

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

RESERVED ON : 7th DECEMBER, 2017

DECIDED ON : 9th JANUARY, 2018

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FAO 532/2016 & CM 42359/16

CHARANJIT SINGH Appellant

Through : Mr.Naresh Thanai, Advocate with
Ms.Khushboo Singh, Advocate.

versus

CHANDRASHEKHAR CHOPRA & ORS Respondents

Through : Ms.Pratibha Chopra, Advocate for R1.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present appeal has been preferred by the appellant Charanjit Singh to challenge the legality and correctness of an order dated 22.09.2016 of learned Addl. District & Sessions Judge whereby review petition filed by the respondent No.1 was allowed and restraint order was passed regarding the property bearing No.C-95, Farmers Apartment, Sector -13, Rohini, Delhi (hereinafter 'Rohini property') during the pendency of the suit. The appeal is contested by respondent No.1.

2. I have heard the learned counsel for the parties and have examined the file. Undisputedly, the respondent No.1 / plaintiff has filed a suit for recovery of ₹50 lacs against the appellant Charanjit Singh, Gurvinder Singh and Jatinder Singh. Gurvinder Singh is ex-

parte and the suit is being contested by the appellant Charanjit Singh and Jatinder Singh. By an order dated 31.07.2013 in an ex-parte order, this Court directed the parties to maintain status quo as regards both the title and possession of Rohini property. Subsequently, the contesting defendants moved an application under Order XXXIX Rule 4 CPC for vacation of the interim order. By a comprehensive order dated 11.11.2013 in IA 11722/2013 (filed by plaintiff under Order XXXIX Rule 1 & 2 CPC) and IA 13656/2013 (filed by defendants No.2 & 3 under Order XXXIX Rule 4 CPC), the contesting defendants No.2 & 3 in the suit were directed not to alienate, part with or create any third party interest in respect of their 50% share in the property No.3622-25 and 3990-95, Ward No.XII situated at Roshanara Road, Subzi Mandi, Delhi (hereinafter 'Roshanara Property'). It was further directed that the contesting defendants No.2 & 3 therein would deposit, within four weeks from that day, with the Registrar General of this Court a certified copy of the registered sale deed dated 22.11.2001 in respect of the said property as well as a certified copy of the judgment and decree dated 01.03.2013 passed in CS(OS) 2245/2010. Subject to the order, the status-quo order dated 31.07.2013 was vacated and both the applications stood disposed of.

3. Subsequently, by an order dated 08.08.2016 the learned Trial Court, to whom the case was assigned due to change of pecuniary jurisdiction of this Court, restrained the defendants therein not to sell or create any third party interest with regard to the Rohini property. Being aggrieved by the said orders, the appellant Charanjit Singh preferred CM(M) 896/2016 which came to be disposed of vide

order dated 09.09.2016 by this Court. It was observed that the impugned order dated 08.08.2016 could not have been passed by the Trial Court without any application filed by the plaintiff therein and without a conclusion that prima facie the property in question at Roshanara Road, Subzi Mandi, Delhi was not sufficient security to secure respondent No.1 therein and that the said fact came to the knowledge of the respondent No.1 therein after 11.11.2013. However, liberty was granted to the plaintiff / respondent No.1 therein to move appropriate application before the Trial Court giving full facts within a week.

4. Consequently, a review petition under Section 114 read with Section 151 CPC was filed by the respondent No.1/plaintiff in the suit to modify the order dated 11.11.2013. It was averred that the said property was subject matter of criminal complaints between defendants No.2 & 3 and their brothers and there were as many as 14 tenants living in that property. It was further averred that defendant No.2 therein had relinquished his right in the Rohini property by way of relinquish deed dated 02.01.2014 in favour of defendant No.3 which was an admitted fact. This application was contested by the appellant / defendant No.3.

5. Order dated 11.11.2013 of this Court while disposing of applications under Order XXXIX Rule 1 & 2 CPC and under Order XXXIX Rule 4 CPC is very specific and clear. The respective contentions of the parties to substitute the Rohini property to Roshanara Property were dealt with. This Court in its order dated 23.10.2013 noted that the defendants No.2 & 3 in the suit had

submitted that there were other properties and if the Court so directed, could be offered as a security in substitution of the Rohini property. Copies of the title deeds of the said properties were directed to be provided to the learned counsel for the plaintiff within a week and the matter was adjourned for 11.11.2013. Order dated 11.11.2013 was passed after hearing the relevant contentions of the parties consciously. The restraint order to secure the interest of the plaintiff therein was passed against the Roshanara Property. Status-quo order dated 31.07.2013 came to be vacated by the said order. Needless to say that the said order remained unchallenged and the plaintiff in the suit did not opt to challenge it at any stage; it attained finality. When the matter was listed for recording evidence on 08.08.2016, it was informed by the plaintiff in the suit that the defendants No.2 and 3 intended to create third party interest with regard to the Rohini property. The learned Addl. District Judge without having any application for modification / review of the order dated 11.11.2013 opted to restrain the defendants No.2 & 3 till the next date of hearing not to sell or create third party interest with regard to Rohini property.

6. Since the order dated 11.11.2013 was passed on merits after considering the rival contentions of the parties, there was no occasion for the learned Trial Court to modify or review it. Even without lifting attachment regarding Roshanara Property, by an order dated 08.08.2016, the learned Trial Court passed a restraint order against defendants No.2 & 3 regarding the Rohini property.

7. In the impugned order, no sufficient material was before the learned Trial Court to infer if there was any substantial change of

circumstances to review the order dated 11.11.2013. The respondent / plaintiff was well aware at the time of the order dated 11.11.2013 that the Roshanara Property was in occupation of various tenants. No material has been placed on record to show if the said property is not worth ₹50 lacs. As per the contentions of the appellant at present the value of the said property is to the tune of ₹10 crore. Merely because a suit for recovery of ₹50 lacs has been filed by the plaintiff / respondent No.1, the Rohini Property worth more than ₹2 crores cannot be subject to restraint order.

8. It is relevant to note that on 02.02.2017, the learned counsel for the appellant had sought permission to sell Rohini property on the condition that the appellant would deposit ₹50 lacs with the Trial Court out of the earnest money received by him. Liberty was granted to the petitioner / appellant to approach this Court upon finding a customer to buy the aforesaid property. It shows bonafide of the appellant to secure the interest of the respondent No.1 / plaintiff.

9. In the light of the above facts and circumstances of the case, the impugned order dated 22.09.2016 cannot be sustained. The restraint order qua the Rohini property i.e. C-95, Farmers Apartment, Sector -13, Rohini, Delhi is vacated. The restraint order regarding Roshanara Property shall continue in terms of the order dated 11.11.2013.

10. To protect the interest of the respondent No.1 / plaintiff and the offer of the appellant as recorded in the order dated 02.02.2017, it is further ordered that in case the appellant receives any

earnest money on sale of the Rohini property, he shall deposit ₹50 lacs with the Trial Court as security. In that eventuality, the restraint order qua the Roshanara Property would stand vacated.

11. The appeal stands disposed of in the above terms. Pending application also stands disposed of.

12. Copy of the order be sent to the Trial Court.

JANUARY 09, 2018 / tr

**(S.P.GARG)
JUDGE**