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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 24/2024 and CM APPL. 9780/2024, CM APPL. 9781/2024, CM APPL. 9782/2024**

INDER PRATAP SINGH AKOI (THROUGH HIS DULY CONSTITUTED ATTORNEY) Appellant

Through: Mr. Rajesh Yadav, Senior Advocate with Ms. Ruchira V. Arora and Mr. Dhananjay Mehlawat, Advocates.

versus

SHRI HARI MOHAN SHARMA & ORS. Respondents

Through: Ms. Neelima Tripathi, Senior Advocate with Mr. Apoorv P. Tripathi, Mr. Dheeresh K. Dwivedi and Mr. Apaam Mittal, Advocates for Respondent No. 10

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Date of Decision: 19th February, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J: (ORAL)

CM APPL. 9781/2024 (for exemption)

1. Allowed, subject to just exceptions.
2. Accordingly, this application is disposed of.

FAO(OS) 24/2024 & CM APPL. 9780/2024, CM APPL. 9782/2024

3. The present appeal has been filed under Section 10 of the Delhi High Court Act, 1966, impugning the Judgment dated 05th January, 2024 passed



by a learned Single Judge of this Court in I.A. No. 1757/2022, in CS(OS) No. 1511/1991, whereby the application filed by the Appellant i.e., plaintiff no.6 under proviso to Order XXIII Rule 3 of the Code of Civil Procedure, 1908 ('CPC') for setting aside of the Decree dated 25th January, 2019, has been dismissed.

3.1. The Appellant/plaintiff no.6 along with other plaintiffs/Respondent Nos. 1 to 5 filed the underlying suit for Specific Performance on 7th May, 1991, seeking performance of the Agreement to Sell ('ATS') dated 14th September, 1990. The Appellant on 05th January, 1991 had nominated Respondent No.2/plaintiff no.2 as the purchaser and requested the sellers to execute the sale deed of his share in favour of the said Respondent No.2/plaintiff no.2. Accordingly, the Appellant was impleaded only as a proforma party to the suit and the relief was sought in favour of Respondent No.2/plaintiff no.2.

3.2. During the pendency of the suit, the contesting parties arrived at a compromise and an application bearing I.A. No. 1452/1994 was filed agreeing to passing of a decree for specific performance on the terms set out in the said application. However, due to the pendency of another suit i.e., CS(OS) No. 2278/1992 filed by Respondent No. 10/defendant no.5, the final order in the said application was deferred.

3.3. In the interregnum, Respondent No.2/plaintiff no.2 by an onward nomination assigned its rights, under the ATS in favour of Respondent No.3/plaintiff no.3 vide agreement dated 24th April, 1995.

3.4. Thereafter, on 09th August, 2010, a comprehensive application i.e., I.A. 10905/2010 was filed by the contesting parties seeking decree of specific performance in favour of Respondent No.1/plaintiff no.1,



Respondent No.3/plaintiff no.3 and Respondent No.10/defendant no.5. The original contesting defendants i.e., Respondent Nos. 6, 7 and 8/defendant nos. 1, 2 and 3 were also parties to this application. The contesting parties, therefore, prayed for a decree of specific performance in terms of I.A. No. 1452/1994 and I.A. No. 10905/2010 with respect to the Agricultural land with a Poultry Farm in Village Ghitorni, Mehrauli, New Delhi, bearing Khasra Nos. 377/1 [3-3], 378/1 Min [2-14], 386 [4-16], 387 [4-16], 388 [2-13] and 389 [1-18] making a total complement of twenty Bighas and Land at Village Narsinghpur, District Gurgaon, forming part of Khewat No.26, Khata No.47, Rectangle No.24, Plots No.11/2 [5-2], 20 [8-0], 22/1/1 [2-8], 12/2 [8-0], 21 [8-0], 19/2 [6-0]; out of Rectangle No.25, Plots No.15 [3-0], 16 [7-2], 25/1 [4-18]; and out of Rectangle No.27, Plots No. 1/1 [6-17], 2/1/1 [0-1], 10/3 [3-6], 11/1 [0-5], thirteen pieces in all making a total area complement of about sixty-two Kanals, nineteen Marlas ('subject property').

3.5. In the year 2013, the Appellant/plaintiff no.6 herein stated that it was not a signatory to I.A. No. 1452/1994 and I.A. No. 10905/2010 and therefore opposed the passing of the decree of specific performance. The Appellant/plaintiff no.6 alleged that on 01st May, 2013 it has revoked the nomination dated 05th January, 1991 executed in favour of Respondent No.2/plaintiff no.2. The Appellant filed applications opposing the passing of the consent decree.

3.6. The learned Single Judge allowed I.A. No. 1452/1994 and I.A. No. 10905/2010 and on 25th January, 2019 ('Decree') decreed the suit for specific performance in favour of Respondent No.1/plaintiff no.1, Respondent No.3/plaintiff no.3 and Respondent No.10/defendant no.5 and against Respondent Nos. 6 to 8/defendant nos. 1 to 3.



3.7. The Appellant/plaintiff no.6 was claiming rights under the ATS and since suit was being decreed in favour of Respondent No.1/plaintiff no.1, Respondent No.3/plaintiff no. 3 and Respondent No.10/defendant no.5, the Court reserved liberty to the Appellant herein to avail his remedies against the said persons in accordance with law. The Court rejected the opposition of the Appellant to passing a decree against the contesting defendants. The learned Single Judge clarified that the passing of the said Decree will not affect the claim, if any, which the Appellant may have against Respondent Nos. 1, 3 and 10. The applications filed by the Appellant opposing the passing of the decree were dismissed with the aforesaid liberty. The Appellant has elected not to challenge the said Decree or dismissal of his applications by filing an appeal.

3.8. Thereafter, on 21st January, 2022 (three years later), the Appellant filed an I.A. No. 1757/2022 under proviso to Order XXIII, Rule 3 of CPC, praying for setting aside of the Decree, on the same grounds as alleged by it in 2013 which were not accepted by the Court while passing the decree in 2019. The learned Single Judge of this Court has dismissed the said application of the Appellant/plaintiff no. 6 vide the impugned Judgment dated 05th January, 2024 holding that the same is not maintainable in the disposed of suit.

Arguments of the Appellant

4. Learnd counsel for the Appellant/plaintiff no.6 states that I.A. No. 1452/1994, filed under Order XXIII Rule 3 CPC, does not bear Appellant's genuine signatures and the signatures on the said application is forged. The other objection raised by the Appellant was that the nomination made by the Appellant in favour of the Respondent No.2/plaintiff no.2 dated 05th January,



1991 was since withdrawn on 01st May, 2013 and the effect of that withdrawal was not considered by the learned Single Judge while passing the decree.

4.1. He states that the Appellant/plaintiff no. 6 could not have filed an appeal against the Decree dated 25th January, 2019, as no appeal is maintainable against a consent decree due to the specific bar contained in Section 96 (3) of CPC. He states that the compromise agreement, which forms the subject matter of I.A. No. 1452/1994 and I.A. No. 10905/2010, is not lawful and challenge to the said agreement can be maintained in the suit only in view of the proviso to Order XXIII Rule 3 of CPC. He states that no separate proceeding can be maintained for challenging the decree in view of Order XXIII Rule 3A of CPC. He relies upon the judgment of the Supreme Court in ***R. Janakiammal v. S.K. Kumarasamy Thr. LRs & Ors.***¹ in support of his submissions.

4.2. He states that in relegating the Appellant herein to file an independent suit against the decree holders i.e., Respondent Nos. 1, 3 and 10, the Court failed to appreciate the underlying principle of Order XXIII Rule 3 and 3A of CPC, which is intended to bring to an end all litigations and not be a bedrock for further or separate litigation. He states that the intent is to avoid multiplicity of proceedings.

4.3. He states that if a separate suit is filed by the Appellant against the decree holders i.e., Respondent Nos. 1, 3 and 10, he would have to assail the Decree dated 25th January, 2019, which is impermissible and barred under Order XXIII Rule 3A of CPC.

¹ (2021) 9 SCC 114.



4.4. He states that the Appellant/plaintiff no.6 herein is not a party to either I.A. No. 1452/1994 or I.A. No. 10905/2010. He states both the applications were filed without the consent of the Appellant and were opposed before the learned Single Judge.

4.5. He states that the Appellant was wrongfully excluded from the fruits of the Decree to the extent of his share under the ATS dated 14th September, 1990. He states that the nomination dated 05th January, 1991 made by the Appellant herein in favour of Respondent No.2/plaintiff no.2 was without consideration and not accepted by the contesting defendant Nos. 1 to 3/Respondent Nos. 6 to 8 in their written statement. He states that the said nomination was revoked by the Appellant on 01st May, 2013 during the pendency of the suit and prior to the recording of the compromise and passing of the Decree.

4.6. He states that the findings returned in the impugned Judgment with respect to the inter-se transfer/assignment between Appellant and Respondent No.2/plaintiff no.2 and exchange of consideration is not borne out from any evidence on record. He states that no payment of any money was made by Respondent No.2/plaintiff no. 2 to the Appellant/plaintiff no. 6 for executing the nomination dated 05th January, 1991.

Analysis and Findings

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

6. A consent Decree dated 25th January, 2019 for specific performance of the subject property in terms of I.A. No. 1452/1994 and I.A. No. 10905/2010 was passed in CS(OS) No. 1511/1991 in favour of Respondent No.1/plaintiff no.1, Respondent No.3/plaintiff no.3, Respondent



No.10/defendant no. 5 and against Respondent Nos. 6 to 8/defendant nos. 1 to 3. The Appellant/plaintiff no. 6 admittedly, did not consent to the said decree. This was expressly recorded therein and liberty to agitate his rights *qua* the decree holders was expressly reserved therein.

7. The Appellant thereafter, on 21st January, 2022 (three years later) filed I.A. No. 1757/2022 seeking setting aside of the said consent Decree. The Appellant, by way of I.A. No. 1757/2022 seeks determination of his alleged personal rights under the ATS dated 14th September, 1990. However, the alleged rights as noted above at paragraph 3.1, admittedly, stood assigned by the Appellant to Respondent No.2/plaintiff no.2 on 05th January, 1991 even prior to the filing of the suit. The plaint expressly recorded and pleaded the fact of the said nomination and plaintiffs (including Appellant herein) sought a decree of specific performance from the defendants, in accordance with the said nomination. The rights of the Appellant under the ATS by onward nomination further, devolved upon Respondent No. 3/plaintiff no. 3 in the year 1993 as noted in paragraph 3.3 hereinabove. The said devolution of nomination was brought on record of the suit in I.A. No. 10905/2010.

8. The Appellant/plaintiff no. 6 started contesting the nomination in favour of Respondent No. 2/plaintiff no. 2 onward nomination in favour of Respondent No. 3/plaintiff no. 3 in the year 2013 by filing interlocutory applications. After considering the nature of the disputes raised by the Appellant/plaintiff no. 2 in the said applications, the Court on 25th January, 2019 held that the said disputes raised by the Appellant/plaintiff no. 6 were *inter-se* the plaintiffs and the contesting defendants i.e., Respondent Nos. 6 to 8/defendant nos. 1 to 3 were unconcerned with the same. Accordingly, the Court, after taking note of the said objections, clarified that the passing of



the consent decree of specific performance (as prayed for in the plaint and I.A. Nos. 1452/1994 and 10905/2010) will not affect the claims, if any, of the Appellant against Respondent No. 1/plaintiff no. 1, Respondent No. 3/plaintiff no.3 and Respondent No. 10/defendant no.5. With this clarification, the Court passed a decree in favour of Respondent Nos. 1, 3 and 10 and against Respondent Nos. 6 to 8 respectively. The consent decree for specific performance passed against the Respondent Nos. 6 to 8/defendant no. 1 to 3 was in conformity with the substantive relief of specific performance sought in the plaint.

9. The Appellant herein was, therefore, admittedly not a party to the compromise recorded in the Decree dated 25th January, 2019 and the Court unequivocally clarified that the claims, if any, of the Appellant against Respondent Nos. 1, 3 and 10 herein (i.e., the decree holders) will not be affected by passing of the said Decree.

10. In these facts, the Appellant was thus, as a matter of record expressly excluded from being bound by the decree *qua* Respondent Nos. 1, 3 and 10 and liberty reserved to challenge the same. The only effect was that the Appellant was put to notice with respect to passing of the decree of specific performance in favour of Respondent Nos. 1, 3 and 10 for the purposes of limitation. Since the Appellant is not a party to the compromise recorded on 25th January, 2019, the bar of Order XXIII Rule 3A of CPC would not be attracted to a challenge, if any, maintained to the said decree at the behest of the Appellant. The bar of Order XXIII Rule 3A of CPC is attracted to the parties at whose behest the compromise decree is passed and their successors in interest, as well are held to be bound by the said decree.



11. It is well settled that an application under Order XXIII Rule 3A of CPC for setting aside a consent decree is not maintainable at the behest of a party, who can otherwise maintain independent proceedings as it is not bound by the said decree. In view of the fact that express liberty has been reserved to the Appellant to agitate its alleged rights against Respondent Nos. 1, 3 and 10 under the Decree dated 25th January, 2019, the bar under Order XXIII Rule 3A CPC would not be attracted to the independent proceedings initiated by the Appellant against the said Respondent Nos. 1, 3 and 10. Therefore, the reliance placed by the Appellant on the judgment of ***Janakiammal v. S.K. Kumarasamy*** (supra) is not made out in the facts of this case. It is a matter of record that Respondent Nos. 1, 3 and 10 have not objected to the liberty reserved to the Appellant when the Decree dated 25th January, 2019 was passed. Therefore, the Appellant cannot presume that an objection to maintainability of suit due to Order XXIII Rule 3A CPC will be raised by Respondent Nos. 1, 3 and 10 to the independent proceedings filed by the Appellant. Be that as it may, with the stand now taken by Respondent Nos. 1, 3 and 10 in these proceedings it is clear that no such objection is sought to be raised by the said Respondents.

12. In the facts of this case, however, as per the Decree undoubtedly all the rights, title and interest of Respondent Nos. 6, 7 and 8 in the subject property stood transferred in favour of Respondent Nos. 1, 3 and 10 herein and the reliefs sought in the suit *qua* Respondent Nos. 6, 7 and 8 stands satisfied. The Court, which was passing the Decree, after taking note of the objections of the Appellant, reserved his right to claim interest in the subject property only *qua* Respondent Nos. 1, 3 and 10. However, no right was



reserved for the Appellant to raise any claims against Respondent Nos. 6, 7 and 8.

13. In the aforementioned facts, in case the Appellant was aggrieved with the directions issued in the Decree dated 25th January, 2019, the Appellant should have filed an appeal against the said Decree within the statutory period of limitation. Since, the Appellant was not a party to the compromise recorded in the consent decree, the bar of Section 96 (3) of CPC would not have been attracted to an appeal, filed by him. The Appellant having elected not to file an appeal, the Decree dated 25th January, 2019 has attained finality, as regards the transfer of the subject property by Respondent Nos. 6, 7 and 8 in favour of Respondent Nos. 1, 3 and 10. The Appellant cannot overreach the effect of the finality of the said decree *qua* Respondent Nos. 6, 7 and 8 by filing the application under proviso to Order XXIII Rule 3 of CPC or relying upon Order XXIII Rule 3A of CPC.

14. Even on merits, the stand of the Appellant *qua* Respondent Nos. 6 to 8 is untenable. The suit was filed in the year 1991 on the averment that the plaintiffs, including the Appellant/plaintiff no.6 herein, have entered into an ATS with Respondent Nos. 6 to 8/defendant Nos. 1 to 3. It was stated in the plaint that Appellant/ plaintiff no.6 had agreed to purchase undivided 1/6th share in the subject property under the ATS. However, the said right to purchase had been assigned by the Appellant on 05th January, 1991 in favour of Respondent No. 2/plaintiff no.2 prior to institution of the suit. The plaint categorically stated that the decree of specific performance was being prayed for in favour of Respondent No.2/plaintiff no.2 in pursuance of the ATS and it was clarified that the Appellant/plaintiff no.6 had only been



joined as a proforma party. The relevant pleading in the plaint reads as under:

“31. In the meantime on 5.1.1991, Shri Inder Pratap Singh Akoi nominated M/s Moti Board Industries Pvt Ltd. as purchaser under the Agreement. They are Plaintiff No.2. To avoid any objection, Inder Pratap Singh Akoi has also sued as Plaintiff No.6.”

(Emphasis supplied)

15. Though initially contesting defendants (i.e., Respondent Nos. 6 to 8/defendant Nos. 1 to 3) opposed the nomination of Respondent No.2/plaintiff no.2, yet the parties to the suit arrived at a settlement and I.A. No. 1452/1994 was filed wherein the contesting defendants agreed to a decree of specific performance on the terms set out therein. The said application remained pending until the year 2019. In the interregnum, Respondent No.2/plaintiff no.2 assigned its rights in favour of Respondent No.3/plaintiff no.3 vide ATS dated 24th April, 1993. This fact of assignment vide ATS dated 24th April, 1993 was duly disclosed in I.A. No. 10905/2010.

16. The Appellant herein, belatedly, in the year 2013 raised an objection to the passing of the said decree of specific performance in favour of Respondent No.2/plaintiff no.2 and sought to revoke the nomination on 01st May, 2013. However, curiously no amendment to the plaint was sought and the plaint as originally filed seeking a decree of specific performance in favour of Respondent No.2/plaintiff no.2 continued to stand, with paragraph no. 31 remaining unamended.

17. It is, thus, evident that the Appellant, despite raising an objection of revocation of the nomination in favour of Respondent No.2/plaintiff no.2, failed to take appropriate steps for seeking an amendment of pleadings. In the absence of any amendment to the original plaint, the alleged revocation



of the nomination dated 05th January, 1991 was not an issue arising for consideration in the said suit. In these facts, the Court vide judgment dated 25th January, 2019 and the impugned order dated 05th January, 2024 has rightly held that the suit for specific performance was liable to be decreed.

18. The rights, if any, of the Appellant herein to claim share in the suit property is now limited *qua* Respondent Nos. 1, 3 and 10. The Appellant is at liberty to proceed against the said Respondents in a separate suit in accordance with law and specifically, subject to the law of limitation.

19. In view of the aforesaid analysis, this Court finds no reason to interfere with the impugned judgment of the learned Single Judge and accordingly, the present petition along with pending applications stands dismissed.

MANMEET PRITAM SINGH ARORA, J

ACTING CHIEF JUSTICE

FEBRUARY 19, 2024/sk/msh