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

Date of Decision: 23.03.2021

+ **CM(M) 541/2019**

DEEPSHREE SINGH

..... Petitioner

Through

Mr.Ankur Mahindro, Mr.Rohan
Taneja, Advs.

versus

RISHI PRATAP SINGH & ORS.

..... Respondents

Through

Mr.Ritin Rai,Sr.Adv.with
Ms.Kritikak Bhandari, Advs.
for R-1 to 3 and 5 to 8.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the order dated 16.01.2019 passed by the learned Additional District Judge-04 (Central) in Suit, being CS No.12031 of 2016, titled ***Rishi Pratap Singh v. Dr. Chander Kanta Khan & Ors.***, dismissing the application filed by the petitioner herein, who is defendant no.8 in the Suit, praying for setting aside of the order and decree dated 18.11.2013 passed in the Suit.

2. The petitioner herein was arrayed as defendant no.8 in the Suit. The Suit was filed by the respondent no.1 praying for the following relief:

“(i). to declare that the Family Settlement Deed dated 23rd December 1999, two Relinquishment Deeds both dated 29th December 1999 & 25th February 2008 in respect of 1/6th share of late Sh. Shiv Dayal Singh in property no. 18, New Rohtak Road, New Delhi, are illegally executed, are null & void and cannot be acted upon.

“(ii). to direct D.D.A. not to mutate 1/6th share of late Sh. Shiv Dayal Singh in property no. 18, New Rohtak Road, New Delhi, on the basis of Family Settlement Deed dated 23.12.1999, Relinquishment Deeds dated 29.12.1999 and relinquishment Deed dated 25.02.2008 but to mutate 1/6th share of late Sh. Shiv Dayal Singh in property no. 18, New Rohtak Road, New Delhi, according to Judgment & Decree as may ultimately be passed in the present Suit.

“(iii). pass a Decree of Possession in respect of 1/6th share of late Sh. Shiv Dayal Singh in property no. 18, New Rohtak Road, New Delhi, directing Dr. R.S. Chauhan to handover vacant & physical possession of 1/6th share of late Sh. Shiv dayal Singh to the legal heirs of late Sh. Shiv Dayal Singh according to their share as determined otherwise, the said portion of property no. 18, New Rohtak Road, New Delhi, as shown in the Site plan, after recovering possession from Dr. R.S. Chauhan, be put to Public Auction and sale proceeds distributed amongst the legal heirs of late Sh. Shiv Dayal Singh in accordance with their shares as may be determined by this Court.

“(iv). to pass an Injunction Order directing D.D.A. to mutate the 1/6th share of late Sh. Shiv Dayal Singh in property no. 18, New Rohtak Road, New

Delhi, I the manner as may be directed by the Court on final decision of the case.”

3. The petitioner was proceeded *ex parte* on 27.04.2011.
4. I.A. No.18213 of 2013 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 was thereafter filed seeking to place on record a compromise arrived at between the plaintiff and defendant nos.1, 2, and 4 to 6.
5. On 18.11.2013, the said application was allowed and the Suit was disposed of in terms of the settlement. The Court took note of the fact that defendant nos.2, 3, 4A, 4B, 6, 7 and 8 had been proceeded *ex parte* in the Suit.
6. It is the case of the petitioner that the settlement having been arrived at only between the plaintiff and the defendant nos.1, 2, 4 to 6, was not binding on the petitioner and the petitioner is aggrieved of the decree having been passed on the basis of the compromise.
7. It is to be noted that the order dated 18.11.2013 was passed by this Court as the Suit at that stage was pending before this Court. However, on the application being filed by the petitioner and due to rise of the pecuniary jurisdiction, the said application was thereafter transferred to the Court of the learned Additional District Judge, who has, by the Impugned Order, dismissed the said application observing therein that the remedy of the petitioner would be in form of an application under Order IX Rule 13 of the Code. It was further held

that the application is barred by time and the same is liable to be dismissed.

8. At the outset, it has been put to the learned counsel for the petitioner that the remedy of the petitioner against a decree passed, though *ex parte*, is in form of an application seeking review of the same; or in form of an application under Order IX Rule 13 of the Code seeking to set aside an *ex parte* decree; or in form of an appeal under Section 96(2) of the Code. The learned counsel for the petitioner, however, submits that an application under Section 151 of the Code would also be maintainable to challenge the decree, which though having been passed *ex parte*, adversely affects the rights of the petitioner as having been passed unlawfully on the basis of a compromise.

9. I do not agree with the submission made by the learned counsel for the petitioner. Law has given specific remedies to the petitioner if she is aggrieved of the decree passed by the Court. The petitioner cannot bypass such remedies and invoke the jurisdiction of this Court under Article 227 of the Constitution of India.

10. Accordingly, the present petition is dismissed, leaving it open to the petitioner to avail the statutory remedy, if so advised, in accordance with the law.

NAVIN CHAWLA, J

MARCH 23, 2021/Arya/P