

\$~Suppl.-17

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

+ RFA (OS) 14/2021

UMA PATI SOOD

.....Appellant

Through: Mr. Manohar Lal, Advocate

Versus

RAKESH KATYAL & ORS.Respondents

Through: Mr. Rahul Chaudhary with
Mr. Avesh Chaudhary and
Mr. Abhay Shankar Dubey,
Advocates for R-1.

Mr. Ankit Jain with Mr. Shantnu
Aggarwal, Mr. Abhay Pratap Singh
and Ms. Mohina Anand, Advocates
for R-2.

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Date of Decision: 19th April, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

The appeal has been heard by way of video conferencing.

CM APPLs. 14552-14553/2021

Allowed, subject to all just exceptions.

Accordingly, the applications stand disposed of.

RFA (OS) 14/2021 & CM APPL. 14551/2021

1. Present appeal has been filed challenging the preliminary decree dated 23rd March, 2021 passed by the learned Single Judge in CS (OS)

116/2020. Appellant also prays that the said suit for partition, filed by respondent no.1, be dismissed.

2. Learned counsel for the appellant states that the learned Single Judge failed to appreciate the fact that respondent No. 1, vide the alleged sale deed dated 26th December, 2018, acquired 1/4th share in the suit property while CS No. 1053/2018 was pending before the ADJ, Dwarka Courts. He submits that since the said suit was disposed of in terms of a consent order dated 07th March, 2019, whereby the respondent No. 2 agreed to complete the construction as per the collaboration agreement, the rights of respondent no. 1, with respect to the suit property, are subservient to the consent order dated 07th March, 2019. He submits that the *Rule of Priority* is applicable in the present case wherein the same property, interests were transferred to different persons, i.e. respondents No. 2 and 3 and M/s. Jolly Brothers Buildwell Pvt. Ltd. who later on sold their interests to respondent No. 1, in such a manner that use or enjoyment by one transferee is against the interest of the other.

3. He contends that since respondent no.2, who was a signatory to the sale deed dated 26th December, 2018, was a party to the suit before the ADJ, the logical sequitur would be that even respondent no.1 was aware of the pendency of the suit and yet, the respondents continued with the alleged sale to complicate the matter and usurp the appellant's property. He further submits that the Apex Court in '**Rajender Singh and Ors. v. Santa Singh and Ors.**' *MANU/SC/0342/1973 : AIR 1973 SC 2537* has held that Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded

in it. The whole object of the doctrine of *lis pendens* is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property which are the subject matter of a litigation, to the power and jurisdiction of the Court so as to prevent the object of a pending action from being defeated.

4. Having heard learned counsel for the appellant, this Court finds that respondent no. 1 had purchased his share in suit property from M/s.Jolly Brothers Buildwell Pvt. Ltd. Neither respondent no. 1 nor M/s.Jolly Brothers Buildwell Pvt. Ltd. was initially made parties to the suit filed by the appellant before the District Court. Even the subsequent application filed by the appellant for impleadment was never allowed. Further, respondent no. 1 and M/s. Jolly Brothers Buildwell Pvt. Ltd. were not parties to the Collaboration Agreement or Compromise Decree between the respondent no. 2 and the appellant. Consequently, duly signed compromise decree between the appellant and respondent no. 1 binds the respondent no. 1 and appellant only.

5. In fact, respondent no. 2 is not the predecessor-in-interest of respondent no. 1. Respondent no. 2 had signed the respondent no. 1's sale deed as a witness only. Accordingly, respondent no. 1 is not an alienee or successor-in-interest of respondent no. 2. Consequently, the doctrine of *lis pendense*, *Rule of Priority* and judgment of the Supreme Court in '**Rajender Singh and Ors. v. Santa Singh and Ors.** (supra) have no application to the present case.

6. In any event, the appellant's half share in the suit property has not been touched or trampled upon while passing the impugned decree of

partition. Consequently, the appeal and application being bereft of merits are dismissed.

7. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

APRIL 19, 2021

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