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

% Judgment delivered on: 18.04.2023.

+ CM(M) 623/2019 & CM APPL. 18734/2019, CM APPL. 9190/2020

ASHISH BANSAL & ORS

..... Petitioner

versus

SUNIL GOEL & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Pankaj Gupta, Adv.

For the Respondent : Mr. S. S. Jauhar, Adv.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 01.04.2019 in CS No. 729/17 titled '*Ashish Bansal And Ors. Vs. Sunil Goel and Another*' whereby the proposed issue filed by the petitioner on 25.03.2019 were rejected on the ground that the said issue mainly pertains to the transaction between defendant Nos. 1& 2 which is not subject matter of the suit.

2. Mr. Gupta, learned counsel appearing for the petitioner submits that though the petitioner had filed the petition in the DRT challenging the auction sale of the property upon which the petitioner claims promissory title to the extent of 600 square yards, the same was rejected. Learned counsel submits that the said rejection was further carried out in appeal before DRAT which too was dismissed.

3. Mr. Gupta submits that the said rejection by DRAT was subsequently challenged by the petitioner in Writ Petition (C) bearing No.4078/2015 which too was dismissed by way of the order dated 03.12.2015 by this Court.

4. The petitioner had challenged the said decision of the Writ Petition bearing No.4078/2015 before the Hon'ble Supreme Court which too dismissed the SLP (C) Nos.19441-42/2016 with a caveat that the observations made by this Court in the impugned order of the Writ Petition would not be taken to be a reflection on the rival contentions advanced by the parties. Learned counsel submits that it was in that context that the subject suit was filed claiming the following reliefs:-

“a) pass a decree of mandatory injunction in favour of the plaintiffs and against the Defendant No.1 abovenamed thereby directing the Defendant No.1 and his agents, employees, servants, representatives and permitted assign, if any, to remove themselves from the suit property being 600 sq. yds. out of total land of 4 Bigha 16 Biswa situate in Khasra No. 157 of Village Rajpur Khurd, Tehsil Mehrauli, New Delhi as shown in colour red in rough sketch/site plan produced in the case and to handover the vacant, peaceful possession thereof to the plaintiffs;

b) pass a decree for recovery of money in favour of the Plaintiffs abovenamed and against the Defendant No.1 for a sum of Rs. 14,40,000/- (Rs. Fourteen Lacs Forty Thousand only) towards user and occupation charges of the suit property;

c) grant pendente lite and future interest @12% p.a. on above sum of Rs. 14,40,000/- (Rs. Fourteen Lacs Forty Thousand only);

d) pass a decree for recovery of money in favour of the Plaintiffs abovenamed and against the Defendants liable jointly and severally for a sum of Rs. 2,00,000/- (Rs. Two Lacs only) alongwith pendente lite and future interest thereon @12% p.a. towards damages and compensation;
e) pass a decree of permanent injunction in favour of the plaintiffs and against the Defendants abovenamed thereby restraining the defendants, their employees, agents, representatives, successors and/or permitted assigns from laying any right, title and interest in suit property being 600 sq. yds. out of total land of 4 Bigha 16 Biswa situate in Khasra No. 157 of Village Rajpur Khurd, Tehsil Mehrauli, New Delhi as shown in colour red in rough sketch/site plan produced in the case atleast till identification and demarcation of the mortgaged property in accordance with law;
f) award cost of the suit; and
g) pass such further order(s) considered just, fit and proper in the facts and circumstances of the case in favour of the plaintiffs.”

5. Learned counsel on the basis of the aforesaid chequered history as also the prayer made in the suit submits that the two issues which were sought to be added to the issues framed vide the impugned order would be relevant and core to the disputes between the parties.

6. Learned counsel submits that rejecting the said issue on the basis that the issue pertaining only to the transaction between defendant No. 1 and 2 and not being subject matter of the suit, as noted by the learned Trial Court, is contrary to the pleadings on the record and therefore, such dismissal ought to be set aside.

7. *Per contra*, Mr. Jauhar, learned counsel appearing for the respondents vehemently contends the aforesaid submissions made by the learned counsel for the petitioner.

8. Learned counsel draws attention of this Court to the order dated 21.01.2022 passed by the Hon'ble Supreme Court in SLP (C) Nos. 19441-42/2016 submitting thereby that the SLPs were dismissed and the Hon'ble Supreme Court has upheld the orders passed by the Division Bench of this Court in the Writ Petition bearing No.4078/2015 whereby, according to Mr. Jauhar, the parties were relegated to approach the civil court for demarcation of the property between themselves.

9. Mr. Jauhar, learned counsel appearing for the respondents submits that contrary to the permission granted by the Division Bench of this Court in the aforesaid decision as also upheld by the Hon'ble Supreme Court vide the order dated 21.02.2022 as aforesaid, the petitioner had filed a suit seeking a decree of mandatory injunction against the respondent No.1/defendant No.1 to remove themselves from the suit property in respect of 600 square yards out of total land of 4 Bigha, 16 Biswa situated in Khasra No. 157 of Village Rajpur Khurd, Tehsil Mehrauli, New Delhi.

10. Learned counsel submits that prayers itself are untenable and contrary to the judgement of the High Court on the basis that there is no demarcation of the situs in the agreement to sell of the petitioner. Learned counsel submits that having regard to the above, seeking further additional issues, placing the burden on the respondent No.1/defendant No.1, is untenable, unfair and unwarranted.

11. Learned counsel submits that the impugned order, by rejecting the

aforesaid two issues, has not acted with material irregularity or committed any judicial impropriety and has to be sustained as such.

12. This Court has considered the submissions made by the parties as also perused the documents on record.

13. So far as the contention of Mr. Jauhar in regard to re-agitation of the settled issue of the manner in which the auction was upheld right till Supreme Court is concerned, Mr. Gupta has contended that the challenge to the auction process has not been re-agitated in the present suit and it is only mandatory injunction of the suit property, stated to be belonging to him, which is sought to be recovered from the respondent No.1/defendant No.1 in respect whereof, the suit has been filed.

14. This Court at the outset considers it appropriate to first deal with the submissions made by Mr. Jauhar to the extent that the Division Bench of this Court in the aforesaid decision in the writ petition bearing W.P. (C) 4078/2015 had permitted to approach the civil court for seeking demarcation of the suit property.

15. I have perused the order dated 06.05.2016 placed at page 143 of the present petition which is stated to be the order passed in the review petition No.199/2016 in W.P.(C) No.4078/2015 where the petitioner had challenged the order dated 30.03.2016 whereby the consent was stated to have been recorded of the petitioners, for relegating parties to Civil Court for demarcation. However, perusal of the order dated 06.05.2016 particularly the penultimate paragraph at page 145, brings to fore that the petitioner was also directed to seek his relief before the civil court in respect of declaratory possessory title to the extent of 600 square yards of land comprising of Khasra No. 157 admeasuring 4

Bigha 16 Biswa of Village Rajpur Khurd, Tehsil Mehrauli, New Delhi. This review order was passed after noting that the title documents of both parties were without any description of the boundaries of the land. It is on this basis that the suit was filed.

16. So far as the submission of Mr. Jauhar that the prayers as sought in the suit is misconceived and not in accordance with the orders passed by the Division Bench of this Court in the aforesaid writ petition is concerned, the matter is still at the stage of framing of issues and no such conclusion can ultimately be drawn whether the prayer sought is tenable or untenable in law, and therefore, such submission is rejected for the time being keeping such an objection open to be decided during Trial.

17. The issues which the petitioner sought framing of as additional issues are as under:-

“1. Whether the defendant no. 1 has been handed over the possession of the suit property legally and validly by the defendant no.2 or by any other authority?OPD

2. Whether the defendant no.1 is entitled to retain the possession of suit property despite the same is yet to be identified and demarcated in consonance to the Directors issued by Division Bench of Hon’ble High Court vide judgment and order dated 31.03.2016 modified vide judgment and order dated 06.05.2016? OPD”

18. The aforesaid issues arises from the pleadings of the parties as also from the submissions made by learned counsel appearing for the parties. Without prejudice to the rights and contentions of either of the

parties, this Court is of the considered opinion that having regard to the nature of dispute, the issues as proposed above by the petitioner are necessary to decide the dispute between the parties.

19. Accordingly, the impugned order to the extent where it rejected the proposed issues, as noted above, is set aside.

20. Learned Trial Court is directed to take on record the aforesaid two issues as additional issues and proceed with the trial in accordance with law.

21. In view of above, the petition is disposed of with no order as to costs.

22. Pending application also stands disposed of.

TUSHAR RAO GEDELA, J .

APRIL 18, 2023/ms

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