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

% *Date of Judgment: 01.02.2019*

+ RFA(OS) 49/2018 & CM APPL 28377/2018

SHARMISHTHA SANYAL & ANR Appellants
Through Ms. Kiran Suri, Senior Advocate with
Mr. Mayank Sapra and Ms.
Aishwarya Kumar, Advocates

versus

SUJIT SEN & ORS Respondents
Through Mr. Shatadru Chakraborty, Ms. Sonia
Dube and Ms. Surbhi Anand,
Advocates for Respondent no.1
Mr. Arjun Mitra, Advocate for
Defendant no.2

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Challenge in this appeal is to the order dated 01.05.2018 by which an application filed by the respondent no.1 under Order VII Rule 11 CPC was allowed by the learned Single Judge and the plaint was rejected. The subject matter of the present appeal is a flat constructed on a property bearing no. J-1975, Chitranjan Park, New Delhi, which was earlier granted on leasehold basis and was subsequently converted into freehold on 01.03.2000. The property belonged to two brothers namely Sh. Sujit Sen and Sh. Subir Sen. A partition deed was executed between the brothers on 15.04.2002 and was registered. The

property was partitioned into two equal halves/shares, whereby the front portion, fell to the share of Sh. Subir Sen, while the rear half portion fell to the share of Sh. Sujit Sen. The first floor of the rear half portion of the property which fell to the share of Sh. Sujit Sen was sold by means of a Sale Deed dated 07.05.2014 to the appellants herein.

2. The appellants had filed a suit for declaration claiming the following reliefs:-

(a) declaration of the Partition Deed dated 15th April, 2002 as void *ab initio*;

(b) declaration that property is co-owned by the parties with each of the plaintiffs No. 1&2 having 1/12th share, defendant no.1 having 1/3rd share and each of the defendants No.2&3 having 1/4th share each;

Or in the alternative

(c) declaration as void *ab initio* of the Agreement to Sell dated 31st December, 2013 by the defendant No.1 in favour of the plaintiffs;

Or in the alternative

(d) mandatory injunction directing defendant No.1 to perform and carry out the offer contained in his letter dated 4th November, 2016 of buying back the share conveyed to the plaintiffs;

Or in the alternative

(e) declaration that the actual consideration amount paid by the plaintiffs for purchase was Rs. 62 lakhs but the defendant No.1 had

received Rs. 1.5 crores (less TDS deducted) and therefore is liable to restitute the balance amount of Rs. 88,00,000/- to the plaintiffs.

3. The plaint was rejected for various reasons as stated in the impugned order. During the pendency of this appeal, the parties have arrived at an amicable settlement. To enable the parties and counsels to discuss the terms of settlement, with their respective clients, the matter was passed over and at the second call, the following settlement has been arrived at:-

- (1) Respondents agree and admit the settled possession of the appellants in terms of the sale deed entered into between Sh. Sujit Sen and the appellants herein and same would remain undisturbed as per the terms of the Sale Deed.
- (2) Any constructions carried out by either of the parties shall be in accordance with the bye-laws of the Municipal Corporation. Parties would ensure minimum inconvenience to the other occupants of the building.
- (3) In case any fresh construction is to be carried out by any of the parties in terms of the law laid down in the case of NDMC Vs. Kanwal Sibal in LPA 543/2015 reported as 2015 SCC OnLine Del 11255, it would not be necessary to obtain No Objection Certificate (NOC) from each other.
- (4) The parties carrying out construction will ensure that there is no damage to the structure of the building and the flat of the appellant and in case of any damage, the same would be repaired.

4. All disputes and differences, subject matter of CS(OS) 638/2017 and Suit No. 210203/2016 filed by respondent no.1 herein, pending in the Court of Ms. Vandana Jain, learned ADJ, Saket, New Delhi, would stand settled and the suit filed in the Saket Court would be withdrawn.
5. In case of any fresh cause of action, parties would be entitled to take recourse to such remedies as are available to them in accordance with law.
6. Counsel for respondents submits that on account of pending litigations, various communications were addressed by the appellant to the statutory bodies.
7. Counsel for appellant submits that copy of this order of recording their settlement would be forwarded to the concerned authorities, including the Office of the Sub-Registrar, properties and SDM and pending complaints would not be pressed.
8. The order pertaining to the cost stands modified. No costs would be paid by the Appellant.
9. Appeal is accordingly disposed of in above agreed terms. Parties shall remain bound by the terms of settlement. Decree sheet be drawn up.

G.S.SISTANI, J

JYOTI SINGH, J

FEBRUARY 01, 2019

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