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

+ CM(M) 615/2013 & CM Nos. 41644/2017, 9276/2017

RAMESH CHAND

..... Petitioner

Through: Mr. Hemant Malhotra, Mr. K.J.S.
Kalra & Mr. Pankaj Malhotra, Advs.

versus

UDAI RAM & ORS

..... Respondents

Through: Mr. P.K. Rawal & Mr. Rishabh
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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19.04.2018

The impugned order dated 20.03.2013 was passed by the Additional District Judge on the file of civil suit (CS No. 313/11) which had been instituted by the petitioner on 08.04.2005 for the decree of partition. By the impugned order, the application of the petitioner under Order XXIII Rule 3 of the Code of Civil Procedure, 1908, praying, *inter alia*, for the statements of the parties recorded on 03.05.2012 to be cancelled, set aside and taken off the record on the averments that the same were vitiated by fraud, misrepresentation and manipulation, was dismissed and instead the suit was dismissed as withdrawn in terms of the said very statements recorded on 03.05.2012 with costs, it having been “compromised”.

The above mentioned suit, it must be noted here, was filed for the relief of partition respecting property described as double storey, bearing house no. 815/49 and old no.1355, situated at Lekhu Nagar, Tri Nagar, Delhi

measuring 175 square yards out of khasra no. 221 and plot no. 139-B and 139-A area of village Chokri Mubarakbad, Delhi. For clarity, it may be added here that it was agreed by both sides at the hearing that the above-mentioned property is only one immovable property, it having been constructed over two adjoining plots of land bearing no. 139-A, 139-B, it having been given municipal number (815/49 old no. 1355) situate at Lekhu Nagar, Tri Nagar, Delhi. The pleadings in the plaint and the written statement as also the reference to the property in the evidence which had been led to some extent by the time the aforementioned controversy arose, make it clear that the dispute concerned only one said property.

The matter was at the stage of evidence of the defendant, one of them (DW-1) having appeared as witness, his deposition having been recorded on 03.05.2012, when both parties talked with each other, assumably in the presence of the Court, and informed the Court that they had reached a settlement. It is in such context that statements of the petitioner (as plaintiff) and Udai Ram (first defendant) were recorded besides that of the counsel for the defendants (he representing other defendants) who was present, indicating their no objection. It appears that in the said statements it came to be recorded that the plaintiff was inclined to withdraw the suit, the matter having been settled, conditional upon he being paid Rs.2,50,000/- in two equal instalments, first payable on 04.06.2012, and second on 16.07.2012, this *“towards full and final settlement of all (my) claim in respect of estate left behind”* by Tilak Raj @ Tilak Ram *“including the property in dispute.”*

The Additional District Judge having recorded the said statements did not decide the suit in such terms on the same date but instead kept it pending

adjourning it to 04.06.2012.

Before any payment was made by the defendants (respondents), or received by the petitioner (plaintiff), the petitioner moved an application on 07.05.2012 alleging fraud, misrepresentation and manipulation stating that there was no occasion for him to give up his share in the entire estate left behind by the father of the parties, referring in this context to another property bearing no. 852/54, Tri Nagar, Lekhu Nagar, Delhi-35.

The Additional District Judge called for the response of the respondents and thereafter, by the impugned order, declined to believe the petitioner and proceeded to dismiss the suit as withdrawn in terms of the compromise. It is the said order which is challenged by the petition at hand.

After some hearing, the counsel for the respondents, on instructions, submitted that the respondents have no objection to the impugned order being set aside and the proceedings/statement recorded on 03.05.2012 being treated as nullity and as of no effect and consequently the suit to be restored for being adjudicated upon on merits.

In view of the above, the impugned order is set aside. The application seeking withdrawal of the statements made on 03.05.2012 is allowed. The said statements would be ignored in the further proceedings in the case and shall be of no consequence. The proceedings in the civil suit stands revived. The case shall be further proceeded with in accordance with law. Needless to add, the respective contentions of both sides to the suit in terms of their pleadings already filed, as indeed the evidence already adduced to an extent, are reserved.

The parties are directed to appear before the trial court on 17th May, 2018.

The petition and the pending application are disposed of in above terms.

R.K.GAUBA, J

APRIL 19, 2018

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