

\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 283/2016 & IA No.7022/2016 (u/O XXXIX R-1&2 CPC)**
ASHA SRIVASTAVA Plaintiff
Through: Ms. Neha Kapoor, Adv.
Versus
DR. S.S. SRIVASTAVA & ANRDefendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.11.2018**

1. The plaintiff instituted this suit for (i) declaration that the plaintiff is the co-owner of property no.C-225, Second Floor, Greater Kailash, Part-I, New Delhi to the extent of 60% and for a direction to the two defendants viz. Dr. S.S. Srivastava and Subhash Arora to insert the name of the plaintiff in the Sale Deed dated 14th October, 2014; (ii) permanent injunction restraining the defendants from dispossessing the plaintiff from the property; and, (iii) permanent injunction restraining the defendant no.1 from creating a third party interest in the property.
2. The suit was entertained and summons thereof ordered to be issued and vide *ex parte* order dated 31st May, 2016, the defendants restrained from disturbing the possession of the plaintiff of the subject property.
3. The order dated 28th July, 2017 records that both the defendants had been served; however, only the counsel for the defendant no.1 appeared. The defendant no.1 filed his written statement and to which the plaintiff filed replication. The defendant no.2 neither appeared nor filed written statement and the right of the defendant no.2 to file written statement was closed on 11th December, 2017.

4. Vide order dated 11th May, 2018, the parties were referred to mediation. A Settlement Agreement dated 31st May, 2018 executed by the plaintiff and the defendant no.1 and their respective advocates was received in this Court. However, on 24th September, 2018, the counsels for the plaintiff and the defendant no.1 stated that the parties be sent afresh to mediation and the parties were accordingly so sent.

5. Another Settlement Agreement dated 11th October, 2018 purporting to bear the signatures of the plaintiff, defendant no.1 and their respective counsels and Mr. Atul Batra, Advocate / Mediator has been received from the Mediation Cell of this Court.

6. The counsel for the plaintiff states that the plaintiff and the defendant no.1 are wife and husband and on further enquiry states that the defendant no.2 is the builder of the property, subject matter of the suit, and Sale Deed dated 14th October, 2014 with respect to the property in favour of defendant no.1 was executed by the wife of defendant no.2. On yet further enquiry, the counsel for the plaintiff states that while in Settlement Agreement dated 31st May, 2018, it was recorded that the plaintiff shall drop the defendant no.2 from the array of parties, the parties subsequently in the Settlement dated 11th October, 2018 agreed that though the defendant no.2 will be so dropped but the parties shall be free to take any action against defendant no.2 as may be permitted by law. Else, it is stated that there is no other major difference between the two Settlement Agreements.

7. The counsel for the plaintiff states that in terms of the Settlement Agreement dated 11th October, 2018, she gives up defendant no.2 from the array of defendants in this suit.

8. The defendant no.2 is deleted from the array of defendants and the Court Master to in today's date, under his signature, make an endorsement to the said effect on the memo of parties.

9. The counsel for the plaintiff also states that the plaintiff has not come to the court today and it is perhaps for this reason only that the defendant no.1 or his counsel also has not appeared.

10. However, since the parties were referred to mediation and a Settlement Agreement has been received and the counsel for the plaintiff also stands by the said Settlement Agreement, it is not deemed appropriate to adjourn the matter.

11. I have perused the Settlement Agreement dated 11th October, 2018. The contents thereof, considering the fact that the plaintiff and the defendant no.1 are wife and husband, are found to be lawful.

12. The undertakings of the parties as contained in para '(m)' of the said Settlement Agreement are accepted and the parties are ordered to be bound therewith.

13. A decree is passed in favour of the plaintiff and against the defendant no.1 in terms of the Settlement Agreement dated 11th October, 2018 which shall form part of the decree sheet, leaving the parties to bear their own costs.

Decree sheet be drawn up.

14. A certificate entitling the plaintiff to refund of court fees paid on the plaint less Rs.10,000/- be issued and handed over to the counsel for the plaintiff.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 01, 2018/'gsr'..

CS(OS) 283/2016

Page 3 of 3