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

+ **FAO(OS) 18/2024 and CM APPL. 7665/2024, CM APPL. 7666/2024, CM APPL. 7667/2024**

MUKESH SAINI

..... Appellant

Through: Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Pramod Dayal and
Mr. Dalip Singh, Advocates

versus

MADAN LAL SAINI SINCE DECEASED THR LRS AND ORS
..... Respondents

Through: None

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Date of Decision: 8th February, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. This appeal has been filed under Section 10 of the Delhi High Court Act, 1966, challenging the impugned order dated 22nd January, 2024, passed in CS (OS) No. 1169/2014, whereby the learned Single Judge, inter alia, issued the following directions:



“19. Under these circumstances, and bearing in mind the facts narrated above as also the orders passed both in this case as also by Ld. Division Bench and the Supreme Court, the following directions are issued:

- i) the proposed purchasers shall now pay a sum of Rs.38,34,000/- to the Defendant Nos. 2 to 4 within a period of two weeks, as requested. The sale deed for the suit property be executed in favour of the purchasers or their wives as their nominees within a period of four weeks after payment of the entire amount of Rs.38,34,000/- to the Defendant Nos. 2 to 4;
- ii) On behalf of the Plaintiff, if the Plaintiff wishes to seek withdrawal of the sum of Rs.48 lakhs then the Plaintiff may also execute the sale deed, failing which, an official shall be nominated by the worthy Registrar General for executing the sale deed on behalf of the Plaintiff;
- iii) Upon the sale deed being executed, the sum lying deposited in this Court to the tune of Rs. 1,34,00,000/- (Rupees One Crore and Thirty Four lakhs) be released in favour of the Defendant Nos. 2 to 4 through Id. Counsels.”

1.1. The learned Single Judge in the impugned order observed that no interest is liable to be paid qua the Appellant herein inasmuch as the Appellant despite grant of repeated opportunities, has failed to give any offer for purchase of property bearing no. 36, Sham Nagar, Kalkaji, New Delhi, ad-measuring 200 sq. yds. (‘suit property’) and has substantially delayed the adjudication of suit.

1.2. The Appellant herein is the plaintiff, the Respondent Nos. 1 to 3 are defendant nos. 2 to 4 respectively and the Respondent Nos. 4 and 5 (not a party to the suit) are the prospective purchasers of suit property. The suit has been filed by the Appellant herein seeking declaration, partition of suit property and injunction from creating any third-party rights in the said property.

2. Brief facts necessary to decide this appeal are as under:



2.1. The now deceased defendant no.1, late Sh. Madan Lal Saini, is the father and late Smt. Asha Rani is the mother of Appellant and Respondent Nos. 1 to 3. In the plaint it is averred that the suit property was purchased by the Appellant in the name of Smt. Asha Rani, who died intestate on 16th October, 2008.

2.2. It is stated that in January, 2014, an Agreement to Sell ('ATS') was entered into between late Sh. Madan Lal Saini and the Respondent Nos. 4 and 5 i.e., the prospective purchasers, for purchase of suit property for a consideration of ₹ 2.40 crores. In these circumstances, the Appellant filed this suit.

2.3. On the first date of hearing of suit i.e., on 28th April, 2014, the learned Single Judge restrained the original defendant no.1 i.e., late Sh. Madan Lal Saini, from alienating, encumbering or parting with possession of the suit property. It is stated that however, the said defendant violated the directions for interim injunction issued vide order dated 28th April, 2014 and accordingly, an application under Order XXXIX Rule 2A of Code of Civil Procedure, 1908 was filed by the Appellant herein.

2.4. The learned Single Judge while hearing the said application on 9th July, 2018, recorded the submissions made by the counsel for the proposed purchasers to the effect that the ATS was entered into on 27th January, 2014, for a consideration of ₹ 2.40 crores and a sum of ₹ 50 lacs was paid on the said date. The possession of suit property was taken over by the proposed purchasers in January, 2014, itself and construction had started. It was further recorded that upon being apprised with the directions for injunction, issued vide order dated 28th April, 2014, the construction was immediately



stopped and appearance was entered before the Court.

2.5. The learned Single Judge in these circumstances, vide order dated 10th July, 2018, observed that Appellant, at best, if he succeeds in suit, would be entitled to 1/5th share in suit property. The learned Single Judge further observed that the ATS is consented by all the co-owners except the Appellant herein and accordingly, a sum of ₹ 48 lacs towards 1/5th share of Appellant was directed to be deposited with this Court, which shall be released subject to the final outcome of the suit. The said amount of balance sale consideration admittedly, stands deposited.

2.6. The learned Single Judge in the impugned order, more particularly paragraph 15 therein, has recorded that Respondent Nos. 4 and 5 have paid, in parts, the entire sale consideration of ₹ 2.40 crores i.e., ₹ 50 lacs on 27th January, 2014, ₹ 48 lacs on 31st May, 2022, ₹ 8 lacs on 21st July, 2022 and ₹ 1.34 crores on 28th October, 2022.

Submissions of the Appellant

3. Learned senior counsel for the Appellant states that the Court ought to have called for the valuation of the suit property as per Section 2 of the Partition Act, 1939 ('Partition Act'). He states that the current market value fixed as per the valuation report should be the sale price payable by the prospective purchasers. He states that the Appellant has been unreasonably called upon to pay the current market value of suit property to the defendants, whereas, the prospective purchasers have been permitted to conclude the sale of suit property at the price fixed in the ATS dated 27th January, 2014. He states that the direction to execute a sale deed in favour of the prospective purchasers is not maintainable in this suit for partition.



3.1. He states that there is no equity in favour of the prospective purchasers. He states that the ATS executed by late Sh. Madan Lal Saini in favour of the prospective purchasers was unregistered and they were handed over the possession of the suit property without any registration of the ATS. He fairly admits that the prospective purchasers have carried out substantial construction in the suit property and the same is almost complete.

3.2. He states that the true purport of Section 4 of the Partition Act and Section 44 of the Transfer of Property Act, 1882, is to keep-off strangers, who purchased the undivided share of the co-owners of immovable property.

Findings and Analysis

4. We have heard the learned senior counsel for the Appellant and perused the record.

5. At the outset, it is noted that this is the third round of litigation by the present Appellant reagitating the very same issue.

First round of litigation

6. Initially, the learned Single Judge vide detailed order dated 10th July, 2018, had permitted the Respondent Nos. 1 to 3 to execute the sale deed in favour of the proposed purchasers in recognition of their subsisting interest in the suit property. To safeguard the interest of the Appellant herein, the Respondents were directed to deposit an amount of ₹ 48 lacs with the Registrar General of this Court. The sale consideration payable by the proposed purchasers was ₹ 2.40 crores and since, the Appellant's claimed share was 1/5th, the aforesaid direction of deposit of ₹ 48 lacs was issued. The said order was assailed by the Appellant in FAO (OS) 120/2018 wherein, the Division Bench by its detailed order dated 7th March, 2019,



upheld the order of the learned Single Judge and did not interfere in the directions for sale. The Appellant challenged the aforesaid directions of sale before the Supreme Court in SLP (C) No. 10935/2019. The said SLP was dismissed vide order dated 7th May, 2019 and the Supreme Court categorically recorded that it was not inclined to interfere with the judgment of the Division Bench. However, the Supreme Court granted liberty to the Appellant to give an offer for buying out the share of the other co-owners, which was to be considered by the learned Single Judge in accordance with law. The aforesaid facts clearly show that the directions issued on 10th July, 2018 permitting execution of the sale deed of the suit property in favour of the Respondent Nos. 4 and 5 was not interfered with.

Second round of litigation

7. In pursuance of the liberty granted by the Supreme Court in its said order dated 7th May, 2019, the Appellant filed an application IA No. 8173/2019 seeking permission to purchase the shares of co-owners i.e., Respondent Nos. 1 to 3 at the price determined in the ATS dated 27th January, 2014. The Appellant was unwilling to pay the purchase price as per the existing market value. Therefore, in view of the unwillingness of the Appellant to buy the share of the co-owners at the current market value, the learned Single Judge held that the offer of the Appellant was not in consonance with the provisions of the Partition Act and accordingly, dismissed the said application vide order dated 17th October, 2023. The said order of the learned Single Judge was assailed by the Appellant in FAO (OS) 122/2023. The said appeal was dismissed by this Division Bench vide judgment dated 18th January, 2024, after taking note of the fact that the offer



of the Appellant to purchase the shares of the co-owners at the price reserved in the ATS dated 27th January, 2024 lacks bona fides. We also held that the pleadings in I.A. No. 8173/2019 evidence that the Appellant herein does not have the financial wherewithal to purchase the shares of the other co-owners.

Third round of litigation

8. In the aforesaid background, when the matter came up for hearing before the learned Single Judge on 22nd January, 2024, the Court after recording the statement of the Appellant that he is not in a financial position to buy out the shares of the Respondent Nos. 1 to 3, issued consequential directions in furtherance of the initial order dated 10th July, 2018, which order has attained finality. We therefore, find no infirmity in the impugned order.

9. We are of the considered opinion that the present appeal is barred by res judicata (Re. *S. Ramachandra Rao vs. S. Nagabhushana Rao and Ors.*¹) and is in fact an abuse of process of law. The Appellant is seeking to re-litigate the same issue again and again, which has been deprecated by the Supreme Court in its judgment reported in *M. Nagabhushana vs. State of Karnataka and Ors.*². The Appellant admittedly does not have the financial resources to buy out the shares of the Respondents and is opposing the sale to secure a lucrative financial package for himself. Even during the course of arguments, the distinct impression given to the Court was that the Appellant is looking for a higher share from the prospective purchasers. The legal

¹ 2022 SCC OnLine SC 1460

² (2011) 3 SCC 408



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process cannot be resorted to for making financial bargains.

10. Accordingly, in view of the aforesaid observations, the present appeal is bereft of any merits and the same along-with applications is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 8, 2024/rhc/aa

Signature Not Verified

Signed By: MANJIMA
SHARMA
Signing Date: 13.02.2024
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