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

+ **FAO(OS) 44/2020**

ANANT NARAYAN RAI

..... Appellant

Through: Ms. Pinky Anand, Sr. Advocate
with Mr. Sanjay Sahay, Ms. Jhum Jhum
Sarkar and Mr. Hemant Arya, Advocates.

versus

SIDDHARTH RAI & ORS.

..... Respondents

Through: Mr. P.P. Malhotra, Sr. Advocate
with Mr. A.K. Panda, Advocate for R-1
Mr. Tanvir Nayar and Mr. Samar Khan,
Advocates for R-2 and R-7.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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19.08.2020

HEARD THROUGH VIDEOCONFERENCING

FAO(OS) No. 44/2020, C.M. APPL. 19532/2020 (by the appellant for interim relief) and C.M. APPL. Nos.19533-534/2020(Exemptions)

1. The appellant/plaintiff is aggrieved by a part of the order dated 10.7.2020, passed by the learned Single Judge on a stay application moved by him in a suit for partition, declaration, rendition of accounts, permanent injunction etc. instituted by him against the respondents/defendants in respect of properties described as 'joint family properties', as mentioned in Schedule A attached to the plaint to the extent that while passing the

restraint order, the learned Single Judge has restrained the respondents/defendants from creating any third party rights only in respect of two properties out of five properties mentioned in Schedule A, which are at Sr. No. (i) and (v), while refusing to grant any injunction order in respect of the properties mentioned at Sr. No.(ii) to (iv) of Schedule A.

2. On examining the details of the properties mentioned at Schedule A, it transpires that the property at Sr. No.(ii), is a Farm House measuring 8.5 acres situated in Dera Gaon, New Delhi. Mr. P.P. Malhotra, learned Sr. Advocate appearing for the respondent/defendant No.1 and states on instructions that the said property was sold as long back as in the year 2010.

3. Ms. Anand, learned Sr. Advocate appearing for the appellant/plaintiff submits that all the five properties mentioned in Schedule A were the subject matter of an earlier suit instituted by the appellant/plaintiff, who was at that time a minor, registered as CS (OS) 1737/2007 where an injunction was operating against the respondents/defendants and they did not reveal the factum of sale to the Court in the said proceedings. In fact, the said suit was dismissed for non-joinder of necessary parties vide order 06.2.2020, while reserving the right of the appellant/plaintiff to institute a fresh suit on the same cause of action. Learned Senior Advocate thus states that from the year 2007 till February, 2020 an injunction order was operating against the respondents/defendants, who could not have sold any of the properties mentioned in Schedule A, much less the one at Sr.No.(ii).

4. Mr. Malhotra, learned Sr. Advocate disputes the aforesaid submission and states that in the earlier proceedings, the respondents/defendants had not been restrained from dealing with the properties in question, which submission is however contested by Ms. Anand, learned Sr. Advocate, who

states that the restraint order passed in the earlier suit, is a matter of record.

5. On enquiring from Mr. Malhotra, learned Sr. Advocate as to why was the said fact was not pointed out to the learned Single Judge in the subsequent suit, he submits on instructions that summons were issued in the suit only on 10.7.2020 and time was granted to the respondents/defendants to file their written statement. In the said written statement, the factum of sale of the property mentioned at Sr. No.(ii) of Schedule A, has been detailed along with the relevant documents.

6. In view of the statement made by Mr. Malhotra, learned Sr. Advocate about sale of the property at Sr.No.(ii) in the year 2010, we do not propose to go into the said aspect. However, leave is granted to the appellant/plaintiff to take up the issue regarding sale of the Farm House in the teeth of a stay order, if any, passed in the earlier proceedings between the parties, before the appropriate forum.

7. Coming next to the property mentioned at Sr.No.(iii) of Schedule A, i.e, house built in Khasra No.275, 1056, situated at Semri Jamalpur, Mau, Uttar Pradesh, Mr. Malhotra, learned Sr. Advocate submits that the appellant/plaintiff himself is residing in the said property along with his mother. Ms. Anand, learned Sr. Advocate appearing for the appellant confirms the said position but states that possession itself is not enough as the respondents/defendants may clandestinely change the title of the said property and create third party interest therein. Mr. Malhotra, learned Sr. Advocate states on instructions that the respondents/defendants have no such intention.

8. That being the position, it is directed that the restraint order passed by the learned Single Judge in respect of the properties mentioned at Sr.No.(i)

and (v) of Schedule A, shall also extend to the property mentioned at Sr. No.(iii).

9. The third property in question at Sr.No.(iv) is stated to be agricultural land measuring 20 bighas situated at Semri Jamalpur, Mau, Uttar Pradesh. Both the parties state that they are not in a possession of the said parcel of land. Neither side has any objection to the restraint order being extended to the said parcel of land. Accordingly, it is directed that the property at Sr. No.(iv) of Schedule A shall also be covered by the order dated 10.7.2020, passed by the learned Single Judge in respect of the properties mentioned at Sr.No.(i) and (v) of Schedule A.

10. With these directions, the present appeal is disposed of along with the pending applications.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

AUGUST 19, 2020

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