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

Date of Decision: 2nd May, 2024

+ **CS(OS) 1841/2014 & I.As. 15452-53/2021**

MGS(INDIA) PVT LTD

..... Plaintiff

Through: Mr. Rajesh Yadav, Senior Advocate
with Mr. Bharat Arora, Mr.
Dhananjay Mehlawat and Ms.
Ruchira Arora, Advs. (M:
9811628929)

versus

**SOUTH DELHI MUNICIPAL CORPORATION OF DELHI
& ORS**

..... Defendants

Through: Mr. Sudeep Singh, Mr. Maheshwar
Das & Mr. K G Tyagi, Advs. for D-5.
Mr. Hirday Virdi, Adv. for
Applicant. (M: 8375839726)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

**I.As.15452/2021 (for recalling of order dated 11th October, 2021) &
15453/2021 (u/O I Rule 10 CPC) in CS(OS) 1841/2014**

2. These are two applications seeking impleadment of certain parties and recall of the compromise deed dated 11th October, 2021 in respect of property bearing No.A-64, South Extension -II, New Delhi.

3. A suit for declaration was filed by Plaintiff Nos.1, 2 & 3, who own the property in the following shares, against various governmental authorities and Shri Adesh Kumar and Shri Ramesh Kumar. The shareholdings of the Plaintiffs are as follows:

CS(OS) 1841/2014

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(i) Plaintiff No.1 (M/s MGS (India) Pvt. Ltd.) - 2/3rd

(ii) Plaintiff Nos.2 & 3 (Smt. Kiran Dutta & Smt. Poonam Dutta)-
1/3rd

4. The prayer in the plaint was for declaration that said Shri Arvind Kumar had committed forgery and fabrication and had managed to obtain the said property reflected in his own name in the official records. The allegation was that the first page of the sale deed had been changed by Shri Arvind Kumar, in the Sub Registrar's office, who had illegally made an attempt to usurp the property in his own name. Shri Arvind Kumar had, however, passed away in 1993 and his son Mr. Adesh Kumar was impleaded as Defendant No.5, as an attempt to mutate the property was being made by the son.

5. Plaintiffs and Mr. Adesh Kumar had led evidence in this matter. Shri Adesh Kumar claimed to be the sole and exclusive right owner, in view of the General Power of Attorney (hereinafter 'GPA') which was executed in favour by his siblings. The case of Shri Adesh Kumar was that his father was the owner in the property.

6. The trial in the suit also concluded. However, settlement negotiation took place at that stage. The Plaintiff agreed to pay a sum of Rs.1.4 crores to Shri Adesh Kumar. At the said time, Shri Adesh Kumar claimed that he had a GPA in his favour from his siblings, which permitted him to enter into the settlement. The said amount was paid by the Plaintiff to Shri Adesh Kumar. In view of the settlement, which was entered into, an application being ***I.A.13300/2021*** under Order XXIII Rule 3 CPC came to be filed pursuant to



which order dated 11th October, 2021 was passed recording the settlement. Vide the said order, the suit was decreed in favour of the Plaintiff in terms of the settlement agreement dated 2nd July, 2021.

7. The present application has now been moved by the siblings of Shri Adesh Kumar i.e., children of Mr. Arvind Singh/ Arvind Kumar i.e., his son Mr. Krishan Mohan, and his daughters - Smt. Sudesh and Smt. Anita. It is the case of the Applicants that the deceased father had six children and so the compromise could not have been entered into by only son – Shri Adesh Kumar.

8. The stand of Shri Adesh Kumar, the son is that he has a GPA in his favour, which authorized him to enter into a settlement.

9. Ld. Counsel for the Plaintiff submits that Shri Adesh Kumar was the only party, who was contesting this matter and had represented himself as sole legal heir of his father.

10. The present application seeks recall of a compromise decree under which a substantial sum of Rs.1.4 crores has already been paid by the Plaintiff to Shri Adesh Kumar.

11. Vide order dated 8th January, 2024, the Court had, in this background, considered it appropriate to direct the applicants i.e., the siblings of Shri Adesh Kumar namely Mr. Krishan Mohan, Smt. Sudesh, Smt. Anita as also Shri Adesh Kumar to remain present in Court. Directions issued on the said date read as under:

“11. Considering the nature of the matter, it is deemed appropriate to direct that the applicants i.e. Mr. Krishan Mohan, Smt. Sudesh and Smt. Anita and Shri Adesh Kumar to remain present in the Court on



the next date of hearing. Original GPA in favour of Shri Adesh Kumar and the original title deed of the property in favour of the Plaintiff, shall be produced by the respective parties on the next date.”

12. On 4th March, 2024, all the said parties were present and their statements were recorded. The statements read as under:

Statement of Mr. Adesh

“My father - Sh. Arvind Kumar passed away on 12th May, 1993. I have four sisters and one brother. The names of my sisters are Smt. Sudesh, Smt. Anita, Smt. Sunita and Smt. Kamlesh. One of my sisters, namely, Smt. Sunita, has passed away. The name of my brother is Sh. Krishan Mohan.

A-64, South Extension, Part-II, New Delhi is the property which is in dispute. I have never lived in this premises. My father was involved in property dealing business in this area. We hail from Mahipal Pur, New Delhi. Currently we live in Haryana. None of us have ever lived in the suit property. I had settled the disputes with the Plaintiff and had received the settlement amount of Rs.1.4 crores. The money was paid to me to close this dispute. My siblings have executed the GPA in my favour and told me to get the disputes settled in the manner I deemed appropriate. I had given the original GPA to Mr. Tarun Gupta who was my earlier counsel. I had only one original GPA. I did not file the original GPA with the Sub-Registrar's Office. The GPA has been signed by three of my siblings. Two sisters were having ill health and they did not sign. The settlement amount of Rs.1.4 crores that I received was used for paying loans. It was also used for the marriage of the younger sister - Smt. Kamlesh. The parents were also unwell and for their medical treatment also the amount was used.



The application has now been filed because of some dispute which my nephew - Sh. Manish - son of Sh. Krishan Mohan, has raised. He has some disagreement within the family. I am also being supported by my sister - Smt. Kamlesh. Sh. Krishan Mohan, my brother is supporting his son - Sh. Manish. In fact, the GPA was signed by Sh. Krishan Mohan and now he is trying to resile from the same. I have spent Rs.1.4 crores for the welfare of my family."

Statement of Mr. Krishan Mohan

"I have heard the statement of my brother - Sh. Adesh and according to me he is not telling the true facts. In fact, I have also spent for the wedding of my sister- Smt. Kamlesh and so have my other sisters . My parents used to live with my brother - Sh. Adesh. I agree that the GPA was signed by me but the same was for the purpose of getting the property mutated. We did not know about this suit. I was informed about this suit by my nephew- Sh. Rajesh who was informed by his friend- Sh. Hansraj. Sh. Rajesh is the son of my sister - Smt. Sunita.

Question: Who informed Sh. Hansraj about this case?

Answer: Sh. Rajesh told Sh. Hansraj.

Sh. Hansraj is in the business of property dealing. I was informed by my nephew and Mr. Hans Raj some time in June-July, 2021 that the settlement has taken place.

We had earlier retained Sh. Abhishek Sharma. However, thereafter my son suggested that we should retain the present lawyer - Mr. Tarun Gupta who was earlier the lawyer for my brother."

Statement of Ms. Sudesh

"I was telephonically called by my elder brother-Mr.



Krishan Mohan, informing me that Mr. Adesh has sold the plot. I was told about the sale when the sale actually took place. I told Mr. Adesh to give the share to my elder brother. He said that he would not give even a single penny. therefore, we filed a case. Mr. Adesh also said that there is no rishte naate with us. Our parents used to live with Mr. Adesh. I did not give any power of attorney to my brother Mr. Adesh. My other sisters Ms. Anita and Ms. Kamlesh have given the power of attorney. I only want to claim my share in the said property.”

Statement of Ms. Anita

“By doing dhoka (fraud) my brother got the power of attorney executed. He said he would take care of us. He did not pay us any part of the amount received in the settlement. The elder brother called me and said that I should come and claim my share in the property. I only want to claim my share in the said property.”

13. In addition, the certified copy of the GPA obtained from the Registrar office, Jhajjar was also filed on record and the corrected copy of the sale deed dated 1st May, 1964 was placed on record by the Plaintiff. The copies of the same were taken on record. The observations of the Court on 4th March 2023 are as under:

“4. Certified copy of the GPA as obtained from the Registrar’s office in Jhajjar has been filed on record. The Plaintiff has also placed on record the corrected copy of the sale deed dated 1st May, 1964 which has now been corrected in the sub-registrar’s records. The copy of the said sale deed is also taken on record. Both these documents be tagged with the electronic record of this Court. The original sale deed which is duly laminated has been perused by the Court and clearly shows that the same is in favour of Ms. Veerawali and not Mr. Arvind Kumar. The original



sale deed has been returned after perusal.”

14. The matter was listed for hearing today. After hearing submissions of the parties and in view of the background set out above, it is clear from the statements that none of the siblings challenged the factum of execution of GPA. However, their allegations are that the said Mr. Adesh Kumar had betrayed them and got the GPA executed under wrong influence. These allegations would, therefore, have to be gone into independent proceedings. The GPA itself having been executed in favour of Mr. Adesh Kumar, the settlement entered into by him on behalf of his siblings and himself with the Plaintiff, cannot be faulted in this suit. The allegations in the applications would have to be gone into appropriate proceedings, if any, filed by Shri Krishan Mohan, Smt. Sudesh and Smt. Anita against Mr. Adesh Kumar.

15. The applications are rejected with the observation that the said siblings of Shri Adesh Kumar are at liberty to take appropriate action, if so advised in accordance with law against Shri Adesh Kumar. If any such proceedings are filed, the objections of all parties are left open. Insofar as the Plaintiff is concerned, the settlement recorded on 11th October, 2021, shall be final.

16. The applications are disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 2, 2024/dk/ks