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

Judgment reserved on : September 12, 2018

% Judgment pronounced on: September 17, 2018

\+ FAO(OS) 274/2017

CARAVAN COMMERCIAL COMPANY ..... Appellant

Through: Mr. Sanjeev Sindwani, Sr. Adv. with Mr. K. Datta, Mr. Manish Srivastava & Mr. Ashish Verma, Advs.

versus

PUSHPA DEVI & ORS ..... Respondents

Through: Mr. Ankit Sharma, Adv. for R-1. Mr. Manish Vashisht, Mr. Rikky Gupta, Mr. Manashwy Jha, Mr.Sameer Vashisht & Mr. Kapil Gupta, Advs. for R-2 to 5. Mr. Lalit Gupta, Mr. Siddarth Arora, Mr. Sahil Gupta, Advs. for R-6 to 10. Mr.Nandni Sahni, Adv. for R-11.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

J U D G M E N T

A.K. CHAWLA, J.

1. This appeal is directed against a learned single judge's order dated 18.07.2017 in a pending suit (CS(OS) 2443/1993)

disposing an application (under Order XXIII Rule 3 read with Section 151 CPC being IA No.5089/2017 in short, 'the subject application'), which was a joint application on behalf of the plaintiff-appellant and the Respondent nos. 6 to 10 (arrayed as defendant nos. 3 to 7 in the suit) seeking a decree with respect to 1/3rd undivided share of the defendant nos. 6 to 10 (hereafter “the applicant-defendants”) in the property being 42 & 44, Sunder Nagar, New Delhi measuring approx. 1732.17 sq. yds. ("the subject property" hereafter), was disposed of. The appellants are aggrieved by the absence in the impugned order of a direction to draw a decree.

2. The facts relevant for the disposal of the appeal are that a suit for declaration, injunction and specific performance was filed by the appellant company in respect of the subject property, which has been pending trial before the learned Single Judge. The suit was premised on the fact that the subject property was initially owned in three equal undivided shares by (i) Ms. Pushpa Devi - respondent no.1 (defendant no.1 in the suit); (ii) Late Ms. Bimla Devi (erstwhile defendant no.2 now represented by defendant nos. 2A to 2D); and, (iii) legal heirs of Late Shanti Devi (defendant nos. 3 to 7) and that, all the said referred owners/lessors had entered into two Agreements to Sell dated 15.11.1991 and 16.11.1992 with the appellant and received proportionately, ₹22 Lakh each. The subject application averred that in order to buy peace and put to an end to an protracted litigation, (over 20 years), the appellant and the applicant-

defendants, had arrived at an amicable settlement and in furtherance of the agreement to Sell, the applicant-defendants sold, transferred and conveyed ownership of their 1/3rd undivided share in the subject property in favour of the appellant company by executing a series of documents - Agreement to Sell (full stamp duty paid and registered), a General Power of Attorney (registered), Special Powers of Attorney (registered), Wills (registered), and affidavit etc. all dated 30.05.2011. The application stated that the applicant defendants were paid an additional sum of ₹10 crore by the appellant. The application sought for passing of a consent decree with respect to 1/3rd undivided share of the defendant-applicant (nos. 6 to 10) on agreed terms. The subject application was disposed of by the impugned order keeping open the question of passing of the decree on the basis of the settlement to be decided at the appropriate stage with further clarification that there was no final adjudication of the rights of the parties by the impugned order. Aggrieved thereof, the appellant company has preferred the appeal in hand.

3. The joint application filed by the appellant company and the respondent nos. 6 to 10 (defendant nos. 3 to 7 in the suit) i.e. the subject application, which is disposed of vide the impugned order, claimed the following relief:

> *"Pass a decree with respect to 1/3rd undivided share of Defendant Nos. 3 to 7 in property situated at 42 & 44, Sunder Nagar, New Delhi comprising*

of plot of land bearing Nos. 42 & 44, Block No. 171 admeasuring approximately 1732.17 sq. yards and a double storey building with garages, servant quarters and other structures in terms of the consent terms as set out in ***Paragraph 4*** *above thereby inter-alia passing a decree in favour of the Plaintiff and against the Defendant Nos. 3 to 7 of specific performance of agreements to sell dated 15.11.1991 and 16.11.1992 read with the agreement to sell dated 30.05.2011 along with all other reliefs including execution and registration of the sale deed for conveying the said Property in favour of the Plaintiff "*

5. It would thus be seen that the pre-dominant relief sought in the subject application is of seeking a consent decree with respect to 1/3rd undivided share of the applicant-defendants in the subject property as per the terms set out in para 4, which is as follows :

> *"Therefore, in light of the Agreement to Sell dated 30.05.2011, the Plaintiff & Defendant Nos. 3 to 7 jointly pray that this Hon'ble Court may pass a consent decree in the following terms with respect to the 1/3rd undivided share of Defendant Nos. 3 to 7 :*
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> > *a. That the Defendant Nos. 3 to 7 have, upon execution of the registered Agreement to Sell dated 30.5.2011, Special Powers of Attorney (duly registered), a General Power of Attorney (duly registered), Wills (duly registered) and Affidavit etc., all dated 30.05.2011, sold, conveyed and transferred at their right, title and interest in their undivided 1/3rd share in the said property in favour of the Plaintiff, absolutely, unconditionally and forever.*

> *b. The Defendant Nos. 3 to 7 are with no right, title and interest in their undivided 1/3rd share in the said property and Plaintiff has become absolute owner of the undivided 1/3rd share of the Defendant Nos. 3 to 7 in the suit property.*
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> *c. The Defendant Nos. 3 to 7 agree to execute and register, if necessary, all such further deeds and documents as may be necessary to further perfect the Plaintiff's title in respect of their 1/3rd share in the said property.*
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> *d. The Plaintiff and Defendant Nos. 3 to 7 have no further claims qua each other.*
>
> *e. The Defendant Nos. 3 to 7 admit and acknowledge the existence, legality and validity of the agreements to sell dated 15.11.1991 and 16.11.1992 and that the agreement to sell dated 30.05.2011 was executed in furtherance of the said two agreements to sell.*
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> *f. Plaintiff shall also be entitled to seek partition and separate possession of that 1/3rd share in the entire suit property, which was previously owned by Defendant Nos. 3 to 7 herein in as much as the Plaintiff has now become absolute owner of the said 1/3rd share."*

5. Was the trial Court, in terms of the compromise arrived at amongst the appellant company and the defendant-applicants, obligated to pass a decree *inter alia* specific performance of Agreements to Sell dated 15.11.1991 and 16.11.1992 read with

the Agreement to Sell dated 30.05.2011 along-with the other reliefs including execution and registration of the sale deed as prayed for in the subject application, is the moot question for consideration before this Court.

6. Mr. Sindhwani, learned Senior Counsel for the appellant, argued that the agreement arrived at amongst the appellant and the applicant defendants was lawful and there was no impediment in passing of the consent decree as prayed for in the subject application inasmuch as the genuineness of the compromise/settlement was not in question. In support of the submissions, he placed reliance upon *K. Venkata Seshiah vs. Kanduru Ramasubbamma,* (1991) 3 SCC 338.

7. Mr. Sahni, learned counsel for the respondent No.11, however, submitted that the appellant and applicant defendants were not the only parties to the suit and since the other parties too were contesting the suit for specific performance instituted by the appellant company, the trial Court was justified in not proceeding to pass the decree as prayed for. In support of his submissions, reliance was placed upon *Arjan Singh vs. Punit Ahluwalia &Ors.,* (2008) 8 SCC 348.

8. The subject application was disposed of by the impugned order, which is as follows:

> ***"I.A. 5089/2017 (u/O 23 Rule 3 CPC)***
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> *By this application, plaintiff seeks to apprise this Court that share of defendants No. 3 to 7 has been purchased by plaintiff.*

Upon Notice, counsel for defendant No.8 opposes this application by pointing out that in the year 1989, defendants No. 3 to 7 had sold their share of the suit property to defendant No.8 vide Agreement to sell of 23rd April, 1989 and admission to this effect is already there in the written statement and that defendants No. 3 to 7 had taken a sale consideration of Rs.3,00,000/- from defendant No.8 and so, this application ought not be entertained.

There is no opposition to this application by counsel for defendant No.1 and rightly so.

Upon hearing, this application is disposed of while permitting plaintiff to step into the shoes of defendants No. 3 to 7 to proceed further in this case. So far as the question of passing a decree on the basis of settlement is concerned, it is deemed appropriate to leave it open to be decided at the appropriate stage. It goes without saying that there is no final adjudication of rights of the parties by this order.

With aforesaid observations, this application is disposed of."

9. At the onset, we observe that the appeal against the impugned order, whereby, the learned Single Judge, in effect, deferred the question of passing the decree as prayed for, is not maintainable. The order of the court recording the compromise (or refusing to record a compromise), in view of the deletion of clause (m) of Rule 1, Order 43 is not appealable has been so reiterated by the Supreme Court in *Daljit Kaur & Anr. vs. Muktar Steels Pvt. Ltd.,* (2013) 16 SCC 607.

10. The learned counsel for the parties had made submissions only on merits; therefore, the appeal cannot be disposed of only on the ground of maintainability. Indisputably, the property in question is a lease hold property, the lessor of which is the President of India. The appellant filed the suit *inter alia* seeking specific performance of the purported Agreements to Sell by the joint owners. The compromise arrived at amongst the appellant company and the applicant-defendants *ipso facto* does not have the effect of settling the suit as a whole inasmuch as, the other defendants are challenging the Agreements on which the suit is founded. *Arguendo,* the compromise is legal, the appellant has acquired a lawful and valid title to 1/3rd of the undivided interest in the subject property, any decree of specific performance is not a compulsion, as is claimed in the subject application. Therefore, in the given factual conspectus, the observation made in the impugned order by the learned single Judge that the appellant is permitted to step into the shoes of the applicant-defendant Nos. 3 to 7, is quite justified and no error can be seen therein.

11. It is undoubtedly true that if a compromise is not unlawful and the genuineness of the compromise is not in question, then the court would ordinarily record the compromise and the suit can be settled wholly or partially. Each case however, depends on its own peculiar facts and circumstances and no hard and fast rule can be laid in that regard. *K. Venkata Seshiah's* case (supra), relied upon by the learned counsel for the appellant, does not aid it. It was a case, where the entire subject matter of the litigation

was resolved in view of settlement of all equities amongst the parties to the suit. That is not the fact-situation in the case in hand. It is sufficient to say that for the applicant-defendants, the other respondents are contesting the suit, which is founded on the Agreements purportedly executed by all the co-owners/co-lessors. The parties had adverted to various previous orders; the appellant's counsel had sought to demonstrate that the legal representatives of one of the original joint owners too, has admitted to the agreement to sell and consequently there is no real bar to the issuing of a decree. This court is however of the opinion that there exists a *lis,* which is pending trial; at the heart of that dispute is the binding nature of the agreement in respect of which the plaintiff/appellant has sought a decree.

12. In view of the foregoing, the appeal is dismissed. There shall be no order as to costs.

A. K. CHAWLA, J

S. RAVINDRA BHAT, J

SEPTEMBER 17, 2018

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