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

+ **FAO(OS) 120/2018 & CM APPL. 29473/2018 (stay)**

MUKESH SAINI

..... Appellant

Through: **Mr. M.P. Sharma & Mr. Rehan Alam,**
Adv.

versus

MADAN LAL SAINI & ORS

..... Respondents

Through: **Mr. Rajesh Pandey, Adv. for R-1 & 4**
along with R-1 & 4 in person.
Mr. Faisal Farook with Mr. Shubail
Farook & Mr. Prabul Jindal, Adv. for
R-5 & 6.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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07.03.2019

1. Challenging an order dated 10.07.2018 passed by the learned Court below in CS(OS) 1169/2014, this appeal has been filed.
2. Parties to the suit belong to a Hindu undivided family. Appellant/plaintiff being eldest son of defendant/respondent No.1, one Asha Rani expired intestate. She was owner of the suit property in question situated in Kalkaji, New Delhi. Respondent No.1 had entered into an agreement to sell the suit property by agreement dated 27.01.2014 and received a sum of ₹50 lakhs as advance. Plaintiff has filed the suit for permanent injunction restraining the respondents, particularly, defendant

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No.1 to sell/transfer any of the suit property in any way or to create any third party interest in favour of any other person to restrain the respondent No.1 to go ahead with the same as per agreement dated 27.01.2014. It is the case of the plaintiff before us that if the respondent is not restrained, he will create third party interest and if the sale deed is executed it would create further confusion in the matter and therefore in permitting execution of the sale deed on certain conditions the learned Single Judge has committed an error.

3. We have heard learned counsel for the parties and we find that while dealing with the application under Order XXXIX Rule 2A CPC the interim protection granted by the learned Single Judge in Para 5 found that except the plaintiff herein all other co-owners want to go ahead with the same transaction. It is also found that the proposed purchaser has been given possession of the suit property much prior to filing of the suit and they have already started raising construction. A substantial sum of ₹50 lakhs as agreed to out of the sale consideration of ₹2.4 crores have finally been granted. The learned Court found that the agreement to sell has various consequences in case the sale deed is not executed and the same would lead to further complication and multiplicity of litigation.

4. Taking note of all these circumstances, the plaintiff's interest has been adequately protected while granting injunction and the injunction has been granted in the following terms:

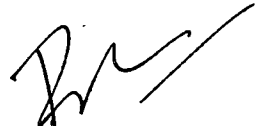
"5. Under such circumstances, the order that would balance the equities between all the parties concerned, would be to secure the interest of the Plaintiff by directing the Defendants to deposit 1/5th of the sale consideration in the Court. The Defendants are permitted to execute the sale deed in favour of the proposed purchasers, as, if the sale transaction is not given a closure, there would be higher liabilities fastened upon the

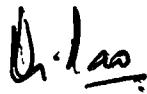
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Defendants. The sale deed and other documents etc. shall be executed in favour of the proposed purchasers within a period of six weeks upon receipt of the complete consideration. The proposed purchasers shall make a deposit of Rs. 48 lakhs with the Registrar General of this Court, in order to safeguard the interest of the Plaintiff. The amount so deposited shall be kept in an FDR by the Registrar General of this Court. The sale deed shall not be executed by the parties until the said deposit is made in this Court. The remaining sale consideration shall be paid to the Defendants. The deposit of Rs. 48 lakhs shall abide by the final decision in the suit."

5. Taking note of the aforesaid circumstances and the fact that the learned Single Judge has already protected the interest of the plaintiff adequately and the sale has been made subject to final decision of the suit, it does not cause any prejudice to the appellant and therefore the discretion exercised in grant of injunction does not call for any interference.

6. Accordingly, the appeal as well as the pending application stand disposed of.


CHIEF JUSTICE


V. KAMESWAR RAO, J

MARCH 07, 2019

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