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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1019/2022 & CM APPL. 42133/2022, CM APPL. 42134/2022

M/S MU BUILDCON PVT LTD Petitioner
Through: Mr. Hariom Gupta, Ms. Sukrit Gupta, Mr. Arhav Avasthu & Ms. Annanya Giri, Advs.

versus

MST. AMTUL BATOOL & ORS. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)
23.09.2022

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1. This petition, under Article 227 of the Constitution of India, assails order dated 16th November 2021 passed by the learned Additional District Judge (“the learned ADJ”) in CS 13081/2016 (*Amtul Batool v. Mukarramuddin*).

2. CS 13081/2016 was instituted by the respondents Amtul Batool and another, against Mukarramuddin and others. The suit related to various properties, including the properties at (i) No. 4926 to 4928, Foota Road, Sadar Bazar, Ward no. 13, Delhi-110006, (ii) No. 4922 to 5028, Sadar Bazar, Ward no. 13, Delhi-110006 and (iii) No. 5015 and 5018-5027, Mandi Rui, Sadar Bazar, Ward no. 13, Delhi-110006 (collectively referred to, hereinafter, as “the suit properties”, for



convenience) . The plaint averred that the suit properties were originally owned by Sughra Bi, who expired on 7th January 1950 leaving behind, as her legal heirs, Hasibuddin, Zainul Abidin and Mumtazuddin. Hasibuddin is also stated to have expired, leaving behind his widow and four daughters. Consequent to a decree passed in CS 174/1950, filed by the legal heirs of Sughra Bi for partition of her properties, the suit avers that late Sheikh Mumtazuddin, the father of the respondent 1 Amtul Batool and of Mukarramuddin and Manzoor-Ul-Islam, the first and second defendant in the suit, became exclusive owners of the various properties including the suit properties.

3. Reliance was also placed in the suit on a Will dated 18th November 1958 of Zainul Abidin, whereunder his brother Mumtazuddin is stated to have become owner of various other properties.

4. Consequent to the death of Mumtazuddin intestate, the plaint avers that the petitioner Amtul Batool and other plaintiffs in the suit, as well as the defendants, became joint owners of the properties forming subject matter of the suit.

5. Predicated on the aforesaid assertions, among others, the suit sought partition of the aforesaid joint properties, which included properties at (i) 4926 to 4928, Foota Road, Sadar Bazar, Ward no. 13, Delhi-110006, (ii) property at 4922 to 5028, Sadar Bazar, Ward no. 13, Delhi-110006 and (iii) property no. 5015, 5018-5027, Mandi Rui,



Sadar Bazar, Ward no. 13, Delhi-110006.

6. On 23rd September 2009, while framing issues, the learned ADJ directed all parties to maintain *status quo* qua the suit properties and, on that ground, disposed of the plaint filed by the plaintiffs Amtul Batool and others (the defendant in the present petition) under Order XXXIX Rules 1 and 2 of the CPC.

7. During the course of further proceedings in the suit, the petitioner moved an application, in the suit, under Order 1 Rule 10 of the CPC, on the ground that, *vide* Sale Deed registered on 19th October 2015, the petitioner company had acquired 2/7th share of Mukarramuddin in the aforesaid properties situated at (i) 4926 to 4928, Foota Road, Sadar Bazar, Ward no. 13, Delhi-110006, (ii) property at 4922 to 5028, Sadar Bazar, Ward no. 13, Delhi-110006 and (iii) property no. 5015, 5018-5027, Mandi Rui, Sadar Bazar, Ward no. 13, Delhi-110006.

8. Being bonafide purchaser for consideration, who purchased the suit properties unaware of the interlocutory injunctions issued against alienation of the suit properties by the learned ADJ on 23rd September 2009, the petitioner sought impleadment in the suit, claiming that the outcome of the suit would vitally affect the petitioner's interest.

9. The petitioner's application has been rejected by the learned ADJ *vide* order dated 16th November 2021, under challenge in the present proceedings initiated under Article 227 of the Constitution of



India.

10. The learned ADJ has, in rejecting the petitioner's application, relied on the judgment of the Supreme Court in *Surjit Singh v. Harbans Singh*¹.

11. Clearly, the dispute is completely covered by the aforesaid decision.

12. In *Surjit Singh*¹, too, an interlocutory injunction against alienation of the suit property had been granted by the learned Trial Court on 29th July 1977. In breach of the injunction, one Pritam Singh, who was a party in the proceedings, assigned his rights in respect of the property by a registered deed partly in favour of the wife of his lawyer and partly in favour of others.

13. The assignees of the suit properties moved an application under Order XXII Rule 10 of the CPC, seeking impleadment in the suit.

14. The Supreme Court, in its decision, categorially held that the assignees were not entitled to be impleaded as the transfer of the suit properties had taken place in the teeth of the restraint against alienation, issued by the learned Trial Court on 29th July 1977.

15. Para 4 of the report reads thus:

¹ AIR 1996 SC 135; (1995) 6 SCC 50



“4. As said before, the assignment is by means of a registered deed. The assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A decree relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done. *It is per se property, for it relates to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order.* In sum, it did not make any appreciable difference whether property per se had been alienated or a decree pertaining to that property. *In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy, When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders. The principles of lis pendens are altogether on a different footing. We do not propose to examine their involvement presently. All what is emphasised is that the assignees in the present facts and circumstances had no cause to be impleaded as parties to the suit.* On that basis, there was no cause for going into the question of interpretation of paragraphs 13 and 14 of the settlement deed. The path treaded by the courts below was, in our view, out of their bounds. Unhesitatingly, we upset all the three orders of the courts below and reject the application of the assignees for impleadment under Order 22 Rule 10 C.P.C.”

(Emphasis supplied)

16. In the present case, the Sale Deed, whereunder the petitioner claims to have acquired title in respect of the aforesaid properties, was



registered only on 19th March 2015. More than six years prior thereto, alienation of the properties already stood restrained *vide* the order dated 23rd September 2009 of the learned ADJ. The sale of the properties to the petitioner was, therefore, clearly in the teeth of the said order dated 23rd September 2009.

17. The mere fact that the petitioner may have purchased the properties oblivious of the order dated 23rd September 2009 as a *bonafide* purchaser for consideration cannot detract from the effect of the principle of law enunciated in para 4 of *Surjit Singh¹ supra*. As the suit properties were sold in violation of the injunction order dated 23rd September 2009, the petitioner, as the purchaser of the properties, could not seek to be impleaded in the suit.

18. The impugned order dated 16th November 2021 of the learned ADJ is, therefore, perfectly in order and does not call for any interference.

19. This petition is accordingly dismissed in *limine* with no order as to costs.

C.HARI SHANKAR, J

SEPTEMBER 23, 2022

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