

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 18th November, 2021.

+ CM(M) 1040/2021

SHRI BAIJ NATH

..... Petitioner

Through: Mr. R.B. Singh, Advocate.

Versus

SHRI BHOLA NATH

..... Respondent

Through: Mr. Pawan Kumar Bahl, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

[VIA VIDEO CONFERENCING]

Caveat No.63/2021

1. The counsel for the caveator/respondent enters appearance. Therefore, the caveat stands discharged.

CM No.41123/2021(for exemption)

2. Allowed, subject to all just exceptions.

3. The application is disposed of.

CM(M) 1040/2021 & CM No.41124/2021(for stay)

4. The present petition under Article 227 of the Constitution of India impugns the order dated 11th October, 2021 passed by the Additional District Judge – 04, South-East, Saket Courts, New Delhi in MCA

No.30/2019, whereby the appeal filed on behalf of the petitioner/judgment debtor, impugning the order dated 28th May, 2019 passed by the Executing Court in EX. No.1/2017 directing the petitioner/judgment debtor to facilitate the respondent/deed holder for the use of the suit property to the extent of 50:50, has been dismissed.

5. The brief facts leading to the filing of the present petition are as follows:

5.1 A suit for mandatory injunction was filed by the respondent/deed holder against the petitioner/judgment debtor in 2009 for joint enjoyment of the suit property, a co-owned property, bearing no. 3 Bhogal Road, Bhogal, New Delhi-110014;

5.2 The said suit bearing Civil Suit No.80/2014 was decreed on 7th June, 2014 by the Civil Judge – 03, South District, New Delhi, directing the petitioner/judgment debtor, by way of mandatory injunction, to handover one set of keys of the suit property to the respondent/deed holder;

5.3 An appeal bearing RCA No. 21/2014 was preferred against the said decree by the petitioner/judgment debtor, which was dismissed by the Additional District Judge – 04, South-East, Saket Courts, New Delhi on 12th January, 2016;

5.4 The petitioner/judgment debtor preferred a second appeal bearing RSA No. 44/2016 thereagainst before this Court and the same was dismissed on 28th July, 2016;

5.5 The petitioner/judgment debtor approached the Supreme Court by filing SLP (C) No. 26438/2016, impugning the aforesaid order of this Court, and the said SLP was also dismissed on 23rd September, 2016;

5.6 The respondent/decreed holder filed an execution petition bearing EX. No.1/2017, wherein vide order dated 28th May, 2019, the Executing Court directed the petitioner/judgment debtor to facilitate the respondent/decreed holder for the use of the suit property to the extent of 50:50; and

5.7 The petitioner/judgment debtor preferred an appeal bearing MCA No.30/2019 thereagainst and from the dismissal of which appeal, the present petition arises.

6. The counsel for the petitioner/judgment debtor has drawn attention of this Court to the decree dated 7th June, 2014 passed in Civil Suit No.80/2014 to contend that the said decree, by way of a mandatory injunction, was only to hand over one set of keys of the suit property to the respondent/decreed holder and in pursuance of the said decree, the keys have been duly handed over by the petitioner/judgment debtor to the respondent/decreed holder. Furthermore, he submits that the Trial Court in the said decree also notes that the issue with regard to the sharing of the suit property in the ratio of 50:50 was not required to be adjudicated. He has also drawn attention of this Court to the order dated 28th May, 2019 passed by the Executing Court in EX. No. 1/2017 to contend that the directions of the Executing Court went behind the terms of the decree passed by the Trial Court.

7. The counsel for the respondent/decreed holder appearing on caveat submits that the respondent/decreed holder had always been in possession of the suit property, therefore, there was no requirement for the adjudication of his right to share the aforesaid suit property in the ratio of 50:50. In fact, it was the petitioner/judgment debtor who had contended that he was in exclusive possession of the suit property and the said contention of the petitioner/judgment debtor was rejected in the judgment of the Trial Court

and the said judgment of the Trial Court has been upheld till the Supreme Court. The counsel for the respondent/decreed holder also draws attention of this Court to paragraphs 4 to 6 of the judgment dated 28th July, 2016 of this Court in RSA No. 44/2016, wherein it has been specifically observed that no document was filed on behalf of the petitioner/judgment debtor to show that he was ever in exclusive/sole possession of the suit property and further, it was held that once the suit property is jointly owned, all co-owners are entitled to joint possession of the same and one co-owner cannot deny the benefit of use, enjoyment and possession of a co-owned property to other co-owners.

8. The Appellate Court in the impugned judgment has relied upon the aforesaid paragraphs 4 to 6 of the judgment dated 28th July, 2016 of this Court in RSA No.44/2016, and the SLP preferred whereagainst has been dismissed by the Supreme Court on 23rd September, 2016. In view of the aforesaid, the Appellate Court has noted that all the contentions raised by the petitioner/judgment debtor are nothing but an attempt to re-agitate the issues that have already been decided against him. It has further been noted by the Appellate Court that despite exhausting his remedies upto the Supreme Court, the petitioner/judgment debtor is intentionally causing delay to the respondent/decreed holder enjoying the benefits of the decree. Accordingly, the appeal filed by the petitioner/judgment debtor was dismissed by the Appellate Court with costs of Rs.20,000/- to be paid to the respondent/decreed holder.

9. I have heard the counsels for the parties and also examined the record.

10. In my view, the Appellate Court has passed a detailed and well-reasoned judgment. As per the decree of the Trial Court, which has attained

finality up to the Supreme Court, the issue of the entitlement of the respondent/decreed holder for being handed over the keys and effectively, the joint possession of the suit property has been decided in favour of the respondent/decreed holder. The said judgment in favour of the respondent/decreed holder was obviously passed taking into account the fact that the petitioner/judgment debtor and the respondent/decreed holder were in joint possession of the suit property and that the petitioner/judgment debtor had failed to showcase his exclusive/sole possession of the suit property. The petitioner/judgment debtor by filing the present petition cannot be permitted to go behind the spirit of the decree of the Trial Court by raising technical objections or arguing for a literal interpretation of the decree of the Trial Court, especially when the matter has already been settled upto the Supreme Court in favour of the respondent/decreed holder. The present petition is yet another attempt of the petitioner/judgment debtor to delay the execution of the decree passed in favour of the respondent/decreed holder and against the petitioner/judgment debtor. In light of the aforesaid, there is no infirmity in the impugned judgment, which requires interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

11. Accordingly, the present petition is dismissed with costs of Rs.50,000/- to be paid to the respondent/decreed holder within ten days from today.

AMIT BANSAL, J

NOVEMBER 18, 2021

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