on the basis of Will stated to have been executed by Naresh Kumar, has to seek probate of the said Will and which has also not been done.
6. The counsel for the petitioner has contended that the aforesaid questions can be decided in the Civil Suit aforesaid in which both the petitioner and Naresh Kumar have applied for impleadment.
7. I am afraid not. The question for adjudication in the Civil Suit aforesaid is the challenge by Naresh Kumar to the document claimed to have been created by other persons with respect to the property in their favour. The *inter se* disputes between the petitioner on the one hand and the respondent No.2 Motia Kumari on the other hand cannot be the subject matter of the said Civil Suit.
8. Moreover, even if the respondent No.2 Motia Kumari succeeds in obtaining probate, if the petitioner is entitled to specific performance of the agreement of sale in favour of father of the petitioner, the petitioner can still enforce the said agreement against the respondent No.2 Motia Kumar.
9. As far as the right claimed by the petitioner under the document claimed to be the Will of Naresh Kumar is concerned, though the counsel for the petitioner has argued that in Delhi, it is not essential to obtain probate of a Will to claim a right thereunder but once the said document is disputed and/or the right claimed thereunder is disputed, the said right can be asserted

either by seeking probate or by proving the Will in other appropriate proceedings. The agreement to sell with respect to a property does not create any interest in the property and merely gives a right of specific performance.

10. For this reason also, it cannot be said that the petitioner, as an agreement purchaser, has a caveatable interest to become a party to the Probate Case, from which this petition arises.

11. There is thus no merit in the petition.

12. Dismissed.

13. The counsel for the petitioner states that the petitioner, besides applying for impleadment in the Probate Case has also applied under Section 340 of the Code of Criminal Procedure, 1973 (CrPC). and which application is pending. He seeks clarification that this order will not affect the said application.

14. It is made clear that the application of the petitioner under Section 340 Cr.P.C. shall be decided in accordance with law.

No costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 07, 2017

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