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

+ CM(M) 1617/2006

S.AMARPAL SINGH Petitioner

Through: None.

versus

SMT. SURINDER SACHDEVA & ORS. Respondents

Through: Ms. Leena Tuteja & Mr. Ishaan
Chawla, Advs. for R-1 & 2.

+ EFA 11/2009

SURENDER SACHDEVA & ANR. Appellants

Through: Ms. Leena Tuteja & Mr. Ishaan
Chawla, Advs.

versus

AMARPAL SINGH Respondent

Through: None.

+ EFA 12/2009

KIRAN SACHDEVA & ANR. Appellants

Through: None.

versus

AMARPAL SINGH & ORS. Respondents

Through: Ms. Leena Tuteja & Mr. Ishaan
Chawla, Advs. for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

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ORDER
23.04.2018

1. The parties to the litigation from which these three matters have come up are related to each other. The summary suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for recovery of Rs. 11,60,000/- had been filed on the original side of this Court, it having been registered as CS (OS) 1188/1985. The suit was preferred by Sardar Sobha Singh Sachdeva, Sardar Trilok Singh Sachdeva and Sardar Amarpal Singh Sachdeva for themselves and as Karta of HUF of Sardar Ajit Singh, joining together as co-plaintiff. Sardar Sobha Singh Sachdeva died during the pendency and stood represented by his legal representatives. On the other side, parties that were shown in the array as defendants included Smt. Surinder Sachdeva, Smt. Kiran Sachdeva, Sardar Gurbir Singh Sachdeva and Sardar Kirpal Singh Sachdeva. The suit was decreed by judgment dated 25.09.1989.
2. The decree holders took out execution proceedings (execution case no. 3/2004) sometime in 2001. In the course of the said execution proceedings, objections were filed by two sets of judgments debtors, judgment debtor nos.1 and 3 together on one hand and judgment debtor nos.2 and 4 on the other. The objection petitions were dismissed by the executing court by order dated 23.01.2007 whereby the executing court held the decree holder entitled to a total sum of Rs. 3,62,500/- in terms of the settlement dated 02.04.1986. The said order dated 23.01.2007 has been challenged by both the said two sets of objectors by appeals – EFA 11/2009 being the appeal filed by Judgment Debtor Nos. 1 and 3 and EFA No. 12/2009 by Judgment Debtor Nos. 2 and 4.
3. While filing the objections, as aforesaid, in the execution proceedings

Judgment Debtor Nos. 1 and 3 had instituted Civil Suit (Suit no. 1895/2002) seeking declaration to the effect that the judgment and decree dated 25.09.1989 had been obtained by fraud and was consequently null and void. In the said civil suit, as also in the objections, reliance was placed on memorandum of family settlement dated 02.04.1986. The copy of the said document has been submitted in these proceedings. Reliance is placed on terms of the settlement indicating the obligation to make the payment contingent upon sale of certain property in New Delhi, South Extension part II, it having been agreed between the parties at that stage that the aforementioned suit (pending at that stage in this Court) would not be pressed and request to be made for the same to be kept pending.

4. The decree holders who are the defendants in the aforesaid suit had submitted an application seeking rejection of the plaint invoking Order VII Rule 11 CPC primarily with the contention that it could not be instituted in the context of a decree passed in a summary suit under Order XXXVII CPC. This contention has been repelled by the trial Judge by the order dated 12.09.2006, *inter alia*, observing that the allegations of fraud will have to be put to trial. The order dated 12.09.2006 dismissing the application under Order VII Rule 11 CPC has been challenged by CM (M) 1617/2006.

5. The petitions and appeals have been pending for long. No one has been appearing for the petitioner in CM (M) 1617/2006 over the last three dates of hearing. There is no reason why these matters should remain pending undecided. The learned counsel for the judgment debtor nos. 1 and 3 has been heard. The record has been perused.

6. There is no substance to the contention in the application under Order VII Rule 11 CPC whereby the decree holders who are defendants in the civil

suit of judgment debtor nos. 1 and 3, as aforesaid, seek the case to be nipped in the bud. The allegations of fraud having been played and there having been *mala fide* acts committed will have to be put to trial. The view taken by the trial court dismissing the application under Order VII Rule 11 CPC does not call for any interference. The petition CM (M) 1617/2006 is, therefore, dismissed. The stay against the proceedings in the civil suit 1895/2002 of judgment debtor nos. 1 and 3 are vacated.

7. The judgment debtor nos. 2 and 4 have not joined the proceedings in the civil suit of judgment debtor nos. 1 and 3 but have simply approached the executing court with allegations of fraud. The executing court, in the aforementioned facts and circumstances, will not be competent to go behind the decree or to grant any relief. The objection petitions of the said set of judgment debtors have been rightly dismissed. The EFA 12/2009, therefore, is dismissed.

8. The learned counsel for the appellant in EFA 11/2009 fairly conceded that the suit having been filed to seek a declaration that the decree had been obtained by fraud and, consequently was null & void and inoperative. The proper course for them as plaintiffs of the suit is to press for interim protection in the said civil suit. Since protection has been granted in these proceedings, it is appropriate that while allowing the EFA 11/2009 to be withdrawn the said protection be extended till decision is taken by the trial court on the application to that effect pending in the proceedings in the civil suit, as aforesaid. Ordered accordingly.

9. Needless to add, the trial court dealing with the civil suit of judgment debtor nos. 1 and 3 and while taking a call on the application for interim protection will not feel bound by the opinion expressed in the orders passed

by the executing court.

10. This disposes of all the matters and the applications filed therewith.

R.K.GAUBA, J

APRIL 23, 2018

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