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

+ **FAO(OS) 123/2022, CM APPL. 47471/2022, CM APPL. 47473/2022
& CM APPL. 7403/2023**

TERRA REAL ESTATE P LTD

.....Appellant

Through: Dr. I.M. Quddusi, Senior Advocate
with Mr. Pramod Kumar and Ms.
Kanti Tiwari, Advocates

versus

FAIZ MURTAZA ALI (DEAD) THROUGH LRS.....Respondent

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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13.11.2024

1. Present appeal has been filed challenging the order dated 31st August, 2022 passed by the learned Single Judge in I.A. No. 21318/2014 in CS No. 2122/2011, whereby the learned Single Judge allowed the impleadment of Mr. R.C. Maheshwari in the subject suit.
2. Vide the impugned judgment dated 31st August, 2022, the learned Single Judge allowed the application filed on behalf of respondent no.1 (wife) and respondent no.2 (daughter) under Order VI Rule 17 read with Section 151 CPC, 1908 seeking amendment of the plaint in view of the subsequent developments after the demise of Late Mr. Faiz Murtaza Ali with respect to knowledge of alleged will dated 1st January, 2010 executed by Late Mr. Faiz Murtaza Ali (who died on 20th June, 2013) in favour of Mr. R.C. Maheshwari.



3. Learned senior counsel for the appellant states that the subject suit had been filed by Late Mr. Faiz Murtaza Ali under Section 31 of Specific Relief Act, 1963 for cancellation of agreement to sell dated 1st January, 2010 which was registered on 8th January, 2010 entered into between Late Mr. Faiz Murtaza Ali and the appellant/defendant no.1 in respect of property bearing no. A-4, Chirag Enclave, New Delhi. He states that Late Mr. Faiz Murtaza Ali had specifically admitted the fact of execution of agreement to sell dated 1st January, 2010 and receipt of full consideration of Rs. 2,37,05,000/- in lieu of the agreement to sell.

4. He states that the learned Single Judge allowed the prayer for amendment of the plaint without considering that the prayer for cancellation of will of Late Mr. Faiz Murtaza Ali was time-barred.

5. Having heard the arguments and having perused the paper book, this Court finds that the alleged will dated 1st January, 2010 is a part of the set of documents that were allegedly executed along with the agreement to sell which late Mr. Faiz Murtaza Ali during his lifetime had challenged by way of the subject suit as, according to him, his signatures had been fraudulently obtained on the said documents. Moreover, it is specifically pleaded that neither the late Mr. Faiz Murtaza Ali nor his legal heirs were aware of the existence of the alleged will till August, 2013 when Mr. R.C. Maheshwari applied for substitution as legal representative on the demise of Late Mr. Faiz Murtaza Ali.

6. Moreover, the will dated 1st January, 2010 will come into effect only after the death of late Mr. Faiz Murtaza Ali i.e. 20th June, 2013 and consequently the amendment application is within limitation.



7. This Court is further of the view that declining to permit the amendment to include the challenge to the will, which is on the same ground as agreement to sell, would lead to multiplicity of suits and trials which would not be in the interest of justice. Accordingly, the present appeal and applications being bereft of merits are dismissed.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 13, 2024
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