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

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Judgment delivered on: 07.01.2020

+ FAO 5/2020

SHACHI MAHAJAN & ANR

..... Appellants

versus

SANTOSH MAHAJAN & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Puneet Kumar Saxena, Advocate

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 109/2020 (Exemption)

Allowed, subject to all just exceptions.

FAO 5/2020 & CM APPL. 108/2020 (stay)

1. Appellant impugns order dated 17.09.2019 whereby the application of the appellant under Order 39 Rules 1 and 2 CPC has been dismissed.

2. Appellants had filed the subject suit for declaration injunction and possession contending that the husband of appellant no. 1 and father of appellant no. 2 had 1/3rd share in property bearing no. D-13,

Anand Vihar, Delhi and said property has been registered in the name of respondent no. 1 (mother of the husband of appellant No. 1), based on a conveyance deed registered with the DDA.

3. It is contended that the conveyance deed was registered by committing a fraud and it is husband of appellant no. 1 who had 1/3rd share therein, accordingly cancellation of conveyance deed is sought. Further, it is prayed that the subsequent sale deed in favour of respondent no. 4 and 5 be also cancelled and declared null and void.

4. Trial court has dismissed the application under Order 39 Rules 1 and 2 CPC, inter-alia, on the ground that in earlier matrimonial proceedings initiated by the appellants certain orders were passed which was upheld by the Supreme Court.

5. The case of the Respondents is that the Respondent No. 1 was the sole and absolute owner of the subject property and her son i.e. husband of the appellant No. 1 and father of appellant No. 2 had no right title or interest in the same. Even other he has not claimed any share and has supported the case of Respondent No. 1.

6. Proceedings were also initiated by appellants seeking a restraint on the respondent No. 1 from selling the subject property and also seeking a right of residence therein.

7. By judgment dated 10.01.2019 in Crl. M.C. 1868/2016 certain protective orders were passed, inter-alia, directing respondent no. 1 to

acquire a flat on rent for the appellants. Respondent no. 1 was also directed to deposit 1/6th share of the sale proceeds i.e. one-half of one-third representing the alleged share of the husband of appellant no. 1 and father of appellant no. 2 with the trial court to secure the rights, if any, of the appellants to be determined in the subject Suit.

8. It is admitted by the learned counsel for the appellants that said amount has already been deposited.

9. Judgment of this court dated 10.01.2019 has been upheld by the Supreme Court in SLP (Crl.) No. 1142-45/2019 by order dated 01.02.2019.

10. Since this court has already passed protective order protecting the interests of the appellants and securing part the sale proceeds representing half of the alleged 1/3rd share of the husband of the Appellant No. 1, no further injunction order could have been passed by the trial court by further putting a restraint to transfer the share of respondent no. 4 and 5.

11. Further contention of the learned counsel for the appellants that trial court by the impugned order has conclusively returned finding of facts and ruled on certain issues which are yet to be decided by the trial court after trial, is misplaced, as the same is not borne out from the impugned order.

12. In any event, the observations of a court in an order passed

under Order 39 Rules 1 and 2 CPC are only prima facie observations and have no bearing on the final outcome of the Suit, which is to be decided on the evidence led by the parties.

13. I find no infirmity in the order dated 17.09.2018 rejecting the application of the appellant under Order 39 Rules 1 and 2.

14. I find no merit in the appeal. The appeal is accordingly dismissed.

15. Order *dasti* under signatures of the Court Master.

January 07, 2020/‘rs’

SANJEEV SACHDEVA, J.