

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

+ CM(M) 997/2012, CM 15534-15536/2012

Date of Decision: 06.09.2012

RAJENDRA BHARTIYA & ANR. Petitioner

Through: Mr. Rakesh Tikku, Sr. Adv.
with Mr. Vivek Singh, Adv.

Versus

RAJ RANI & ORS. Respondent

Through: Presence not given.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J. (Oral)

CM(M) 997/2012, CM 15534-15536/2012

This petition under Article 227 of the Constitution is filed by the petitioners impugning order dated 29.08.2010, whereby application of the petitioner filed under Order 21 Rule 97, 99 and 101 CPC read with Section 47 and 151 CPC and application under Order 21 Rule 35 r/w Section 47 and 151 CPC, were dismissed by the executing Court of Civil Judge, Central-04, in Execution petition No. 37/2009.

2. Certain facts in brief would demonstrate the conduct of the petitioner being hell bent upon to avoid execution of the decree that

was passed against him in suit M-65/1999 (original number

58/1984). The respondents had filed a suit for possession and damages against the petitioner and others in respect of plot No. 13, ad-measuring 123 square yards situated at Jawahar Park, Block-B, forming part of Khasra No. 56 of village Shakarpur, Ilaqa Shahdara, Delhi. The said plot was shown in red colour in the site plan that was attached with the plaint. The suit was dismissed by the Civil Judge vide judgment dated 24.01.2002. The respondents carried the matter in appeal vide RCA 4 of 2002 (re-numbered as RCA No. 29/2003/02). The appellate Court of ADJ vide judgment dated 11.11.2003 set aside the decision of the Civil Judge and decreed the suit in favour of the respondents/plaintiffs. The respondents/plaintiffs filed execution being Execution Petition No. 37/2009 for execution of the judgment and decree dated 11.11.2003 of ADJ. The petitioners filed an application under Order 41 Rule 5 CPC for stay of the execution petition on various grounds, which came to be dismissed by the executing Court on 18.12.2009. The same was challenged in this Court vide CM(M) 1541/2009, which came to be dismissed by this Court on 23.12.2009. The petitioner moved further and filed application under Order 41 Rule 21 CPC

before the Court of ADJ for re-hearing the appeal, which also came to be dismissed by the ADJ on 22.04.2010. The petitioners filed appeal against this order before this Court under Order 43 Rule 1 CPC vide FAO 190/2010 and this FAO also came to be dismissed by this Court vide detailed order dated 27.09.2011. The petitioners did not stop, but filed second appeal being RSA No. 92/2010 against the judgment dated 11.11.2003 of ADJ, which also came to be dismissed by this Court on 27.09.2011 along with pending applications. Now, when the executing Court further initiated the execution, the petitioners filed two applications, one under Order 21 Rule 97, 95 and 101 CPC and another under Order 21 Rule 35 reads with Section 47 CPC. Both these applications came to be dismissed by the executing Court vide the impugned order dated 29.08.2012.

3. The petitioners have assailed the said orders in the instant petition.

4. I have heard the learned counsel for the petitioners and gone through the entire record including all the orders passed by the courts below and this Court. This case reflects the mischievous conduct of the petitioners in having retained the encroached suit

premises, by taking advantage of owning the adjoining plot bearing No. 12. All the pleas which have been taken in the instant petition assailing the impugned order are nothing, but, attempt to re-open the controversy as regard to the identification and demarcation of the suit plot. The respondent's case has been throughout that they are owners of plot bearing No. 13, measuring 123 square yards situated at Jawahar Park, Block-B, out of Khasra No. 56 of Village Shakarpur, which they had purchased by way of registered sale deed. In the registered sale deed Ex.PW1/2, the demarcation of the plot has been clearly described, as bounded on North: Plot No. 14, on South: Plot No. 12, on East: Gali and one West other's plot. A site plan that was filed along with the plaint and proved as Ex. PW1/7 also clearly described the boundaries of the suit plot No. 13 as above. The petitioner No. 1 claimed to be owner and in possession of Plot No. 12, which is adjoining and formed part of the same Khasra. The entire evidence led by the parties and also the documents filed by them has been elaborately discussed by the learned ADJ in RSA No. 29/03/04. It was categorically held that the measurement of the plot in question was 39.5 x 28 feet which was

equivalent to 123 square yards and the same was so shown in the site plan Ex. PW1/C, and which was not impeached by the petitioners. It was held that from the evidence on record it could not be said that the petitioners were in possession of plot No. 12 only as has been stated by them everywhere, but, also in possession of plot No. 13.

5. The finding of facts have been confirmed by this Court in FAO and RSA and that has now become resjudicata. The only controversy that was sought to be raised by the petitioners, time and again, was with regard to identification, alleging that the respondents had stated that the aforesaid plot bearing No. 13 bear Municipal No. D-55, D-65 and D-58, known as Laxmi Nagar, Shakarpur, and that these are the numbers of Plot No. 12 which was in possession of the petitioners. This is nothing but another attempt to create confusion. When the petitioners are found to be in unauthorized possession of the plot bearing original number 13, which is adjoining to Plot No. 12, and new municipal numbers have been given to both these plots, it may be that the aforesaid municipal numbers might have been given to the plot of original number 13.

This is nothing, but another device to mislead the Court and this issue has already been dealt with by the courts below as also by this Court in different orders. The petition is nothing but frivolous and mischievous. The petitioners have been able to delay the trial of the case filed in the year 1984 up till 2002, and after the decision of the appellate Court of ADJ on 11.11.2003, have successfully managed and manipulated to avoid the execution, by filing repeated petitions before the executing court as also first appellate Court and this Court, as noted above. Such persons do not deserve indulgence by this Court and such litigation needs to be checked with stern hand. The petitioners being unscrupulous persons and still showing their adamancy, during the course of arguments, deserve to go back with some message.

6. Consequently, I do not see any cause or reason to interfere in the impugned order of executing court. Since the petitioners have been able to deprive the respondents of their property for several years and also deprive them of the fruits of decree, the petition deserves to be dismissed with cost. The executing court shall

forthwith proceed with the execution of warrants of attachment with police aid, as already ordered by it.

7. The petition stands dismissed with cost of Rs.25,000/- to be payable to the respondents.

8. Dasti.

M.L. MEHTA, J.

SEPTEMBER 6, 2012

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