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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 10th December, 2019

Pronounced on: 13th December, 2019

+ RFA 760/2019 & CM APPL Nos.37730, 37731, 37849 of 2019

BIMLA DEVI & ORS

..... Appellants

Through : Mr.Sunil Dahiya, Advocate.

versus

MOHD SHAHZAD & ORS

..... Respondents

Through : Mr.Amit Chaddha and Mr.Shoaib
Haider, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This Regular First Appeal is preferred by the appellant against the judgment and decree dated 28.05.2018 passed in Civil Suit No.CIV.DJ./577/2018 titled as *Mohd. Shahzad Vs. Gayatri and Anr.* and also to set aside the order dated 22.07.2019 by learned Additional District Judge, Tis Hazari Courts, Delhi on an application bearing *M.No.215/2018*.

2. Before coming to the impugned judgment and order, let me state the facts in brief. In the year 1968 the property bearing No.B-6, Camp No.2, J.J. Colony, Nangloi, Delhi admeasuring 25 sq.yds. was allotted to Smt.Chameli Devi being a Jhugi Jhopri demolition affected person under *Jhugi Jhopari Removal and Rehabilitation Scheme 1968* on licence basis by the then Slum and J.J. Department, MCD through Delhi Development Authority.

3. During her lifetime i.e. on 04.08.1992 Chameli Devi had executed an Agreement to Sell, General Power of Attorney and receipt for Rs.25,000/- for sale of the property in favour of Gayatri Devi. Gayatri Devi was in possession of the suit premises and was residing with Chameli Devi till her death. On 01.04.2018 Smt. Gayatri Devi executed a Bayana receipt-cum-Agreement to Sell in favour of Mohd. Shahzad (respondent No.1)

4. On 11.05.2018 Mohd. Shahzad/respondent No.1 had filed a suit for specific performance against respondents No.2 and 3. The said suit was settled before Mediation Centre, Tis Hazari Courts vide a Mediation Agreement dated 28.05.2018 and a decree on the basis of such compromise was passed and the suit was disposed of.

5. However, on 26.06.2018 appellants no.1 and 2, *allegedly*, through appellant No. 3 filed an application under Order XLVII Rule 1 CPC for setting aside of the decree dated 28.05.2018, but the said application was dismissed on 22.07.2019, hence this appeal.

6. In this appeal the appellant has alleged the compromise was '*unlawful*' hence his application ought to have entertained by the court below and as it erred in dismissing the application, this appeal is filed. On the other hand the learned counsel for the respondent says the appellants ought to file a separate suit to agitate their claims.

7. Admittedly, Chameli Devi, the *allottee* had three daughters viz. Gayatri Devi/respondent No.2, Chander Devi/appellant No.2 and Bimla Devi/appellant No.1.

8. Admittedly Chameli Devi had leasehold rights in her favour under the settlement scheme. It is alleged she was not authorised to transfer the title of the suit property to anyone, hence, the General Power of Attorney, Agreement to Sell/receipt, all dated 04.08.1992, executed in favour of Gayatri Devi by late Chameli Devi were all fabricated as the property is still owned by DUSIB and one floor of it being in possession of Prem Chand Sharma, son of Gayatri Devi/respondent No.2. It is alleged as Mohd. Shahzad/respondent No.1 was trying to dispossess Prem Chand Sharma/appellant No.3 as also the appellants No.1 and 2, hence an effort was made by the appellants to get impleaded as parties before the learned trial court and to set aside the compromise decree, but it failed vide impugned order dated 22.07.2019.

9. The facts on record do show on 04.02.1992 Chameli Devi had transferred whatever rights she had in the property in favour of her daughter namely Gayatri Devi/respondent No.2. Admittedly none of her sisters viz. the appellants No.1 & 2 had ever agitated such act of their mother late Chameli Devi during her lifetime. Rather the review application, though allegedly filed on behalf of appellants No.1 & 2 herein but was signed only by Prem Chand Sharma, son of respondent No.2 who is residing in the subject property along with his family. The trial court has also noted Mohd. Shahzad/respondent No.1 shall get only rights to enforce the bayana receipt dated 01.04.2018 and *the decree shall not affect the right of any other legal heirs of late Chameli Devi and/or, of DUSIB.*

10. The compromise, if was unlawful or obtained by fraud has been *aptly* dealt with by the learned trial court noting, *inter alia*, the compromise was executable only against Gayatri Devi/respondent No.2 and Devki Nandan Sharma/respondent No.3. Neither the *inter se* rights of legal heirs of late Chameli Devi were decided in this suit nor the court had an occasion to examine the documents dated 04.08.1992 in such suit seeking specific performance of bayana receipt cum agreement dated 01.04.2018.

11. As per report of DUSIB on record (at page 138 of the paperbook) only Gayatri Devi/respondent No.2 with her family was only residing with late Chameli Devi in the subject property and after the death of original allottee viz Chameli Devi, the mutation could be effected in the names of legal heirs of the allottee *who has been residing with deceased allottee*. As per the annexures with the said report, the names of Bimla Devi and Chander Devi/ appellants does not appear in the list of family members of late Chameli Devi in the record of DUSIB even at the time of applying for allotment in 1973. The appellants No.1 and 2 hence were not residing with their mother late Smt.Chameli Devi in the year 1973.

12. Admittedly the suit filed was for specific performance of Bayana cum agreement to sell dated 04.08.1992. The court could have either passed a decree for specific performance or could have dismissed such suit. No ownership issues were decided or agitated in the said suit. The learned trial court examined the settlement dated 28.05.2018 and finding it *lawful* proceeded to pass a compromise decree. By its order dated 22.07.2018 it rather cleared the air saying the decree shall not affect

succession rights if any, of the appellants herein, in the subject property. Now in a suit for specific performance could the appellants be allowed to agitate their legal rights, if any, flowing from late Chameli Devi. The answer is *No*. The respondent No.1, the plaintiff would have been the last person to convert his suit for specific performance into a legal battle between the legal heirs of late Smt.Chameli Devi. Admittedly, he had no privity of contract with any of the appellants herein. Thus compromise effected between the parties to the suit, of course, was *lawful* considering the dispute between them viz *a) if the document dated 01.04.2018 was executed by respondent Nos.2 & 3 in favour of respondent No.1 and b) if respondent No.1 was ready and willing to perform his part of agreement dated 01.04.2018*. This was the only limited scope of the suit and could not be expanded further. Now if such property could be legally transferred or not, is an issue concerning DUSIB and it is free to take action, including cancellation of allotment/licence etc, but perhaps the appellants did not file any complaint before DUSIB since appellant No.3 himself and his family only is residing in a portion of the said premises.

13. Coming to maintainability of appeal, the learned counsel for the appellants urged since the appellants cannot file a separate suit, hence need to challenge the compromise decree only in this appeal. Admittedly the appellants were never a party to the suit.

14. Two judgments have been relied upon by the appellant in support of their arguments viz the *appeal being maintainable by a third party*, I have gone through both the judgments. The facts of such cited cases, however, are wholly different. In *P Chinnaraj @ P Rajan V.*

C.Ramasamy & Ors. 2014 Lawsuit (Mad) 3944, it was a dispute amongst the legal heirs qua *partition* of joint family property. Some of the legal heirs have filed a suit for partition and separate possession and have settled the matter amongst themselves and a compromise decree was passed on 13.10.2009. The court held compromise decree was *not legal* since the other legal heirs were not made party to the partition suit and such ousted members were rather claiming $1/16^{\text{th}}$ share each in the subject property; hence the court held unless and until all the family members were party to the suit, a compromise amongst few, qua sharing of the joint family property, would be an *unlawful* compromise. In these circumstances the court held an appeal be maintainable by third party.

15. Similarly in *Thakur Prasad Vs. Bhagwandas* 1985 AIR (MP) 171, it was a compromise amongst the parties; some of whom were not even parties to the suit and the compromise included even those properties which were not the suit properties, hence in the light of these facts the compromise was held to be *unlawful* and the Court held an appeal by 3rd party being maintainable.

16. The facts of the present case are wholly different. Here is a suit for specific performance amongst the respondents, wherein the court was expected to examine a *lawful agreement* amongst the parties to the suit and their *readiness* and *willingness* to conclude the transaction. The suit before the learned trial court was never a suit for partition and / or declaration where all the family members could jump in and their rights need be determined. To allow such a prayer would rather have *altered* the entire cause of action from one of specific performance of a contract

to a succession battle amongst legal heirs of Late Chameli Devi. Thus if the appellants are aggrieved of the compromise; they being strangers to the transaction involved in this suit, are well within their rights to file an independent suit agitating their independent rights, there being no bar of Order XXIII Rule 3A CPC to challenge such compromise decree by an independent suit; since such compromise is being held *lawful*. Appeal thus has no merit, hence dismissed.

17. Pending applications are also disposed of.

18. No order as to costs.

YOGESH KHANNA, J.

DECEMBER 13, 2019

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