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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 13th November, 2019

+ **FAO 236/2017 & CM No. 19623/2017**

OM PRAKASH

..... Appellant

Through: Mr. Rajeev Saxena, Mr. R.K.
Bedi, Mr. Rachit Sahney &
Mr. Manish Khurana, Advs.

Versus

SONIA DUA & ORS

..... Respondents

Through: Mr. Abid Ali Beeran P., Adv.
for R-1, 6 & 7.
Mr. Y.P. Ahuja & Mr. Atul
Ahuja, Advs. for R-2 to 5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The order dated 01.05.2017 passed by the additional district judge which was impugned by this appeal was rendered in civil suit (612036/2016) instituted by the first respondent impleading the other respondents as defendants. By the said suit, the first respondent (plaintiff) prayed for decrees of partition, possession and injunction vis-à-vis property described as 2751, Ranjeet Nagar, New Delhi - 110008. It appears that she (the first respondent/plaintiff) and sixth and seventh respondents herein (they being fifth and sixth defendants in the civil suit) claimed to be the legal heirs of late Mr. Anil Kumar Dua, the subject property forming his estate. The dispute essentially is

between the said set of parties on one hand and second to fifth respondents (they being first to fourth defendants in the civil suit) on the other.

2. The appellant herein is a builder, a third party, to whom the responsibility of re-development of super-structure on the above-mentioned plot of land was entrusted by late Mr. Anil Kumar Dua, during his lifetime. It appears the superstructure had been completed and, in terms of the collaboration agreement, the appellant (the builder) was to be entitled to receive ownership of the entire first and second floors along with rear terrace of the newly developed superstructure. The appellant was added as seventh defendant to the fray of parties before the trial court, by an order passed subsequently.

3. The additional district judge, by the impugned order dated 01.05.2017, had granted prayer for *ad interim injunction* by an application moved by plaintiff under Order XXXIX Rules 1 and 2 CPC. Given the above-mentioned interim injunction order, the discharge of responsibilities by the appellant (builder) came to be blocked. The appellant was, thus, aggrieved and brought a challenge through the present appeal.

4. On 10.05.2018, a learned single judge of this Court, then in *seisin* of the matter, passed the following order:-

“It is not in a dispute that the building is constructed on property identified as Municipal No. XVII/2751 in Khasra No. 835/446 situated in the Revenue Estate of Village Khampur, in the abadi known as Ranjeet Nagar, New Delhi. The ground floor and the third floor with roof on the front side fell into the share of Late Mr. Anil Kumar Dua. The rear portion of the terrace fell

into the share of the appellant /builder. The third floor comprises two residential units. The ground floor is occupied by the family of late Mr. Anil Kumar Du and has been acknowledged as his family. However, a dispute has been raised by respondent nos. 1, 6 and 7, claiming to be the family members of late Mr. Anil Kumar Dua. This claim has been disputed by respondent nos. 2, 3, 4 and 5, who are presently in possession of the ground floor; they contend that only they are entitled to the estate of late Mr. Anil Kumar Dua. They also refer to bank records and other documents pertaining to the estate of Late Mr. Anil Kumar Dua, in which they are either the nominees or successors. They contend that their possession of the ground floor and itself establishes that only they are the undisputed family members of late Mr. Anil Kumar Dua. Respondent nos.1, 6 & 7 have opposed to the handing over of the third floor and the front portion of the terrace to R2 to R-5 and any handing over to the latter would prejudice their rights on the ground that they too have a biological link with late Mr. Anil Kumar Dua. The learned counsel for respondent nos. 1, 6 and 7 relies upon Survivor Certificate dated 13.01.2017 which according to them was issued after due proceedings in which respondent nos. 2 to 5 participated. A copy of the same has been handed over to the contesting parties during course of the hearing. Be that as it may, the issue of the respondent nos.1, 6 and 7 is yet to be determined. Insofar respondent nos. 2, 3, 4 and 5 are concerned, the fact that they were living with late Mr. Anil Kumar Dua and survived him as family and his successors, is not in doubt. Accordingly, the front portion of the third floor shall be handed over to them, without prejudice to the rights and contentions of the respondent nos. 1, 6 and 7. The right to construct on the said building shall be determined at a later stage. However, respondent nos. 2 to 5 shall have the right to use the terrace till further

orders. The keys of the rare portion shall be deposited in this Court.

The learned counsel for the appellant undertakes to execute the transfer as and when directed. Let an undertaking be filed in this regard within six weeks by the appellant.

The learned counsel for respondent nos. 2 to 5 submits that property transfer documents have been executed, however it is still pending registration. There may be an element of dispute or doubt regarding the registration of the sale in favour of respondent nos. 2 to 5.

The keys of the rear part of the terrace, if any, shall be deposited in the Court.

List for further proceedings on 12.07.2018”.

5. It may be mentioned here that the expression “*rare portion*” appearing in last sentence of fourth penultimate paragraph of above-quoted order should actually read “*rear portion*”. The order shall stand corrected accordingly.

6. The parties on all sides agree that the appellant has submitted an undertaking on affidavit in terms of the directions in the above-mentioned order and has also deposited the key of the concerned portion with the registry. The respondents through their respective counsel further agree with the submission of the counsel for the appellant that the issues which persist essentially involve them, the appellant having no connection whatsoever therewith. They also submit that they wish to get the dispute adjudicated upon or explore the possibility of amicable resolution of their *inter-se* dispute, by

seeking reference to the mediation and pray for a reference to mediation. They further agree with the submission of the appellant that given the above compliance with the directions of this Court by the appellant nothing further remains insofar as he (the appellant) is concerned.

7. On the joint request of the respondents through their respective counsel, the said set of parties are referred to process of mediation. They may appear before Delhi High Court Mediation and Conciliation Centre at 3.30 p.m. on 3rd December, 2019. The report of mediator shall be submitted to the trial court.

8. The learned counsel for the appellant submits that given the above facts and circumstances, no further relief is to be pressed in the present appeal which may be disposed of accordingly, he reserving the right to press for relief *vis-a-vis* the matter concerning his other rights or obligations under the collaboration agreement before the trial court where the matter is pending. The counsel for the respondent has no objection.

9. The appeal and the pending application are disposed of accordingly.

R.K.GAUBA, J.

NOVEMBER 13, 2019

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