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IN THE HIGH COURT OF DELHI AT NEW DELHI

Pronounced on: 20.04.2010

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I.A. No. 7476/2006 & CS(OS) No. 466/2006

MOHD. FARJAM

..... Plaintiff

Through : Mr. Raman Kapur and Ms. Honey Taneja, Advocates.

versus

SARFARAZ AHMED AND ORS

CA+

..... Defendants

Through : Mr. B.B. Gupta, Advocate.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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

MR. JUSTICE S. RAVINDRA BHAT

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1. The applicant first defendant moves this Court, for rejection of the suit, on the ground that it is barred in law, citing Order XXI Rules 58 and 101 of the CPC.
2. The plaintiff claims to be owner of property ("suit property") being 190 square yards, part of Khasra No. 436/297, Batla House, Okhla, Jamia Nagar, which is shown in red in the site plan filed with the suit. The plaintiff claims that the third defendant was his predecessor in interest, with whom he (the plaintiff) entered into a transaction to purchase (the suit property), on 25.09.2003 and 26.09.2003, when a General Power of Attorney and a will were executed and Rs. 3,00,000/- was paid as consideration. It is stated that an agreement (to sell) was also entered, and that further, the predecessor in interest, third defendant put the plaintiff in

possession of the suit property. The suit alleges that the suit property was an open piece of land, and formed part of a larger plot of 800 square yards. It is alleged that when this was the factual situation, the first defendant, claiming to be the landlord in respect of the said property, including the suit property, with the aid of the court bailiff, dispossessed the plaintiff from the said suit property, on 30.08.2005. The suit contends that the plaintiff was at that time, unaware of the full facts, but after causing inspection of the official file (of the Court whose decree was sought to be executed) discovered that the first defendant had falsely represented himself to be owner of the suit property, and also alleged – falsely that the second defendant was his tenant.

3. The plaintiff elaborates, in the suit, that the first two defendants appear to have colluded in securing the decree of the Court and dispossessing him from the premises, as was allegedly apparent from the circumstance that the suit was instituted in 2004 (E-19/2004); the second defendant was proceeded *ex-parte* on 15.09.2004, and the eviction decree issued on 12.10.2004. In these circumstances, the plaintiff claims declarations that he is the true and lawful owner of the suit property, and that the decree of the Rent Controller in E-19/2004 is void and not binding, and for the consequential relief of a decree for possession, against the defendant Nos. 1&2; in the alternative, a decree for Rs. 3 lakhs is claimed against the third defendant, in the event of the said defendant's title being proved to be defective.

4. The defendant resists the suit, on merits, in the written statement, and in the application for rejection of the plaint, contends that the plaintiff has preferred objections before the Rent controller, which were rejected on 21.11.2007. It is submitted that the power of the Rent Controller is identical to that of the Civil Court, by virtue of Section 42 of the Delhi Rent Control Act, 1958 read with Rule 23 of the Delhi Rent Control Rules, 1959. In the circumstances, the plaintiff having availed of the remedy – which included the right to seek adjudication of the title and true ownership of the property, the present suit, for declaration is not maintainable. Section 42 of the DRC Act and Rule 23 of the DRC Rules are extracted below:

“Section 42. Controller to exercise powers of civil court for execution of other orders.- Save as otherwise provided in section 41, an order made by the Controller or an order passed on appeal under this Act shall be executable by the Controller as a decree of a civil court and for this purpose, the Controller shall have all the powers of a civil court.”

“Rule 23. Code of Civil Procedure to be generally followed.- In deciding any question relating to procedure not specifically provided by the Act and these rules the Controller and the Rent Control Tribunal shall, as far as possible, be guided by the provisions contained in the Code of Civil Procedure, 1908.”

5. It is urged, in addition, that the question of right, title and interest to the property having been put in issue by way of objections under Section 25 of the DRC Act, before the Additional Rent Controller, the plaintiff cannot agitate the same in the present action. It is pointed out that the provision of Order XXI Rule 101 makes it clear beyond a shade of doubt that issues of title can, and are to be agitated in execution proceedings, and the Rent Controller is competent to decide them. In this case, subsequent to filing of the suit, that application was rejected.

6. The plaintiff, in response, submits that questions of title cannot be gone into by the executing court, whether it is the civil court, or the Rent Control Tribunal. It is urged, by relying on Section 25 of the DRC Act, that an order of eviction can be enforced even against a non-party to the rent control proceeding, as it is *“binding on all persons who may be in occupation of the premises”*, and that Section 42 does not confer any additional power to adjudicate issues of title. It is also submitted that the order rejecting the plaintiff’s application under Section 42 was premised on the Rent Controller lacking jurisdiction or power to adjudicate issues of title; the Rent Control Tribunal merely affirmed the said order. The following observations of the Rent Control Tribunal, as made in order deciding the objections, dated 21.11.2007 are relied upon, by the plaintiff, in support of this submission:

6. There cannot be any dispute with respect to proposition as laid down in the aforesaid authorities but all the aforesaid authorities as placed reliance upon are pertaining to the jurisdiction of either Hon'ble High Court or Hon'ble Supreme Court or of civil court. This court being only executing court which execution already stands satisfied and right now is to dispose off only the objections u/s 25 DRC Act on the basis of independent claim of the objectors. Cannot declare a decree as passed by J.A. Proceedings to be null, void or also cannot give any findings with respect to alleged fraud, if any. This court exercising powers under Delhi Rent Control Act cannot assume powers of the court prescribed under Specific Relief Act for which the objectors are at liberty to take appropriate steps and accordingly the objections for the reasons as above are dismissed. As the execution already stands satisfied, the execution file as well as all these objection files be consigned to record room.

7. The relevant provisions of the Civil Procedure Code, i.e. Order XXI Rules 58, and 98-101 are extracted below:

“58. Adjudication of claims to, or objections to attachment of, property-

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained-

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(emphasis supplied)

“98. Orders after adjudication.-*(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—*

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99. Dispossession by decree-holder or purchaser.— (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application complaining of dispossession.— Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

101. Question to be determined.— All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

8. The plaintiff had filed objections against the order, dated 12.10.2004 of the Addl. Rent Control, Tribunal, which were pending before the Addl. Rent Controller at the time this application was filed by the first defendant. These objections were finally disposed of by order, dated 21.11.2007, wherein it was held that- “This court exercising powers under Delhi Rent Control Act cannot assume powers of the court prescribed under the Specific Relief Act for which the objectors are at liberty to take appropriate steps and accordingly the objections for the

reasons above are dismissed." The Addl. Rent Controller allowed the execution of the decree held by the applicant herein.

9. In this Court's opinion the above finding by the Addl. Rent Controller does not correctly reflect the legal position because the Court called upon to execute a decree is empowered to consider and rule upon all issues arising out of the right to possession in respect of the property as well as the title to it. This is apparent from the tenor Order XXI Rule 58(2) and Rules 99 and 101, CPC. If there is any lingering doubt as to whether such issues can be raised and the determination (by the executing court), bind only parties to the main proceeding or the suit, they stand clarified by the judgment of the Supreme Court in *Usha Sinha v. Dina Ram & Ors.*, (2008) 7 SCC 144. In that judgment the Court had cited with approval and applied the ruling in a previous decision, i.e. *Silverline Forum Pvt. Ltd. v. Rajiv Trust*, (1998) 3 SCC 723 to the following effect:

"...A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree..."

10. In the present case the plaintiff elected for a remedy, i.e. application under Order XXI objecting to his dispossession. The application was made correctly before the Rent Controller, who has exclusive jurisdiction over such matters, and who, by virtue of Section 42 of the Delhi Rent Control Act, is invested with all the powers of a Civil Court, (which include the powers enumerated under Order XXI). All the grounds urged in support of the suit which include the declaration as to his rightful title were available. That application was filed before the present suit was instituted. The executing court's ruling that it did not possess jurisdiction to decide on issues concerning title does not foreclose the plaintiff's remedies i.e. Order XXI Rule 58, 98-101. These reasons are sufficient to dispose of the present application and return the suit. The Court also observes that the plaintiff's claim is founded on documents which are unregistered and insufficiently stamped and therefore prima facie inadmissible in evidence. A careful reading of the agreement to sell (which is on a Rs. 50 stamp paper) also reveals that it purports to convey title in *praesenti* which implies that the intention of the parties was to treat that as a final sale or conveyance deed. These observations, however, are only prima facie and are not meant to preclude any of the parties' contentions in this regard.

11. For the above reasons the application I.A. No. 7476/2006 has to succeed and is accordingly allowed; the plaintiff's right to seek appropriate remedies including moving under Order XXI with suitable application is reserved. The plaint in Suit No. 466/2006, therefore, rejected. No Costs.

20th April, 2010

(S.RAVINDRA BHAT)
JUDGE