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

+ **FAO 416/2018 and CM APPL. 36335-36336/2018**

AARTI MEHRA Appellant
Through: **Mr.B.S.Chauhan, Advocate**

versus

KAMLA DEVI & ANR Respondents
Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **07.09.2018**

CM No. 36335/2018 and 36336/2018 (Exemptions)

Exemption allowed, subject to just exceptions.

FAO 416/2018

Vide the present appeal, the appellant assails the impugned order dated 21.7.2018 of the learned Additional District Judge- West in CS No. 610528/16 whereby an application filed by the applicant, i.e., the appellant herein submitting to the effect that in order to preserve the suit property the defendants of the said suit be restrained from creating any third party interest in the suit property in any manner, was dismissed.

A bare perusal of the impugned order dated 21.7.2018 indicates that it relates back to an order dated 1.7.2017 that had been filed by the appellant herein before the learned Trial Court under Order XXXIX Rule 1 & 2 seeking to the effect that the defendants be

restrained from alienating the property i.e. the ground floor of the DDA built up Janta Flat No. 665, Pocket -1 situated at Madipur, Paschimpuri, New Delhi-110063. It was submitted on behalf of the plaintiff, i.e., the appellant herein that in the year 2011, the defendant No.2 had represented himself to be the owner of Plot No.A-3-B, DSIDC, Madipur, Paschim Puri, New Delhi and on the representation made by the defendant No.2, the plaintiff along with her husband started staying in the suit property. As contended on behalf of the appellant, after the death of the plaintiff's husband it was agreed between the plaintiff and the defendant No.2 that the plaintiff would execute a sale deed for the suit property in favour of defendant No.2 or his nominee and in return, the defendant No.2 would execute the sale Deed for Plot No.A-3/B, DSIDC, Madipur, Paschim Puri, New Delhi in favour of the plaintiff and it was further contended that on the assurance given by the defendant No.2 the plaintiff executed the sale deed dated 17.1.2013 in favour of the defendant No.1 with respect to the suit property, but the defendant No.2 failed to execute the title documents in favour of the plaintiff as agreed. Thus the plaintiff, i.e., the appellant filed the suit for declaration of cancellation of Sale Deed dated 17.1.2013 executed in favour of the defendant No.1 and also seeking an injunction against alienation of the suit property and possession of the same.

It was submitted by the defendants through their written submissions as indicated by the order dated 1.7.2017 of the learned Trial Court that the defendants stated that the suit property was purchased by the defendants after paying valid consideration and

subsequently, the plaintiff had forged the documents pertaining to the plot No.A-3-B, DSIDC, Madipur, Paschim Puri, New Delhi in order to get Government job and that the suit was filed by the plaintiff allegedly based on false and frivolous averments. The impugned order reflects categorically to the effect that the sale deed qua the suit property had been executed by the plaintiff and the same has apparently been executed which sale deed indicates that the plaintiff had received a sum of Rs.16,35,000/- from the defendant No.1. The factum that it was not stated that the same was not received as significantly, the sale consideration had not been received the same would not have been mentioned in the sale deed which is a duly registered document.

The submission sought to be made by the plaintiff now that there was no such payment received by her, presently cannot be allowed to be contended until leading of evidence qua the suit filed by the plaintiff i.e., the appellant herein seeking cancellation of the said documents. Apparently, the very execution of the sale deed, indicates that the application filed by the plaintiff, i.e., the appellant herein before the learned Trial Court seeking a restraint against the defendants from alienating the property in suit when the registered sale deed has been executed, cannot be allowed.

As rightly held by the learned Trial Court that in relation to the reliefs claimed through the suit that had been filed by the plaintiff *inter alia* seeking cancellation of the document i.e., the duly registered sale deed, the plaintiff can be undoubtedly compensated in terms of money.

In view thereof, there is no infirmity in the impugned order, the appeal and the accompanying application are declined.

ANU MALHOTRA, J

SEPTEMBER 07, 2018/sv