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

Date of decision: 05.09.2023

+ EX.F.A. 33/2023 & CM APPL. 45510/2023

MANJU DAVE & ORS.

..... Appellants

Through: Mr. Jatin Sahni and Mr. Nikhil Kushwaha, Advocates, along with Appellant No.3 and Mr. B.P. Dave on behalf of Appellant Nos. 1 and 2.

versus

TRILOCHAN KAUR & ORS.

..... Respondents

Through: Mr. S.S. Nizami, Advocate for R-1 (Through VC) along with Respondent No.1 in person.

Mr. Vineet Dhanda, Advocate for CGSC with Ms. Durga Dass Vashist, Advocate for R-2 & R-3

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 45511/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

EX.F.A. 33/2023 & CM APPL. 45510/2023

1. This execution first appeal impugns the order dated 18.08.2023 passed by the ADJ-06, Central District, Tis Hazari Courts, Delhi ('Executing Court') in execution petition i.e., EX No. 23852/2016, dismissing the objections filed by Appellants herein.

2. The learned counsel for the Appellants states that final decree dated



16.08.2013, passed by the ADJ, Central District, Delhi ('Trial Court') in civil suit no. 186/2013, is not executable in execution proceedings since it is an admitted fact that the final decree has not been engrossed on stamp papers.

2.1. He states until the final decree is engrossed on the stamp paper, there is no decree available before the Court for execution. Until this act is completed, there is no executable decree as envisaged under Code of Civil Procedure, 1908. In this regard he has relied upon the judgments of the Supreme Court in *Shankar Balwant Lokhande (D) v. Chandrakant Shankar Lokhande & Anr.*, (1995) 3 SCC 413 and *Chiranji Lal (D) vs. Hari Das (D)*, (2005) 2 SCC 261.

2.2. He states that the Respondent No. 1 i.e., the decree holder, has not filed the stamp papers of appropriate value in accordance with the market value of the suit property bearing no. 27/59, Old Rajinder Nagar, New Delhi, 110060 ('suit property'). He states that instead, the Respondent No.1 has filed a new valuation report on the basis of the circle rate, claiming the value of the suit property to be Rs. 1,26,00,000/-. He states that the Respondent No.1 has deposited stamp papers on the basis of the said new valuation report. He states that however, it is a matter of record that even as per Respondent No.1, the market value of the property is Rs. 6,14,00,000/- and therefore, the stamp paper deposited are in deficit.

2.3. He lastly, states that the Appellants herein had no opportunity to contest the civil suit and that they have been defrauded due to their non-impleadment in the suit proceedings.

3. In reply, the learned counsel for the Respondent No. 1 i.e., the decree holder, states that the Appellants herein are claiming their rights in suit



property through S. Jagat Singh. He states that S. Jagat Singh was impleaded as defendant No. 1 in the civil suit.

3.1. He states that S. Jagat Singh had the entire suit property fraudulently conveyed in his favour vide conveyance deed executed in February, 2003, by Respondent No. 3 i.e., the Land and Development Officer, Ministry of Urban Development to the exclusion of the other legal heirs of late Shri Mohar Singh.

3.2. He states that thereafter S. Jagat Singh permitted defendant nos. 12 and 13 i.e., Sh. Harish Chouhan and Sh. Lucky Chouhan to construct the suit property and transfer the suit property in favour of third parties.

3.3. He states that the Appellants herein are claiming their right through defendant nos. 1, 12 and 13. He states that defendant nos. 1, 12 and 13 were duly impleaded in the suit and have suffered the final decree passed by the Trial Court, which has attained finality.

3.4. He states that the Coordinate Bench of this Court on 21.11.2011 in RFA No. 25/2009, has held that Respondent No. 1 herein is entitled to 1/10th share in the suit property being the legal heir of S. Balwant Singh, who was the son of late S. Mohar Singh. The right of S. Jagat Singh through whom the Appellants herein are contesting has been declared to be limited to 1/3rd share in the suit property.

3.5. He states that the Respondent No. 1 has also separately filed criminal complaint against S. Jagat Singh i.e., defendant No. 1, for the fraud committed by him on the Respondent No. 1 and, in fact, S. Jagat Singh has been declared as a proclaimed offender therein.

3.6. He states that the stamp papers have been duly deposited with the Executing Court and the valuation at Rs. 1.26 Crores is correct as it is as per



the prevailing circle rate in the suit property area. He states that a valuation report of the government valuer has been filed with the Executing Court. He further states that since the direction in the final decree is for the sale of the suit property, subject to the highest bid fetched at the time of the auction sale, the Respondent No. 1 undertakes to make good the deficiency as directed by the Executing Court at that stage. The said submission of Respondent No.1 is taken on record and she is bound down to the same.

4. This Court has considered the submissions of the parties and perused the paper book. This matter was heard on 04.09.2023 and adjourned at request of the parties to 05.09.2023.

5. This Court is of the opinion that there is no error of law or fact in the impugned order of the Executing Court. The Respondent No. 1 herein has already deposited the stamp papers as per the prevailing circle rate and there is no dispute that as per the prevailing circle rate, the valuation of the property is at Rs. 1.26 crores.

6. The Trial Court *vide* final decree dated 16.08.2013 has directed the sale of the suit property and issued a direction for distribution of the consideration amongst the shareholders. In view of the judgement of the full Bench of this Court in ***Indu Singh vs. Prem Chaudhary, 2018 SCC OnLine Del 8951***, at this stage, the payment of stamp duty on the circle rate value is appropriate and correct. The real value would be the market value that will be realised after the final price is settled in the bidding process. At that stage, if the market value realised is higher than the circle rate value, the deficiency in the stamp paper will be made good firstly, by the Respondent No.1 as stated before this Court and noted hereinabove.

7. With respect to the objection raised by the learned counsel for the



Appellant that the decree is not executable since the final decree has not been drawn up on the stamp paper, this Court finds that the Executing Court has already taken note of the said defect and has observed that the said defect has been cured as the stamp papers have been deposited before the Executing Court and necessary steps in this regard have already been taken by Respondent No.1. Therefore, this Court is satisfied that with the filing of the stamp papers, the final decree is now executable.

8. At this stage, when the order had been dictated on 04.09.2023, the learned counsel for the Appellant stated on instructions from Mr. B.P. Dave, who was present in Court, that the Appellant Nos. 1 and 2 are ready to handover the vacant and peaceful possession of the ground floor and third floor of suit property, which is in their possession and handover the possession to the Executing Court by depositing the keys within one (1) month i.e., on or before 03.10.2023.

8.1. He states that the Appellant Nos. 1 and 2 are willing to accept the binding nature of the final decree dated 16.08.2013 and they reserve their right to claim proportionate share in the 1/3rd share of the sale proceeds, which S. Jagat Singh is entitled to upon the sale and auction of the property.

8.2. He further states on instructions that the Appellant No. 3, is also willing to accept the judgement and she reserves her right to claim her proportionate share in the 1/3rd share of the sale proceeds, which S. Jagat Singh is entitled to upon the sale and auction of the property.

8.3. He states that on behalf of Mr. Naveen Anand, the legal representative of Appellant No. 4, Mr. Praveen Anand, he is authorised make the statement that he as well accepts the impugned judgement and reserves his right to claim proportionate share out of the 1/3rd share of the sale proceeds, which



S. Jagat Singh is entitled to upon the sale and auction of the property.

8.4. He states that Appellant Nos. 3 and 4 have already vacated the portions of the suit property which were transferred in their favour and the possession of the said portions with the Executing Court.

8.5. He states that as held by the Executing Court in the impugned order that the 1/3rd share of S. Jagat Singh in the sale proceeds will be divided amongst the bona fide purchasers of the suit property and to that extent they make a statement that Appellant nos. 1 to 4 will claim their rights from the said share of S. Jagat Singh before the Executing Court.

8.6. He states that as is evident, Respondent No.1 does not dispute that Appellant Nos. 1 to 4 are bona fide purchasers. He states that therefore, the Appellant Nos. 1 to 4's right to lay claim over the 1/3rd share of S. Jagat Singh as observed by the Executing Court vide impugned order dated 18.08.2023 be taken on record.

9. The matter was adjourned on 04.09.2023 to enable the Appellants to file an affidavit of undertaking and for recording the statement of Respondent No.1.

10. At this stage on 05.09.2023, the Appellant Nos. 1 and 2 have given an affidavit of undertaking to the effect that they have accepted the judgment passed by the Executing Court, however, the Appellant Nos.1 and 2 seek extension of time until 03.10.2023 to hand over the vacant and peaceful possession of the portions of the property in their possession by depositing the keys before the Executing Court. An affidavit of undertaking has also been filed on behalf of Appellant No.3. The Appellant No.4 as well adopts the stand of Appellant Nos. 1 to 3 and has authorised his counsel to make this statement vide email.



11. The affidavit of undertaking of Appellant Nos. 1 to 3 and the email issued by Appellant No.4 to his counsel, are taken on record.

12. The learned counsel for the Respondent No.1 on instruction from Respondent No.1, who is present in Court, states that Respondent No.1 has no objection to the aforesaid statement made by Appellant Nos. 1 to 4 and she has no objection if Appellant Nos. 1 to 4 are given the 1/3rd share in the sale proceeds, which will fall to the share of S. Jagat Singh. The Respondent No.1, who is present in Court also confirms the aforesaid statement to the Court. She is also accompanied her brother Mr. Surender Singh Banga. The counsel for Respondent No.1 and Respondent No.1 herself state that this is also the finding of the Executing Court in the impugned order dated 18.08.2023.

13. The undertaking of the Appellant nos.1 to 4 and Respondent No.1 are taken on record and they are bound down to the same.

14. Accordingly, the time to vacate and handover peaceful possession of ground floor and third floor by Appellant Nos. 1 and 2 is extended until 03.10.2023.

15. The impugned order dated 18.08.2023 is upheld in its entirety, except the time for handing over of possession has been extended. With the aforesaid direction, the present petition is disposed of. Pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 5, 2023/rhc/aa

Click here to check corrigendum, if any