

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

+ RSA NO. 118/2012

Date of Decision: 27.07.2012

APARNA ASHRAM

..... Petitioner

Through: Mr. Rakesh Munjal, Sr.Counsel
with Mr.R.P.S.Sirohi, Adv.

Versus

SUBH CHINTAK KISHORE & DDA

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This Regular Second Appeal is preferred against the judgment dated 31.3.2012 of the Addl. District Judge (Central), Tis Hazari Courts passed in RCA No. 41/2011.

2. The respondent No. 1 herein is the allottee of a plot bearing No. 39, Block-A, measuring 736.922 sq. mt., Friends Colony, New Delhi by the respondent No. 2 Delhi Development Authority (DDA). Since the possession of the said plot was not delivered by the DDA to the respondent No. 1, the latter filed a suit being Suit No.87/2007 against DDA, which was ultimately decreed in his favour and against DDA (respondent No.2). The decree remaining unsatisfied, the respondent No. 1 filed execution. The appellant came into fray and filed objections in the Executing Court. Its objections came to be dismissed by the

Executing Court vide order dated 23.08.2011. The appellant carried the matter in appeal before the Addl. District Judge, which came to be dismissed vide order dated 31.3.2012. It is this order of the ADJ, which is assailed here by way of regular second appeal.

3. The sum and substance of the grounds of challenge and the submissions which have been made by the learned counsel for the appellant herein are that the appellant is in possession of the suit premises for the last several years and cannot be dispossessed by the respondent No. 1 in execution of decree obtained by him against the respondent No. 2 DDA. It was the submission of learned senior counsel that the objections have been dismissed by the Executing Court summarily without any trial and that the learned first Appellate Court of ADJ has also erred in dismissing its first appeal against the order of the Executing Court. It was submitted that as per Order XXI Rule 97 CPC, it was entitled to resist the execution and its objections ought to have been determined by way of proper adjudication by the Executing Court, since a separate suit in this regard was barred under Order XXI Rule 101 CPC.

4. Having heard the learned senior counsel for the appellant and on perusal of the record, I find this appeal to be nothing but a gross misuse of the process of law. The appellant seems to be hell bent on usurping the suit premises of respondent No. 1 by all dubious methods. At one point of time, the respondent No. 1 had thought of donating the suit

premises to the appellant and wrote a letter to DDA on 06.03.1976 expressing his such desire. On being informed by DDA about the payment of 50% unearned income in value of suit property, the respondent No. 1 did not carry his desire any longer. On this account, some dispute arose between respondent No. 1 and DDA, which resulted in respondent No. 1 filing a suit (Suit No. 417/1999) for declaration, mandatory injunction against the later. Two separate applications were filed by the appellant under Order 1 Rule 10 CPC for impleadment in the said suit on the plea of its possession of the suit premises. Those applications came to be dismissed with reasoned orders. Ultimately, the suit was decreed in favour of the respondent No. 1 and against DDA on 11.08.2006. The appellant, though was not the party in the suit, but challenged the judgment and decree in this court, where he remained unsuccessful. Despite that a decree was there in favour of respondent No. 1, the DDA failed to give possession and execute lease deed, which resulted in respondent No. 1 filing another suit being Suit No.87/2007 against DDA. Here again, the appellant moved application under Order 1 Rule 10 CPC for impleadment on the same grounds, which application also came to be dismissed vide order dated 24.4.2009. This suit was also decreed in favour of the respondent No. 1 and against DDA on 24.04.2009. As before, the appellant again challenged the same by carrying appeal RCA No. 01/09 in the court of ADJ, which also came to be dismissed with the observations that the status of the appellant in the suit property was only that of a rank trespasser. The appellant carried second appeal to this court vide RSA No. 153/2010, which also came to

be dismissed by this court on 29.07.2011. Further, the appellant had also filed a suit being 1517/2006 against the respondent No. 1 and respondent No. 2/DDA seeking restraint from dispossession. This suit also came to be dismissed on 21.02.2007. Appeal against this judgment also came to be dismissed by the court of ADJ.

5. Now having seen above that the appellant not only made several unsuccessful attempts to be impleaded as a party in the suits filed by the respondent No. 1 against DDA, but also filed a suit against both the respondents claiming to be in rightful possession of suit premises, where also, he remained unsuccessful. The appellant seems to be utterly frustrated in having made so many attempts and getting failed everywhere. The Executing Court rightly observed that the appellant does not seem to be willing to accept its fate, but continue to fight lost battle again and again, on one or the other pretext. The objections which were taken by the appellant were nothing, but based on the old story of its possession of the suit premises, based on the aforesaid letter written by the respondent No. 1 to the respondent No. 2 DDA. The objections have been dismissed by the Executing Court vide detailed order dated 23.08.2011 and the appeal against the same has been dismissed with well-reasoned judgment of learned ADJ vide his order dated 31.3.2012.

6. The grounds which have been presented in the second appeal before this court are nothing, but the same old objections and the pleas

which were taken before the Executing Court as also the Appellate Court of ADJ. The plea that the objections ought to have been tried as a suit and not dismissed summarily, is utterly devoid of any merit. There was nothing on record in any of the proceedings to show that the appellant had any right, title or interest in the suit premises except that of being in the unauthorized possession thereof. A mere letter of desire written by the respondent No. 1 at one point of time to DDA, does not create any right in favour of the appellant. Unauthorized possession of the appellant in the suit premises cannot come in the way of execution of decrees of possession and of lease deeds, secured by the respondent No. 1 against DDA. When the appellant had no rightful claim of any kind including that of possession, there was no question of its objections to be tried as a suit. In any case, the appellant had also filed a suit 1517/2006 against the respondents claiming adverse possession and seeking restraint of dispossession on the plea of adverse possession. Since the appellant did not have any rightful claim even based on the plea of adverse possession, the said suit met its fate of dismissal. The orders passed by this court in different litigations as noted above, have attained finality. The learned ADJ has rightly dismissed the appeal against the order dated 23.08.2011 of the Executing Court dismissing the objections of the appellant.

7. In view of all this, I do not see any infirmity or illegality in the order dated 23.8.2011 of the Executing Court or that of the impugned

order of the learned ADJ. The appeal has no merit at all and is hereby dismissed in limine.

M.L. MEHTA, J.

JULY 27, 2012/_{akb}