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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 20.08.2019

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RFA 362/2019 & CM No.18975/2019 (for stay)

M/S SAI MOTORS & ANR

..... Appellants

Through: Mr.Rakesh Tiku, Sr. Adv. with
Mr.Arvind Kr. Shukla, Mr.Kunal
Yadav, Ms.Jyotsna Mehta &
Mr.Sandeep Kumar, Advs.

versus

ADITYA JAIN & ORS

..... Respondents

Through: Mr.Sandeep Agarwal, Sr. Adv. with
Mr.Abhishek Aggarwal, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 assails the judgment and decree dated 03.01.2019 passed by the learned Additional District Judge No.12, Central, Tis Hazari Courts, New Delhi in Civil Suit No.9692/16 whereunder a decree for possession in respect of suit property comprising of half portion of the Ground Floor and the entire mezzanine floor of property No.2704, Lothian Road, Kashmere Gate, New Delhi ('suit property' for short) has been passed in favour of the respondent nos.1 and 2.

2. Shri Virender Kumar Jain, respondent no.4 who was the owner of the suit property executed a lease deed dated 01.08.2007 in favour

of his daughter and two sons, i.e., respondent nos.1 to 3 which lease deed created a right in their favour to sub-lease the property. Pursuant to the said lease deed, the respondent nos.1 to 3 sub-leased the suit property to the appellant no.1 vide lease deed dated 24.07.2009 for a total period of 11 months. As per the said deed, the respondent nos.1 to 3 were to be paid a monthly sum of Rs.35,000/- as rent. The said lease deed was extended from time to time and the last extension of the lease was granted in 10.04.2012 for a period of 11 months whereunder the appellants were liable to pay a monthly rent of Rs.1,50,000/- which was to be equally apportioned between the three lessors, i.e., respondent nos.1 to 3. As the aforementioned deed dated 10.04.2012 was set to expire on 31.03.2013, a legal notice was issued by the respondent nos.1 to 3 to the appellants on the same date requiring it to hand over the vacant possession of the suit property to them on or before 01.04.2013. The said legal notice also stated that, even otherwise, in the light of the appellants' failure to pay any rent from 01.11.2012 for their continued occupation of the suit property, they were in default of Clause 9 of the lease deed. Although the appellants never replied to the said legal notice, on 18.04.2013 they sent their reply to the legal notice dated 28.03.2013 issued by the respondent no.4, in respect of the other half portion of the Ground Floor of the suit property which had also been let out to them by way of a separate lease deed executed by the respondent no.4. In their reply, the appellants stated that pursuant to the orders passed by this Court in a suit for partition preferred by respondent no.4 being CS(OS) No.185/2010 ('partition suit' for short), the respondent no.4

was no longer the owner of the suit property which had fallen to the share of his four brothers namely, Shri Ravinder Kumar Jain, Narain Bhiku Ram, Arvind Jain and Adarsh Jain.

3. In October 2015, as the appellants had neither paid any rent after 01.11.2012 nor did they hand over possession of the suit premises to the respondent nos.1 to 3, the respondent no.3 instituted a suit being CS No.152/2016 (New Number: CS No.15352/2016) for possession and mesne profits whereunder she made a claim qua the arrears of rent and mesne profits accruing on her share of the suit property. In her plaint, though the respondent no.3 made a reference to the fact that her two brothers were also co-lessors of the suit property along with her, she did not implead them as parties in the suit. During the pendency of her suit, the subject suit seeking possession and mesne profits came to be instituted by the respondent nos.1 and 2 against the appellant no.1 and its partner, i.e., appellant no.2 wherein they also impleaded their sister/respondent no. 3 and their father, Sh. Virender Kumar Jain/respondent no.4as defendants

4. In their written statement the appellants, while not denying that they had taken the suit property on lease from respondent nos.1 to 3, opposed the subject suit primarily on the ground that none of the respondents were the lessors/landlords of the suit premises as the same stood transferred in favour of the four brothers of respondent no.4 as a consequence of a family settlement arrived at between them in the partition suit which is currently pending adjudication before this Court. It was, thus, contended that pursuant to the aforesaid family settlement, only the brothers of respondent no.4 were the landlords of

the property and the appellant had been paying rent to them w.e.f. 15.04.2013 as per the terms of a separate lease deed dated 06.07.2013 executed between the appellant and them. It was further urged that all the four brothers of respondent no.4 were necessary parties in the suit and, therefore, an application under Order I Rule 10 Code of Civil Procedure, 1908 ('CPC' for short) was also moved by the appellants to seek their impleadment as defendants in the subject suit.

5. The trial Court rejected the impleadment application vide its order dated 19.05.2017 by observing that once the appellants had come into possession of the suit property as tenants of the respondent nos. 1 to 3, they could not enter into any contract of lease pertaining to the said property with any other person except with the knowledge and consent of the said respondents; even if they did, such a contract would be at their own risk. The trial Court also noticed the fact that the terms of the alleged family settlement, on which reliance was sought to be placed by the appellants, was only a proposal which ultimately did not materialise as was evident from the order dated 06.10.2016 passed by this Court in the partition suit.

6. The appellants, aggrieved by the dismissal of their impleadment application, challenged the same by preferring a petition before this Court under Article 227 of the Constitution of India being CM(M) No.686/2017 which also came to be dismissed vide the order dated 10.07.2017 and the said order has now attained finality.

7. On 05.12.2017, in the light of the admission made by the appellants in their written statement that they had come into possession of the suit property only as tenants of the respondent nos.1

to 3, the respondent nos.1 and 2 preferred an application under Order XII Rule 6 CPC before the trial Court. The appellants filed their reply to the application reiterating their plea that the right of the respondent nos. 1 and 2/ plaintiffs as owners of the suit property stood transferred in favour of the four brothers of respondent no.4 owing to the family settlement recorded as part of the proceedings in the partition suit. They further urged in their reply that there were three different suits pending qua the same property and, on this ground itself, the suit was liable to be rejected. The appellants contended that the suit was barred under the provisions of the Arbitration and Conciliation Act, 1996 as the lease deed provided for resolution of disputes between the parties by way of arbitration. They finally contended that in view of the ownership of the suit property being under dispute, no case was made out for decreeing the subject suit under Order XII Rule 6 CPC, as there was no admission whatsoever by the appellants as to the respondent nos.1 to 3 being the owners of the property.

8. Under the impugned judgment the learned trial Court has, after considering the respective stands of the parties, decreed the subject suit by directing that vacant and peaceful possession of the suit property be handed over to the respondent nos.1 and 2. The claim of the respondents for mesne profits is still pending adjudication before the trial Court. The relevant extracts of the findings of the trial Court read as under:-

“ 14. The only defense of the defendants no.1 and 2 is that after the renewal of lease deed on 01.05.2013 defendant no.4 and his brothers along with their respective families entering into a family settlement amongst themselves and as per said

family settlement, plaintiffs and defendant no.3 and/or defendant no.4 ceased to be the owner of the suit premises and the interest of defendant no.4 - paramount lessor and plaintiff nos.1 and 2 and defendant no.3 by necessary implication in demised property terminated and/or got transferred in favour of Sh. Ravinder Jain, Sh. Naren Bhiku Ram Jain, Sh.Arvind Jain and Sh.Adarsh Jain who together stepped into the shoes of the transferor i.e. erstwhile owner-landlord and after that a fresh lease deed was executed with Sh. Ravinder Jain, Sh. Naren Bhiku Ram Jain, Sh.Arvind Jain and Sh. Adarsh Jain on 06.07.2013 w.e.f. 15.04.2013 for a period of 11 months and which was later on renewed therefore plaintiff is not entitled to the possession of the suit property but I am not agree with the said contention of the defendants no.1 and 2.

15. In my view non applicants/ defendants no.1 and 2 cannot challenge the title of plaintiffs and defendant no.3 with whom they have entered into lease deed and taken the suit property on lease.

16. Further I am fully agree with the contention of Ld. Counsel for the plaintiffs that defendant no.1 and 2 till they remain in possession of the suit property being tenant of plaintiff no.1 and 2 cannot deny the title of plaintiffs in the suit property as they are estopped from doing so in view of section 116 of Indian Evidence Act. Hence any agreement of lease entered into by them with Sh. Ravinder Jain, Sh. Naren Bhiku Ram Jain, Sh.Arvind Jain and Sh.Adarsh Jain is not binding upon the plaintiffs and defendants no.1 and 2 will remain tenants of plaintiffs and they could entered into any lease agreement with Sh. Ravinder Jain, Sh. Naren Bhiku Ram Jain, Sh.Arvind Jain and Sh.Adarsh Jain for taking the suit property on lease. Only in the event when plaintiffs communicate to the defendants no.1 and 2 that their rights in the property has been transferred in favour of Sh. Ravinder Jain, Sh. Naren Bhiku Ram Jain, Sh.Arvind Jain and Sh.Adarsh Jain and now defendant no.1 and 2 will be tenant of Sh. Ravinder Jain, Sh. Naren Bhiku Ram Jain, Sh.Arvind Jain and Sh.Adarsh Jain, defendants no.1 and 2 can be allowed to take stand that plaintiffs have no longer remain the landlord

of the suit premises but it is not the case of the defendant no.1 and 2 that plaintiffs no.1 and 2 or defendant no.3 have ever communicated to the defendant no.1 and 2 that due to any family settlement ownership of property Sh. Ravinder Jain, Sh. Naren Bhiku Ram Jain, Sh.Arvind Jain and Sh.Adarsh Jain become the owners and now the defendant no.1 and 2 will be their tenants.

17. Even otherwise also the defendant no.1 and 2 have not produced any document from which it could be inferred that plaintiff no.1 and 2 ceased to be landlord qua the suit property and Sh. Ravinder Jain, Sh.Naren Bhiku Ram Jain, Sh.Arvind Jain and Sh. Adarsh Jain with whom defendants no.1 and 2 have entered into fresh lease deed have become owner of the suit property. The non applicants/defendants have filed copy of plaint and various orders passed by Hon.ble High Courts in suit no.185/10 file by one Virender Kumar against Ravinder Kumar and others for partition of family properties. In the said suit Sh. Ravinder Jain, Sh.Narender Kumar Jain, Sh.Arvind Jain and Sh.Adarsh Jain are defendants. From the copy of judgment dated 06.10.2016 passed in above said case it is evident that no final settlement has arrived between the plaintiffs and Sh. Ravinder Jain, Sh. Naren Bhiku Ram Jain, Sh. Arvind Jain and Sh. Adarsh Jain and efforts of settlements between the parties fail. Hence the above said persons have never become owner of suit property in pursuance of any family settlement.

18. Further the application U/o 1 Rule 10 CPC filed by defendants no.1 and 2 to make Sh. Ravinder Jain, Sh. Naren Bhiku Ram Jain, Sh.Arvind Jain and Sh.Adarsh Jain as party in the suit has been dismissed by my Ld. Predecessor vide order dated 19.05.2017 and appeal filed by defendants no.1 and 2 against the said order has been dismissed vide order dated 10.07.2017 passed by Hon'ble High Court in C.M.(M) 686/2017. Undisputedly the said order has not been set aside till date, hence it become final.

19. In view of above, entire defense of defendants no.1 and 2 that in view of family settlement Sh. Ravinder Jain, Sh. Naren Bhiku Ram Jain, Sh. Arvind Jain and Sh.Adarsh Jain

become owner of suit property and plaintiff no. 1 and 2 and defendant no.3 ceased to be owner of suit property goes.

20. *I also do not find force in the contention of Ld. Counsel for defendants no.1 and 2 that since lease deed dt. 01.08.2007 between the plaintiffs, defendant no.3 and defendant no.4 was not registered therefore same cannot be looked upon. First of all even lease deed is not register it can be look for collateral purpose. Secondly, defendant no.1 and 2 who have taken the premises on lease from plaintiffs and defendant no,3 are estopped as prescribed U/s 116 of the Indian Evidence Act from challenging their capacity to rent out the property to them on the ground that same is unregistered lease deed.*

21. *As far as contention of Ld. Counsel for defendants no.1 and 2 that there was arbitration agreement between the parties is concerned since the defendants have already file the written statement the objection u/s 8 of Arbitration Act to refer the dispute to Arbitrator can be taken prior to filing of written statement therefore in my view the said objection is also not sustainable.*

22. *In view of above facts and circumstances I allow the application u/o 12 rule 6 CPC and held that applicants/ plaintiffs are entitled to the decree of possession of the suit property i.e. 1/2 portion of the ground floor and entire mezzanine of the premises no.2704, Lothian Road. Kashmeri Gate, Delhi-110006. Hence, I pass a preliminary decree in favour of the plaintiffs directing the defendants no.1 and 2 to handover the suit premises to plaintiffs. Decree sheet be prepared accordingly."*

9. Aggrieved by this judgment and decree, the present appeal has been preferred by the lessee of the suit property, namely, M/s. Sai Motors along with its partner Mr.Siddharth Aggarwal.

10. Mr.Rakesh Tiku, learned senior counsel for the appellants submits at the outset that the learned trial Court has gravely erred in decreeing the suit under Order XII Rule 6 CPC without appreciating

the fact that it was not a case where any clear admission whatsoever had been made by the appellants. He submits that in view of the categorical denial by the appellants in their written statement regarding the title of respondent no.4 and any purported right of respondent nos. 1 to 3 to seek possession of the same, no case was made out for the trial Court to pass a decree upon admission. In support of this contention, Mr. Tiku places reliance on a decision of the Supreme Court in *S.M. Asif vs. Virender Kumar Bajaj*, [(2015) 9 SCC 287] to contend that the mere admission of a landlord-tenant relationship cannot be said to be an unequivocal admission based on which a decree can be passed in an eviction suit.

11. Mr.Tiku further submits that the trial Court has erroneously decreed the subject suit under Order XII Rule 6 CPC without appreciating the fact that two suits seeking possession of the same property were already pending adjudication. He contends that once a suit for possession had already been preferred by the respondent no.3 in October 2015 and a suit for eviction had been preferred by the respondent no. 4 in March, 2014, both of which were with respect to the suit property, a subsequent suit at the behest of respondent nos.1 and 2 seeking possession of the same property was not maintainable.

12. Mr.Tiku further submits that the learned trial Court, while passing the impugned judgment, has failed to consider the position which was emanating from the orders passed by this Court in the partition suit. He submits that a perusal of the orders passed by this Court on 21.05.2012, 30.10.2012 and 19.03.2015 in the partition suit clearly shows that a settlement had been arrived at between the

respondent no.4 and his brothers whereunder the joint properties had been put in five baskets; whereafter the suit property had fallen to the share of the four brothers of respondent no.4. In these circumstances, the respondent no.4 had no title to the suit property, having lost substratum to the same and, therefore his lessees namely, respondent nos.1 to 3 also did not have any right therein. He submits that the respondent no.1 had even moved an application being IA No.17700/2012 before this Court seeking recall of the family settlement which application came to be dismissed on 19.03.2015 and, therefore, the respondent nos.1 to 3 are also estopped from denying the finality of the family settlement.

13. Finally, by placing reliance on the possession notice dated 18.01.2019 issued by M/s. Orix Leasing & Financial Services India Ltd. under Section 8(1) of the Security Interest (Enforcement) Rules, 2012 and a subsequent petition filed by them under Section 14(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short) against the respondent nos. 1,2 and 4 as their mortgagee, Mr.Tiku contends that it will not be in the interest of justice to direct the appellants to hand over the possession of the suit property to the respondent nos.1 to 3, when the mortgagee has already taken symbolic possession of the said property. He, therefore, prays that the appeal be allowed.

14. On the other hand, Mr.Sandeep Agarwal, learned Senior Counsel for the respondents while supporting the impugned judgment submits that that the appellants are merely trying to convert a suit for

possession into a title suit which is not permissible in law. He submits that in any event, once the appellants' application seeking impleadment of the four brothers of the respondent no.4 as party defendants in the subject suit, on the ground that they had become the owners of the suit property, stands rejected not only by the trial Court but also by this Court, the appellants cannot be permitted to plead that the brothers of the respondent no. 4 were necessary parties in the subject suit to seek possession of the same.

15. He further submits that the appellants' plea that the respondent no.4 is no longer the owner of the suit property and that, consequently, the respondent nos.1 to 3 have no right to seek possession of the same is not only mala fide but also contrary to the record. It is his contention that the reliance on the alleged family settlement between the respondent no.4 and his brothers in the partition suit is wholly misplaced as no such final settlement had been arrived at between them; in support thereof, he places reliance on the order dated 06.10.2016 passed by this Court wherein it had been categorically recorded that no final settlement had been arrived between the respondent no.4 and his brothers.

16. Mr.Agarwal submits that once the appellants had been served with a legal notice dated 31.03.2013 issued by the owners of the suit property, viz. the respondent nos.1 to 3, clearly stating that the lease term stood expired on 31.03.2013, they were required to hand over possession of the suit property on or before 01.04.2013, and could not have entered into a fresh lease deed with the brothers of the respondent no.4. He submits that the appellants were duly informed

that this Court had directed that status quo be maintained with respect to the suit property vide its order dated 02.05.2011 passed in the partition suit and, therefore, if the appellants still chose to enter into a fresh lease deed with the brothers of the respondent no.4, they did so at their own risk. They cannot be permitted to raise this as the ground to either refuse payment of rent and mesne profits which are rightly accruing to the respondents or to refuse handing over the possession of the suit property to them.

17. Without prejudice to his aforesaid contention that the respondents have not lost their title to the suit property, Mr. Agarwal submits that in view of the categorical admission made by the appellants that they had taken the suit property on lease from the respondent nos.1 to 3, they are even otherwise estopped from challenging the right of the said respondents to seek possession thereof for which purpose he places reliance on Section 116 of the Indian Evidence Act, 1872. In view of the admitted position that the term of the lease stood expired and a notice of termination had been duly served on the appellants as also the fact that this Court has already observed that no final settlement of any kind had been arrived at between respondent no.4 and his brothers, the trial Court has rightly decreed the suit for possession under Order XII Rule 6, CPC.

18. Mr. Agarwal further submits that the appellants' plea that the respondent no.4 had filed a suit in respect of the same premises is contrary to the record. He submits that while the subject suit relates to half the portion of the ground floor and mezzanine floor of the property bearing no. No.2704, Lothian Road, Kashmere Gate, New

Delhi, the suit filed by respondent no.4 pertained to the other half portion of the ground floor which had been leased out by respondent no.4 to the appellant no.1 by a separate lease deed and that, therefore, these were not the same properties.

19. Mr.Agarwal further submits that the reliance by the appellants on the notice issued by M/s.Orix Leasing & Financial Services India Ltd. and the subsequent petition filed under Section 14(1) of the SARFAESI is also misplaced. He submits that the appellants, who had entered into possession of the suit premises pursuant to a lease deed entered with the respondent nos.1 to 3, cannot rely on a subsequent action sought to be initiated by the mortgagee of the property for which action also the appellants are responsible as they have failed to pay rent to the respondents after October, 2012. He, therefore, prays that the present appeal be dismissed with costs.

20. At this stage, Mr.Agarwal submits on instructions from the learned counsel for the respondents, including the respondent no.3, that in view of the fact that under the impugned judgment possession of the entire suit property has been directed to be handed over to respondent nos.1 and 2, the respondent no.3 will not press her pending suit for possession. He further submits that the respondent nos.1 and 2 undertake to accept the possession of the property on behalf of the respondent no.3 as well.

21. I have considered the submissions of learned Senior Counsel for the parties and, with their assistance, perused the records.

22. As the entire fulcrum of the appellants' case rests on the orders dated 21.05.2012, 30.10.2012 & 19.03.2012, it would be appropriate

to refer to these orders in extenso and the same read as under:-

ORDER DATED 21.05.2012

“ Plaintiff has drawn five baskets regarding assets and liabilities which has been placed on record, a copy whereof has been given to the Senior Counsel for the defendants. Defendants are willing to accept four baskets out of the five baskets prepared by the plaintiff and give one to plaintiff. Counsel for the plaintiff submits that cash and jewellery, as mentioned in these baskets, may be deleted from the each basket. Some minor issues remains to be sorted out. Parties shall appear before the Delhi High Court Mediation and Conciliation Centre on 24 the May, 2012 to short out the formalities.”

ORDER DATED 30.10.2012

“ 1. At the outset, counsel for the plaintiff states that he confines the reliefs in the present application to prayer (a) as set out in para 8 of the application.

2. This application has been filed by the plaintiff under Section 151 CPC praying inter alia that the defendants No.1 to 4 may be directed to file affidavits giving true and correct status of the assets and liabilities of the properties and businesses, so that the five baskets prepared by the plaintiff can be reframed.

3. Mr. Girish Aggarwal, Advocate for the plaintiff states that the need to file the present application has arisen because the properties that were placed by the plaintiff in basket No.4 are in the control of the defendants No.1 to 8 and this fact came to his knowledge after the defendants No.1 to 4 opted for baskets No.1 to 3 and basket No.5, thus leaving basket No.4 to the share of the plaintiff.

4. Counsels for the defendants No.1 to 3 and defendants No.5 to 7 and for defendants No.4 and 8, who appear on advance copy, oppose the present application and submit that it was the plaintiff, who had prepared the five baskets regarding the assets and liabilities and he had given an option to the

defendants to accept four out of the said five baskets and further, in view of the fact that the defendants No.1 to 8 have exercised their option by opting for baskets No.1 to 3 and basket No.5, the question of reframing the five baskets does not arise.

5. It is further contended by learned counsels for the defendants No.1 to 8 that it does not lie in the mouth of the plaintiff to allege that he was unaware of the status of the businesses and properties when he had prepared the five baskets, more so when the entire task was left to the good offices of the plaintiff exclusively. They submit that as for the apprehension of the plaintiff that the businesses and properties forming a part of basket No.4 are in the control of their clients and cannot be partitioned, they assure the Court that their clients shall take all necessary steps for partitioning the said properties and the businesses falling in the said basket and will not create any impediment in that regard.

6. It is further stated by the counsels for the defendants No.1 to 8 that the aforesaid baskets as prepared by the plaintiff and accepted by their clients is without prejudice to their stand as taken in the written statement that none of the properties mentioned in Schedule-A enclosed with the plaint are HUF properties and that all the said properties are the self-acquired properties of the defendants No.1 to 8, which submission is refuted by the counsel for the plaintiff and the counsel for the legal heirs of the defendant No.11.

7. In view of the aforesaid submission made by the counsels for the defendants No.1 to 8 and having regard to the fact that it was pursuant to a consensus that was arrived at between the parties to the effect that the plaintiff would make five baskets with regard to the properties and businesses and then give an option to the defendants No.1 to 8 to select four baskets, which option has been duly exercised by them, the request now made by the plaintiff for re-framing the five baskets, cannot be acceded to.

8. The prayer made in the present application is declined. The application is dismissed."

ORDER DATED 19.03.2015

Parties have arrived at a settlement. The plaintiff is the brother of defendant nos.1,2,3 and 4. Defendant nos.5 to 8 are the wives of defendants no.1 to 4. Defendant no.9 is the wife of the plaintiff. Defendant nos.10 and 11 are the legal heirs of the two deceased sisters of plaintiff and defendant nos.1 to 4.

The present suit is a suit for partition and rendition of accounts. Various orders have been passed on the applications filed by the respective parties. In the course of the proceedings on the submission of the plaintiff, the properties in dispute were divided into five baskets which were to be shared between plaintiff and defendant nos.1 to 4. On 26.7.2012 it had been recorded that out of five baskets that had been prepared by the plaintiff (in terms of the order dated 21.5.2012) defendant nos.1 to 4 had taken basket no.1,2,3 and 5 and remaining basket i.e. basket no.4 had fallen to the share of the plaintiff. This position stands undisputed even as on date. In the intervening period an application had been filed by the plaintiff seeking revision of the baskets but the said application stood dismissed on 30.10.2012.

The legal representatives of deceased sisters i.e. defendant nos.10 and 11 are both present in person. The deceased sisters had not filed any written statement. No counter claim had also been preferred by them.

In the course of the settlement arrived at between the parties, it has been agreed that defendant nos.1 to 4 will jointly pay a sum of Rs.8 crores to defendant nos.10 and 11 i.e.Rs.4 crores to each by the 4 brothers (defendant nos.1 to 4 will pay a sum of Rs.2 crores each) to wash off this liability. They undertake to pay this amount of Rs.8 crores within an outer limit of twelve months from today. The plaintiff submits that as on date he has no liquidity as the entire business is being run by defendant nos.1 to 4. He however, submits that as and when basket no.4 falls into his hands, he shall also pay a cumulative amount of Rs.1crore to defendant nos.10 and 11 (i.e.Rs.50 lacs to each of them) within a outer limit of eighteen months from today. The general terms and conditions attached to the

properties as on 21.5.2012 (date of drawing of the basket wherein the cash and jewellery is excluded) will enure.

This Court has been informed that the Indian Oil Corporation Petrol Pump at Rohtak Road, New Delhi which has fallen in basket no.2 (share of defendant nos.1 to 4) has been taken over by the IOC because of certain defaults for which as per the defendants the plaintiff and his wife are liable. Plaintiff will have no objection to the steps to be taken by the defendant nos.1 to 4 for the restoration of the petrol pump; the plaintiff and defendant no.9 will sign all requisite documents in this regard.

Learned counsels for the parties further state that Mr.Ravi Gupta, Sr. Advocate is known to both the parties and it would be expedient and in the interest of the settlement that he is appointed as a facilitator/overseer to oversee the modalities to be worked out for the implementation of the aforementioned settlement and the exchange of properties including preparation of documents in terms of the baskets allotted to each of the parties. The fee of the facilitator/overseer is fixed at Rs.3 lacs to be paid equally by the parties i.e. the plaintiff and defendant nos.1 to 4. Defendant no.9 is the wife of the plaintiff and she is also agreeable to all the terms and conditions in the order noted supra.

For report of the facilitator/overseer list on 20.7.2015.

A copy of this order be sent to Mr.Ravi Gupta, Sr. Advocate.

Order dasti under signatures of the Court Master.

I.A.No.17700/2012

Applicant Chaitanya Jain (son of the plaintiff) is present. He has heard the terms and conditions contained in the order noted supra and he has no objection to the settlement arrived at inter se the plaintiff (father) and his uncles (defendant nos.1 to 4); he has no separate claim qua any suit property. This application is not pressed by the applicant.

Dismissed as withdrawn.

23. Reference may also be made to the order dated 06.10.2016

on which reliance has been placed by the respondent and has also been noted in the impugned judgment. The relevant extract of the aforesaid order reads as under:

“1. The suit for partition and rendition of accounts at hand was filed in 2010 impleading eleven defendants. The plaintiff is the brother of defendants no.1 to 4. Defendants no.5 to 8 are the wives of defendants no.1 to 4. Defendant no.9 is the wife of the plaintiff while defendants no.10 and 11 are the legal heirs of the two deceased sisters of the plaintiff and defendants no. 1 to 4.

2. In the course of proceedings, on 21.05.2012 efforts then underway between the parties to resolve the dispute amicably were noted. On 26.07.2012, the court was informed by the counsel for defendants no.1 to 4 that their dispute with regard to the suit properties had been fully and finally settled between the parties for the reason that the plaintiff had accepted to take a specific share (described as basket no.4) from the estate of the predecessor-in-interest of the parties, leaving the balance (out of the five baskets in all) to the shares of defendants no.1 to 4. It appears from the proceedings recorded on the said date (26.07.2012) that the terms on which the parties were agreeable to settle the dispute fully and finally had not yet properly crystallized.

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5. The subsequent proceedings make it clear that the terms on which the parties were ready to resolve the dispute as noted in the order dated 19.03.2015 could not be acted upon. Some further disputes seem to have arisen rendering it a case of compromise which was, to say the least, still-born. So much so, that the directions of the court for the parties to appear before the facilitator/overseer (described in the order dated 14.09.2015 as mediator) also could not result in any meaningful progress.

6. On 15.01.2016, the court was informed that “four out of five brothers being plaintiff and defendants no.1 to 4” were agreeable to “in-principle” settlement of 1/5th share of each of

the brothers, this being with respect to the properties “which could really be divided being either of the parents or purchased from the properties of the parents which were sold”. The order does not clearly indicate if the fifth brother (it is not even clear who the said fifth brother was) also in agreement with the said “in-principle settlement”. Learned counsel Shri Lalit Gupta, Advocate for defendants no.1 to 4 submits that though order dated 15.01.2016 is not so specific, since he represents all the four defendants (defendants no.1 to 4), he would like to clarify that the said settlement was acceptable to all the five brothers including the plaintiff.

7. Be that as it may in the proceedings dated 15.01.2016, the learned Single Judge then seized of the matter further noted that “some differences for actual division” had to be sorted out. It was also noted that the rights of defendants no.10 and 11 (i.e. legal heirs of deceased sisters) would “also be adequately safeguarded if any final compromise is arrived at between the brothers in the spirit of give and take”. The court also noted in the said very order of 15.01.2016 that any affected parties to the present litigation on account of inclusion of their properties would also have “notice of hearing at the stage of finalization of compromise and disposal of the suit”.

8. Subsequent proceedings indicate that parties informed (on 29.02.2016) that settlement was not possible and “the matter will have to be decided on merits”. At the same time, defendants no.1 to 8 raised the issue of maintainability of the suit itself.

9. The execution petition (Ex.P.119/2016) has been preferred by defendants no.10 and 11 seeking execution of the order dated 19.03.2015 whereunder the plaintiff on one hand and defendants no.1 to 4 on the other, had given an undertaking and agreed to pay the amounts of money as specified above.

10. Having regard to the proceedings of 19.03.2015 and what was submitted in its wake on the subsequent dates, particularly the submissions made on 29.02.2016 wherein the parties jointly submitted that the settlement was not possible and the matter would have to be decided on merits, in which submissions even

defendants no.10 and 11 were clearly a party, they being duly represented by counsel on the said date and they not having taken any exception thereto, it is clear that no executable compromise, much less an executable decree came to be recorded or passed by the proceedings of 19.03.2015. At the most, borrowing the expression from the proceedings of 15.01.2016, it was "in-principle settlement" to which some more flesh had to be added. The terms were still not clear and/or crystallized which is why a facilitator/overseer had also to be appointed. In a case of this nature where the estate of the deceased predecessor-in-interest of the parties is vast and includes/involves a number of properties, modalities had to be worked out in clear terms for partition and vesting of clear title in the names of rightful claimants. Since no such modalities could be worked out or put on paper in the form of a formal family settlement, the submissions made to, or observations recorded by, the court in the proceedings of 19.03.2015 can hardly be said to be a judgment or a decree which could be put to execution."

24. Thus what emerges from a perusal of the aforesaid orders is that though undoubtedly, in the partition suit, there was a tentative settlement between the respondent no.4 and his brothers whereunder the suit property was proposed to be allotted to his brothers but the said tentative settlement had never fructified. In fact, the terms on which respondent no.4 and his brothers were ready to resolve the disputes could not be acted upon and the parties in the partition suit had jointly informed this Court on 29.02.2016 that no settlement was possible and that the matter would have to be decided on merits. In these circumstances, I am unable to accept the appellants' contention that the position regarding the title of the suit property stands altered in any manner after the same had been leased to the appellants. Merely because the Court had, on 30.10.2012 as also on 19.03.2015,

rejected the respondent no.4's prayer seeking reframing of the five baskets so as to once again bring the suit property within his share, the same cannot, in the light of the subsequent orders passed in the partition suit, lead to the conclusion that the settlement had attained finality. The subsequent orders passed by the Court in the partition suit, especially the order dated 06.10.2016, leaves no manner of doubt that no settlement had taken place between the parties and that, therefore, the status quo qua the title and possession of the properties, as directed by the Court on 02.05.2011, which were the subject matter of the partition suit continues to operate. In fact, once the appellants' application seeking impleadment of the brothers of respondent no.4 in the subject suit stood rejected, they are even otherwise estopped from contending that the respondent no.4 has no right or interest in the suit property. In the light of these facts, the appellants' plea that the suit property fell into the exclusive share of the respondent no.4's brothers and that the respondent no.4 has lost his title to the suit property is wholly without any merit.

25. The admitted position of the appellants, in their written statement as also before this Court, is that they were put in possession of the suit property pursuant to the lease deed executed by respondent nos.1 to 3 in their favour. Evidently, the only plea taken by the appellants for refusing to hand over possession of the suit property to respondent nos.1 to 3, even after the termination of the lease deed, is that the respondent no.4 from whom the respondent nos.1 to 3 had derived their right to lease the suit property, is no longer the owner of the said property. This plea is solely premised on a family settlement

claimed to have been arrived at between the respondent no.4 and his brothers, whereunder the suit property is stated to have gone to the share of the brothers of the respondent no.4 exclusively, which plea as noted hereinabove has been found to be without any merit.

26. The appellants, having admitted that they had entered into possession of the suit property only pursuant to the lease agreement executed in their favour by the respondent nos.1 to 3 who, in turn, had been authorised to sub-lease the property by respondent no.4, have absolutely no right to challenge either the title of the respondent no.4 to the suit property or the right of the respondent nos. 1 to 3 to seek possession of the suit property from them. It is pertinent to note that none of the brothers of the respondent no.4 have come forward to claim any exclusive right in the suit property and it is only the appellants, who were inducted in the premises as tenants, who are now trying to rake the issue of title without any merit thereto.

27. On the mere claim of the appellants that they were paying a lower monthly rent of Rs.1,00,000/- to the brothers of the respondent no.4 pursuant to an unregistered lease deed dated 06.07.2013 claimed to have been entered into with them as against the agreed upon monthly rent of Rs.1,50,000/- payable to the respondent nos.1 to 3, they cannot claim that they are not in default of rent. The payments, if any, made by the appellants to a person other than respondent nos.1 to 3 cannot be treated as payment of the rent rightfully due to the said respondents.

28. The entire attempt of the appellants has been to alter a simpliciter suit for possession into a title suit between the respondent

no.4 and his brothers and that too when none of his brothers have stepped forward to plead that the suit property belongs to them or that the respondents do not have any right to seek possession thereof. The appellants cannot compel the respondent no.4, or for that matter respondent nos. 1 to 3, to litigate with the brothers of the respondent no.4 on the question of title. Evidently, this is merely an attempt on the part of the appellants to continue holding on to the suit property even when there is no real dispute to the title of the respondents thereto; this conduct, infact, is wholly malafide.

29. In view of the categorical admissions made by the appellants with respect to their tenancy having been derived from a lease deed executed in their favour by the respondents, they are precluded under Section 116 of the Indian Evidence Act, 1872 from now turning around and disputing either the title of the respondent no.4 over the suit property or the right of the respondent nos. 1 to 3 to seek possession of the said property from them as their landlords.

30. I also do not find any merit in the appellants' submission that, in the facts of the present case, no decree on admission under Order XII Rule 6 CPC could have been passed. The object of the said provision is to enable the parties to obtain speedy justice. In the light of the admitted position that no rent for occupying the suit property had been paid by the appellants to the respondents after October, 2012 as also the appellants' unequivocal admission of having entered into possession of the suit property pursuant to a lease deed executed in their favour by the respondent nos. 1 to 3, the term of the lease having expired by the efflux of time, and of their having received a

specific notice terminating the lease, the present case falls squarely within the ambit of Order XII Rule 6 of the CPC for passing of a decree for possession. The reliance placed upon *S.M. Asif (supra)* by Mr. Tiku is wholly misplaced as the fact situation therein is entirely different. The decision in *S.M. Asif (supra)* related to a claim raised by the tenant that he had become owner of the subject property pursuant to an agreement to sell entered into with the respondent-landlord and the said decision is, therefore, not applicable to the facts of the present case.

31. In view of the stand taken by Mr. Agarwal that the respondent no.3 would press her pending suit for possession only qua the mesne profits and not for possession, as also the position emerging from the record that the suit preferred by the respondent no.4 pertains to a separate property, the appellants' plea that the subject suit was not maintainable on account of pendency of two other suits qua the same property, one by the respondent nos.3 and the other by the respondent no.4, has no merit.

32. I also do not find any merit in the appellants' submission that the respondents are not entitled to seek possession of the suit property as after the passing of the impugned judgment, the mortgagee of the said property, namely, M/s. Orix Leasing & Financial Services India Ltd., has initiated proceedings against them under Section 14(1) of the SARFAESI Act. Once the respondent no. 4 is already a party to the aforesaid proceedings it will be open for the mortgagee to exercise its rights, if any, against respondent no.4 in those proceedings and the execution of the impugned judgment cannot be withheld on this

ground. The appellants cannot be permitted to use the pendency of those proceedings to deny possession of the suit property to the respondents under the impugned judgment which, in my view, suffers from no infirmity and is hereby upheld.

33. For the aforesaid reasons, I find no merit in the appeal and the same is dismissed.

REKHA PALLI, J

AUGUST 20, 2019
gm

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