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

+ **CONT.CAS(C) 496/2023**

MANOJ KUMAR SONI Petitioner

Through: Mr. Ajay Verma, Advocate

versus

ADITYA SETIA AND ORS. Respondents

Through: Ms. Beenashaw Soni, SC, MCD with
Ms. Mansi Jain and Mr. Bhupesh
Pandotra for R-6/MCD

Ms. Sangeeta Bharti, Standing
Counsel, DJB along with Ms. P.
Geetanjali, Advocates for R-7

Mr. Udit Malik, ASC, GNCTD with
Mr. Vishal Chanda, Advocate of R-8,
9, 11 & 12 SI Udai Singh, PS Saket.

Mr. Deepak Pathak, Advocate for R-
10, BSES

Mr. Sunil Dalal, Sr. Advocate with
Ms. Manish Saroha, Advocates for R-
14

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Date of Decision: 19th April, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition has been filed alleging disobedience of the order dated 19.08.2015 passed by a Coordinate Bench of this Court in I.A. No. 5243/2015 filed in CS(OS) No. 2857/2012, whereby the Respondent Nos. 1

to 5 were restrained from selling or creating any third-party interest in property bearing no. D-153, Saket, New Delhi -110019 ('subject property').

2. It is stated that upon enhancement of the pecuniary jurisdiction of this Court, the said civil suit was thereafter transferred to the District Court *vide* order dated 02.12.2015 and the suit is now pending adjudication before District Court, Saket, for recording of the defendant's evidence therein.

2.1. The learned counsel for the Petitioner states that the Petitioner had filed the aforesaid civil suit seeking recovery of money to the tune of Rs. 70,80,000/- along with interest. He states that the recovery has been sought in pursuance to payments made under an Agreement to Sell ('ATS') executed between the Petitioner and Respondent No. 5 herein, Sh. Manish Nagpal.

2.2. He states that as per the Petitioner, the Respondent Nos. 1 to 4 are the owners of the subject property. He that the said Respondent Nos. 1 to 4 were proceeded ex-parte in the civil suit. He states that Respondent No. 5 is not the recorded owner of the subject property and is the nephew of Respondent Nos. 1 to 4. He states that the Respondent No. 5 is contesting the said civil suit.

2.3. He states that the present petition has been filed since it has now come to the notice of the Petitioner that a new building having basement, ground floor, first floor, second floor and third floor has been constructed on the subject property and third-party rights have been created in violation of the order dated 19.08.2015.

2.4. He states that Respondent No. 14 is the builder, who constructed the said building; and Respondent No. 15, 16 and 17 are the subsequent purchasers of one floor each in this newly constructed building, on subject

property. He states that Respondent No. 13 is the real estate agent who facilitated the sale of the subject property in favour of Respondent Nos. 14 to 17. In these circumstances he states that Respondent Nos. 1 to 5 and Respondent Nos. 13 to 17 have violated the order dated 19.08.2015.

3. Respondent No. 13 and 14 have entered appearance on advance service through separate counsel.

4. The learned senior counsel appearing on behalf of the Respondent No. 14 states as under:

I. He states that Respondent Nos. 1 to 5 have no right, title, or interest in the subject property.

II. He states that the recorded owner of the subject property is late Mr. Sudharash Kumar Setia. He states that the perpetual lease deed dated 15.10.1977 was executed in favour of late Mr. Sudharash Kumar Setia by the Delhi Development Authority ('DDA').

III. He states that Mr. Sudharash Kumar Setia passed away on 25.02.1995 and thereafter the subject property devolved upon his Class I legal heirs i.e., Mr. Mannu Kumar (son) and Ms. Preeti Kumari (daughter), as per operation of law.

IV. He states that a conveyance deed dated 25.09.2020 was executed in by DDA in favour of the said legal heirs i.e., Mr. Mannu Kumar and Ms. Preeti Kumari; and in this manner the said legal heirs became the recorded owners of the subject property.

V. He states that thereafter the subject property was sold by the legal heirs i.e., Mr. Mannu Kumar and Ms. Preeti Kumari to M.S. Group and Others (a partnership firm) *vide* sale deed dated 25.09.2020. Respondent No. 14 is a partner in the said firm. He states that in this manner

Respondent No. 14 became the recorded owner of the subject property.

VI. He states that the M.S. Group and Others thereafter obtained a sanctioned plan from Respondent No.6, Municipal Corporation of Delhi ('MCD') on 19.02.2020. He states that thereafter the existing building was constructed on the subject property and a completion occupancy certificate was obtained from Respondent No.6, MCD, on 19.12.2022.

VII. He states that subsequently, the M.S. Group and Others have further sold the separate/individual floors of the building to private Respondent Nos. 15, 16 and 17 *vide* separate sale deeds as well as sold the 2nd floor to a third party *vide* separate sale deed dated 01.06.2022.

VIII. He has placed on record a short note during the course of hearing enlisted the said facts and handed over a copy of the conveyance deed, perpetual lease deed, sanctioned plan and sale deed dated 25.09.2020.

4.1. He states that in view of these facts the subject property, which was owned by late Mr. Sudharash Kumar Setia could not have been a subject matter of the Petitioner's civil suit and admittedly, neither of the legal heirs of Mr. Sudharash Kumar Setia i.e., Mr. Mannu Kumar and Ms. Preeti Kumari are parties to the said civil suit nor they were the party to ATS.

5. At this stage, learned counsel for the Petitioner states that the Petitioner admits that the perpetual lease deed dated 15.10.1977 was executed in favour of late Mr. Sudharash Kumar Setia. He, however, states that the Petitioner reasonably believes that *vide* a Will dated 18.09.1994, late Mr. Sudharash Kumar Setia, had bequeathed the subject property to Respondent Nos. 1 to 4. He has handed over a copy of the said Will and states he is unaware the same is registered or unregistered.

5.1 He states that Respondent Nos. 1 to 4 are the brothers of late Mr. Mr. Sudharash Kumar Setia. To a query from this Court, he further admits that the fact of the devolution of title of the subject property in favour of Respondent No. 1 to 4 through this Will is not mentioned in the ATS relied upon by the Petitioner in the civil suit. He further admits that Respondent Nos. 1 to 4 are not Class I legal heirs of Mr. Sudharash Kumar Setia and the property therefore have not devolved upon them under Hindu Succession Act, 1956. To a query from the Court, he states that he is unaware if the said Will was probated.

6. In rejoinder learned senior counsel for the Respondent No. 14 states that, in fact, the brothers of late Mr. Sudharash Kumar Setia i.e., Respondent Nos. 1 to 4 had initiated legal proceedings relying upon the said purported Will dated 18.09.1994. He states that however, the said legal proceedings were dismissed by the District Court in Punjab and the RSA no. 5735/2014 filed by the Respondent Nos 1 to 4 against the said dismissal, has also been since dismissed as withdrawn before the Punjab and Haryana High Court on 16.03.2018. He states that therefore, Respondent Nos. 1 to 4 have no right title or interest in the subject property. He states Respondent No. 5 in any event on the admission of the Petitioner does not have any title to the subject property.

6.1 He therefore states that in this view of the matter the present contempt petition against the Respondent Nos. 13 to 17 is not maintainable, as the Respondent No. 14 herein has bought the property from the recorded owners on 25.09.2020 after conducting due diligence and in accordance with law.

7. This Court has considered the submissions of the parties.

8. To begin with Respondent No. 6 to Respondent No. 12 are statutory

authorities. The learned counsel for Respondent No. 6 has stated that the subject property has been constructed after obtaining a sanctioned plan. The said submission of Respondent No. 6 belies the contention of the Petitioner that the construction on the subject property is unauthorized. In the facts of the present case, the said statutory authorities have not violated the order dated 19.08.2015 by permitting construction in the subject property and are therefore, not liable for contempt of the order dated 19.08.2015. Accordingly, the said Respondents are deleted from the array of parties. The Petitioner does not contest the said deletion.

9. The learned counsel for the Petitioner states that he does not admit the submissions of the Respondent inasmuch as he does not admit to the veracity of the conveyance deed dated 25.09.2020 executed by DDA in favour of Mr. Mannu Kumar and Ms. Preeti Kumari i.e., the legal heirs of Mr. Sudharash Kumar Setia. This Court is of the opinion, the denial of the registered conveyance deed, offered by the learned counsel for the Petitioner is a bald denial and he is unable to substantiate the basis of his denial. Infact he duly admits the veracity conveyance deed dated 15.10.1977 executed by DDA in favour of Mr. Sudharash Kumar Setia and therefore does not dispute the ownership of the late Mr. Sudharash Kumar Setia.

10. In view of the undisputed facts that Mr. Mannu Kumar and Ms. Preeti Kumari are the Class I legal heirs of Mr. Sudharash Kumar Setia, who succeeded to the subject property by operation of Hindu Succession Act, 1956; and that a conveyance deed was registered by DDA in favour of the said individuals, this Court is of the opinion that infact the subject property cannot even be a subject matter of the Petitioner's civil suit for recovery of money.

11. The ATS relied upon by the Petitioner was executed by Respondent No. 5, who admittedly has no right, title or interest in the subject property.

11.1 The Petitioner has alleged that Respondent Nos. 1 to 4 are the owners of the subject property on the basis of the purported Will dated 18.09.1994. However, in view of the dismissal of the legal proceedings initiated by the said Respondent Nos. 1 to 4, on the basis of the said Will, the reliance placed by the Petitioner on the said Will is misconceived. In any event, the Petitioner admits that the said Will finds no mention in the ATS relied upon by the Petitioner.

11.2 Thus, this Court is of the opinion that since neither Respondent Nos. 1 to 4 nor Respondent no. 5 have any right, title or interest in the subject property, this property could not have been the subject matter of the civil suit.

12. Further, the new building stood constructed as on 30.03.2022 (the date of the completion certificate issued by MCD), and therefore, the present petition is filed in April, 2023 is not bona fide and barred by limitation under Section 20 of the Contempt of Courts Act, 1971.

13. The respondent No. 14 purchased the subject property for bona fide consideration from the recorded owners Mr. Mannu Kumar and Ms. Preeti Kumari i.e., the legal heirs of late Mr. Sudharash Kumar Setia. The said legal heirs are admittedly not parties to the civil suit. Therefore, in the opinion of this Court, Respondent No. 14 has not in any manner violated the order dated 19.08.2015 by purchasing the property from the recorded owners.

14. Admittedly, the Respondent Nos. 15, 16 and 17 are subsequent purchasers for bona fide consideration from Respondent No. 14 without

notice of the order dated 19.08.2015.

15. In the facts of this case, this Court is satisfied that Respondent No. 13, 14, 15, 16 and 17 have not acted in disobedience of the order dated 19.08.2015, passed by this Court.

16. In any event, it is admitted that the injunction order dated 19.08.2015 was passed in a civil suit filed against Respondent Nos. 1 to 5.

17. In view of the fact that the said Respondent Nos. 1 to 5 are not party to the sale deeds executed in favour of Respondent No. 14 and subsequently, 15, 16 and 17, this Court also does not find that any case of contempt is made up against the said Respondent Nos. 1 to 5.

18. Accordingly, the present petition for contempt is dismissed. Pending application if any, are disposed of.

19. It is clarified that this Court has not expressed any opinion on the merits of the claims of the Petitioner against Respondent Nos. 1 to 5 in the civil suit for recovery of money. In this regard the prayer for recovery will be decided on its own merits.

20. No order as to costs.

MANMEET PRITAM SINGH ARORA, J

APRIL 19, 2023/rk