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

+ **FAO(OS) 26/2020 & C.M. Nos.8837-39/2020**

GEETA BHUDHIRAJA Appellant

Through Mr. Ashish Kapur and Ms. Chhavi
Luthra, Advocates.

versus

CHANCHAL KUMAR CHANANA & ORS Respondents

Through None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **13.03.2020**

1 The instant appeal is directed against an order dated 09.12.2019, passed by the learned Single Judge dismissing the two applications filed by the appellant, one under Order XXIII Rule 3 CPC for transposing her as the plaintiff in a suit (registered as CS (OS) No.1394/2015) for partition filed by her mother and the other being an application moved under Section 151 CPC for recalling a settlement dated 12.01.2016, entered into between the parties.

2 The facts leading to the appeal are that Smt. Daya Rani Chanana had filed a suit for partition of properties between herself and her children. The appellant herein was arrayed as defendant No. 4 and the other children being two sons and one daughter were arrayed as defendants No. 1 to 3 in the suit.

3 The case was referred to mediation and the parties arrived at a

settlement on 12.01.2016. Under the settlement, the two sons of the plaintiff, Smt. Daya Rani Chanana (since deceased) agreed to pay a sum of Rs.15,000/- per month to their mother which was to be deposited in her bank account and the appellant herein who was party no. five in the Settlement Agreement, was to be paid a sum of Rs.58 lacs. Vide order dated 15.01.2016, the suit was decreed in terms of the settlement.

4. After the settlement was entered into, Smt. Daya Rani Chanana filed an application (I.A. No.9296/2016), for revocation of the Settlement Agreement dated 12.01.2016. Material on record discloses that vide an order dated 31.01.2018 passed in I.A. No. 7351/2016, the learned Single Judge recorded that the said Smt. Daya Rani Chanana (plaintiff in the suit) was satisfied with the arrangements that were made by her two sons. The said order which has been extracted in the impugned order is, once again being reproduced below for ready reference:-

“IA Nos.7351/2016 & 9296/2016 in CS (OS) 1394/2015

... Today, the plaintiff is personally present in the Court. She states that she is satisfied with the arrangements that have been made by the defendants i.e. two sons.

Learned counsel for plaintiff prays that the matter be monitored by the Court for a little longer time.

In the interest of justice, renotify on 18th April, 2018 for directions.”

5. Smt. Daya Rani Chanana passed away on 10.05.2018 and

resultantly I.A. No. 9296/2016, was dismissed as infructuous. After the said application was dismissed, the appellant herein has filed the instant applications, which as stated earlier, were seeking transposition as a plaintiff and for recalling the settlement arrived at. The grounds on which the applications were filed were that her two brothers had failed to fulfil their obligations under the settlement inasmuch as they did not take proper care of their mother. Various instances were cited by the appellant in the applications regarding the conduct of the two brothers which, according to her, was against the spirit of the Settlement Agreement dated 12.01.2016. It was, therefore, the contention of the appellant that since the very basis for which the Agreement was executed was to protect the interest of the mother and the brothers had failed to do so, the settlement must also fail. It was also stated that the settlement is completely one sided and the distribution of assets is completely disproportionate.

6 Replies in opposition were filed by the defendant No. 1. In the said reply, it was stated that the appellant has already acted on the settlement and received a sum of Rs.44,70,000/- in terms of the settlement and, now it is not open for her to wriggle out of the settlement. It was also stated that the appellant wanted to get out of the settlement in order to extract more money from the respondents.

7 The learned Single Judge was of the opinion that during her lifetime, the appellant's mother, the deceased plaintiff had herself accepted in court on 31.01.2018 that she was satisfied with the arrangement made by her two sons and therefore, there was no reason to entertain the applications which were dismissed. Assailing the said

order, the instant appeal has been filed.

8 Mr. Ashish Kapur, learned counsel for the appellant has primarily reiterated the contentions raised in the two applications. It has been strenuously urged that the two sons, defendant Nos.1 and 2 were not taking proper care of the mother and that the appellant had decided to forego what was due to her only because she had hoped that they would take good care of the mother. It is argued that the respondents having gone back from their word and virtually deserted the mother, the settlement arrived at between the parties must also be revoked.

9 As rightly observed by the learned Single Judge, the material on record discloses that the mother was satisfied with the arrangement that were going on and as noticed above, she had herself given a statement in court on 31.01.2018, that she was satisfied with the arrangements being made by her two sons. In the lifetime her mother, the appellant did not choose to challenge the Settlement Agreement dated 12.01.2016 instead, she waited till her mother passed away on 16.05.2018, before moving the instant applications on the ground that since the settlement was for the benefit of the mother and as the two sons had abandoned her, the same must be revoked.

10 As noticed by the learned Single Judge, the appellant had duly acted on the terms of the Settlement Agreement and accepted a substantial amount of Rs.44,70,000/- from the respondents 1 and 2 from out of Rs.58 lacs and now, after accepting the money which was due and payable under the settlement, she has decided to challenge the settlement. The conduct of the appellant would show that she is

actually trying to make a fortune out of the tragedy, on her mother's demise. The said conduct to say the least, is not expected of a daughter/sister who should respect a family settlement entered into between her, her brothers and mother. It is well settled that a family settlement cannot be reopened unless it is vitiated by fraud. The record reveals that the settlement was entered into on 12.01.2016, whereas the instant applications were filed only in October 2018, after the demise of the mother. We are of the firm view that it is no longer open to the appellant to claim that the agreement is vitiated by any kind of deceit practiced by her brothers or that she ought to be transposed as a plaintiff in a decided suit and be permitted to prosecute the same.

11 In view of the above facts and circumstances, we do not find any infirmity in the impugned order for interference and the intra-court appeal is resultantly dismissed *in limine*. No costs.

SUBRAMONIUM PRASAD, J.

HIMA KOHLI, J.

MARCH 13, 2020

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