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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 17, 2010
Date of Order: February 22, 2010

+ CM(M) 425/2008

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Abdul Sattar

Through: Ms. Kamlesh Shambharwal, Advocate

Versus

UOI & Anr.

Through: Mr. Virendra Singh, Advocate

22.02.2010

...Petitioner

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By way of present petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 24th April, 2007 passed the Civil Judge (Executing Court) whereby the learned trial court after recording statement of technical assistant of the Archeological Survey of India, refused to issue warrants of possession of the property.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner filed a suit against Union of India impleading Archeological Survey of India and Delhi Wakf Board as parties. This suit was for recovery of possession. The plea taken in the suit by the Archeological Department was that the property in question was not in possession of it but the property was a DDA property. DDA was not made a party in the suit despite the fact that this was a contention raised by the Union of India. The trial court passed the following order:

"It is pertinent to mention here that it we see the documents Ex.PW1/18 and ExPW1/19, from those document it become clear that the plaintiff had also filed one suit for Permanent Injunction for restraining the DDA and Mohd. Aquil from dispossessing him from the suit premises and the said suit was dismissed on the application of the DDA that possession has been taken over and on the said place a Park is being maintained by the DDA which was not disputed by the plaintiff and the said suit was disposed off as infructuous on 9th October, 1986. In the said suit, the

DDA specifically stated in their WS that the said property belongs and comes under the Management of DDA. Even DW1 in his statement stated that the suit property comes under the DDA and it was DDA who handed over the property to them, for repairs but in the present suit, the plaintiff did not thought it proper to implead DDA as a necessary party which he was supposed to do, therefore, the plaintiff is not entitled for any relief against DDA in the present suit and the plaintiff shall be entitled to obtain possession of the suit land only if the same is found to be in possession of defendant no.1 i.e. Archaeological Department of India and not against DDA. Hence, these issues are decided in favour of plaintiff and against the defendants accordingly. No orders as to costs. Decree sheet be prepared accordingly. File be consigned to record room."

3. After the decree in the suit in above terms, the decree holder filed an execution and sought possession. The statement of technical assistant was recorded by the trial court refused to issue warrants of possession and finding that judgment debtor was not in possession of suit property.

4. It is apparent from the decree passed itself that the trial court had given a finding that the property was in custody and possession of DDA and DDA maintained a park over there and this fact was not even disputed by the plaintiff/ decree holder as the decree holder had withdrawn the earlier suit filed by him. The learned trial court, therefore, gave a limited relief to the plaintiff that in case the property was with Archeological Survey of India and not with DDA then in that eventuality the decree holder will be entitled to obtain possession of the suit property. As Archeological Department of India has specifically made a statement that the property was not in their possession and it has also come in the evidence that the property was in possession of DDA, I consider that the trial court rightly refused to issue warrants of possession.

5. In view of above facts, I find no force in this petition. The petition is hereby dismissed. No orders as to costs.

February 22, 2010
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SHIV NARAYAN DHINGRA J.