

Neutral Citation No. - 2024:AHC:149170

Court No. - 6

Case :- S.C.C. REVISION No. - 48 of 2016

Revisionist :- Naresh Kumar Pandey

Opposite Party :- Shiv Narayan Mishra And 4 Ors.

Counsel for Revisionist :- Pradeep Kumar (Senior Adv.), Uma Nath Pandey

Counsel for Opposite Party :- Awadhesh K Shukla, Awadhesh Kumar Shukla, Chandan Sharma, Rama Goel Bansal, Sumit Kr. Mishra, Sunil Kumar

Hon'ble Saral Srivastava, J.

1. Heard Sri Pradeep Kumar, learned Senior Counsel assisted by Sri Uma Nath Pandey, learned counsel for the revisionist and Ms. Rama Goel Bansal, learned counsel for the respondents.
2. The present SCC Revision has been filed by the applicant/revisionist against the order dated 21.01.2016 passed by the Additional District Judge/Special Judge, E.C. Act, Jhansi in SCC Misc. Case No.42 of 1998 (Naresh Kumar Pandey Vs. Shiv Narayan Mishra and others) by which the learned Judge has rejected the application paper No.3C of the revisionist under Order 21 Rule 97 of C.P.C.
3. The facts in brief are that the respondent no.2-Abdul Samad Khan instituted SCC Suit No.6 of 1987 in the Court of Judge Small Causes Court, Jhansi for eviction of respondent no.1-Shiv Narayan Mishra from the Shop No.24 situated at Mohalla Khanderao Gate Bahar, District Jhansi on the ground of default in payment of rent.

4. In paragraph no.1 of the plaint, it was stated that respondent no.2 (plaintiff) was the owner of the Shop No.24. Paragraph no.1 of the plaint is reproduced hereinbelow:-

“1- यह कि वादी एक किता दुकान नम्बर 24 महदूदा जैल वाके बाहर खण्डेराव गेट झॉसी का मालिक है, और उक्त दुकान के भूमिखण्ड में प्रतिवादी बतौर किरायेदार बशराह 300/- रुपया माहवार मिनजानिब वादी आवाद चला आता रहा है। और उसकी किरायेदारी हर माह की पहली तारीख को उसी माह की आखरी तारीख को समाप्त होती आती रही है।”

5. In the aforesaid suit, respondent no.1 appeared and filed written statement on 31.08.1987.

6. The Trial Court by the judgement and decree dated 19.09.1990 decreed the suit of respondent no.2 against the respondent no.1.

7. Against the judgement and decree dated 19.09.1990 passed by the Trial Court, the respondent no.1 preferred SCC Revision No. 922 of 1990 in which this Court passed a conditional order dated 23.10.1990 directing the respondent no.1 to deposit the entire decretal amount and further a direction was issued to respondent no.1 to deposit the rent by 7th of each month.

8. It is informed that the respondent no.1 did not comply with the stay order dated 23.10.1990 passed in SCC Revision No. 922 of 1990, therefore, this Court vide order dated 25.04.1998 vacated the interim order dated 23.10.1990.

9. After vacation of the interim order dated 23.10.1990 passed in SCC Revision No.922 of 1990, the respondent no.2 put the decree passed by the Judge Small Causes Court in

SCC Suit No.6 of 1987 in execution in which the respondent no.1 filed objection under Section 47 C.P.C. which was rejected by the Trial Court vide order dated 21.01.2016.

10. After dismissal of objection of respondent no.1 under Section 47 C.P.C. in the Execution Case No. 1 of 1997, the revisionist appeared and filed an application under Order 21 Rule 97 C.P.C. contending *inter alia* that the father of respondent no.2 sold Kothari (Room nos.24, 25 & 26) (hereinafter referred to as the 'Room') outside of Khanderao Gate, District Jhansi to one Harish Chandra through registered sale deed dated 30.08.1961 and vendee Harish Chandra renovated the Rooms purchased by him and raised a construction on the plot over which the Room no.24 was existing. It transpires that Room No.24 referred in application under Order 21 Rule 97 C.P.C. is referred as Shop No.24 in the plaint.

11. It is further stated in the application that respondent no.2 was not the owner of room No.24 nor he was in possession over the said room. The further averment in the application is that the respondent no.2 with an illegal motive attempted to grab Shop No.27 situated at Khanderao Gate, and to achieve this, he instituted SCC Suit No.6 of 1987.

12. It is further stated that on 20.07.1998, respondent no.2 told the revisionist that he had won the case in respect to shop No.27 and the possession of the shop may be delivered to the respondent no.1. The revisionist immediately thereafter contacted his counsel and made enquiries and came to know on 25.07.1998 that respondent no.2 by playing fraud and by

adopting illegal means had been attempting to take possession of Shop No. 27 under the garb of decree passed in SCC Suit No.6 of 1987.

13. It is further stated that Room No.24 is not in existence since it was sold to Harish Chandra and the name of Harish Chandra is recorded in the assessment register in the Nagar Palika. In paragraph no.6 of the application, the revisionist has detailed the boundaries of Shop No.27 which is reproduced hereinbelow:-

6. यह कि मकानियत नम्बर-27 बाहर खण्डेराव गेट झांसी जिसकी चौहद्दी में उत्तर में दुकान नम्बर 27 के ऊपर जाने हेतु जीना के बाद मकानियत नम्बर-26 बाहर खण्डेराव गेट झांसी है व दक्षिण में दुकान नम्बर-28 बाहर खण्डेराव गेट झांसी है जिसके सम्बन्ध में कार्यवाही 145 जाबता फौजदारी विचाराधीन है व पूर्व में चबूतरा के बाद सड़क है व पश्चिम में मकान हरिश्चन्द्र पर मिन उजरदार शान्तिपूर्ण तरीके से बहैसियत मालिक काबिज चला आता है और नगर पालिका के असिस्मेंट रजिस्टर में मिन उजरदार का नाम दर्ज है व टैक्स आदि अदा करता है। और नवीन असिस्मेंट में 27 लगायत 29 का नया नम्बर मिला था।

14. On basis of aforesaid pleading, the petitioner prayed for dismissal of Execution Case No. 1 of 1997.

15. It appears that during the pendency of application of revisionist under Order 21 Rule 97 C.P.C., the respondent no.2 had died and his heirs have been substituted as respondent nos. 2/1 to 2/3.

16. The respondent no.2 filed objection to the application under Order 21 Rule 97 C.P.C. denying the averments stated in the application. It was stated by the respondent no.2 that the

revisionist Naresh Kumar Pandey is the real brother-in-law of respondent no.1 and has colluded with respondent no.1 in filing the present application under Order 21 Rule 97 C.P.C.

17. The respondent no.1 further stated that the revisionist has no concern whatsoever with the shop in respect of which the decree was passed inasmuch as he was resident of Village Sachedi, District Kanpur Dehat.

18. The respondent no.2 further stated that he inherited the shop after the death of his father. Further averments in the objection was that Harish Chandra and Umesh Chandra demolished the rooms purchased by them and got a lodge constructed over it in the name of Shri Ram Lodge which existed in the North and West of the shop.

19. It was further stated that respondent no.2 had rented the Shop No.24 to the respondent no.1 on 11.10.1985 and the boundaries of the shop was in East-Public Road, in West-Shri Ram Lodge, in North-Shri Ram Lodge and in South-Shop No.25 of the respondent no.2 It was further stated that the respondent no.1 had executed rent note with the respondent no.2 at the time of taking the shop on rent. It is further stated that the respondent no.2 has detailed the boundaries of the Shop No.24 in the plaint and boundaries of the shop was never disputed by the respondent no.1.

20. It was further stated that since the respondent no.1 did not comply with the stay order by dated 23.10.1990 passed in SCC Revision No. 922 of 1990, therefore, the respondent no.2 filed execution in which the respondent no.1 filed objection under Section 47 C.P.C. which was also rejected. The

respondent no.2 denied the assertion made in the application of the revisionist that the name of the revisionist was recorded in the Nagar Nigam.

21 On the basis of the aforesaid pleading, the Trial Court framed as many as three issues which are reproduced hereinbelow:-

- “1. क्या प्रश्नगत दुकान सं०-27 स्थित बाहर खण्डेराव गेट, झांसी की सीमायें व नम्बर डिक्री में उल्लिखित दुकान सं०-24 से भिन्न होने के कारण यह दुकान डिक्री में उल्लिखित दुकान से भिन्न सम्पत्ति है?*
- 2. क्या प्रार्थी/आपत्तिकर्ता प्रश्नगत दुकान का मालिक काबिज है?*
- 3. क्या प्रार्थी/आपत्तिकर्ता अपनी आपत्ति 3 ग में चाहे गये अनुतोष को प्राप्त करने का अधिकारी है?*

22. On the issue No.1, the Trial Court compared the boundaries of the plot of the alleged Shop No.27 and the Shop No.24 in respect of which the decree was passed, and the Trial Court held that the boundaries of the Shop No.27 are same as boundaries of Shop No.24. Consequently, it decided the issue No.1 in favour of respondent no.2.

23. On the issue No.2, the Trial Court held that the mutation records issued by the Nagar Nigam are not the document of title. It further held that the revisionist did not lead any evidence on record to prove the title. Consequently, it decided the issue No.2 against the revisionist and in favour of respondent no.2.

24. The Trial Court decided the issue No.3 also against the revisionist and in favour of the respondent no.2.

25. Challenging the aforesaid order, learned Senior Counsel

Sri Pradeep Kumar laid emphasis upon the Court Amin Report, according to which the boundaries of the Shop No.24 and the boundaries of Shop No.27 are different. The report of Court Amin is enclosed as Annexure-7 to the paper book.

26. It is submitted that the respondent no.2 did not raise any objection to the report of Court Amin and once the Court Amin report has not been objected by the respondent no.2, it is proved on record that the Shop No.24 and Shop No.27 are different and since the decree has been passed in respect of Shop No.24 and not in respect of Shop No.27, therefore, under the garb of the said decree, the revisionist cannot be dispossessed from the Shop No.27 which is different from Shop No.24.

27. It is submitted that the revisionist has filed a number of documents namely, assessment of Nagar Palika from 1975 to 1990 and Tax Receipts from which it is evident that the shop of the revisionist i.e. Shop No.27 is different from the Shop No.24. Accordingly, it is submitted that the finding of the Trial Court that the boundaries of the suit property and the boundaries described in the Court Amin Report is the same is perverse, more so when no objection was filed by the respondent against the Court Amin Report.

28. It is further submitted that there was ample evidence on record in the form of assessment of Nagar Nigam from the year 1975-1990 and the tax receipts issued by the Nagar Nigam which proved that the revisionist was the owner of Shop no.27 and in such view of the fact it is submitted that the Trial Court has erred in law in rejecting the objection of the revisionist

under Order 21 Rule 97 C.P.C.

29. It is also submitted that it is evident from the photographs filed on record along with the rejoinder affidavit that Shop No.24 does not exist on the spot and in fact Shop no.27 exists. Learned Senior Counsel has further submitted that respondent no.2 Suresh Chandra Gupta is a man of criminal antecedents, and therefore, counter affidavit filed by the respondent may be ignored.

30. Learned counsel for the revisionist in support of his argument has placed reliance upon the judgement in ***AIR 2022 SC 4739, Hindustan Petroleum Corporation Ltd. Vs. Ajay Bhatia. Relevant paras 43 to 48 and 55 of the judgement are reproduced hereinbelow:***

“43. Mr. Kalra emphasised on the fact that there was a site plan attached to the plaint which is part of the decree and the decree has been confirmed by the Appellate Court. Mr. Kalra also argued that 4/4 and 4/5 are only landmarks as found by the Courts below and no substantial question of law is involved. The appeals are thus liable to be rejected.

44. With the greatest of respect, there is no finding by any Court that 4/4 or 4/5 are only landmarks. Rather, there is a plethora of documents on record to show that two separate petrol pumps/retail outlets were being run on two contiguous plots, one of which was initially run by CALTEX, which later merged into the Appellant and the other by ESSO, which later merged into the Appellant. There was no connection between CALTEX and ESSO. It is also admitted that one of the plots have gone to the share of some other descendants of the original owner, Shadi Lal Bhatia.

45. It is clear that the decree is not executable against Plot No. 4/5. The Respondent is liable to restore the possession of Plot No. 4/5 to the Appellant. The

Executing Court would have to appoint a Local Commissioner to demarcate and hand over Plot No.4/4 to the Respondent.

46. It is not necessary for this Court to embark upon a threadbare analysis and discussion of the lengthy judgment of the High Court, in appeal before us. Suffice it to mention that the suit was in respect of Plot No. 4/4, The mesne profits and/or damages were awarded in respect of wrongful occupation of Plot No. 4/4.

47. There can be no doubt that the verdict of the Trial Court has assumed finality in respect of Plot No. 4/4 The Respondent is entitled to possession of Plot No. 4/4. The Respondent is also entitled to mesne profits at the rate of Rs.50,000/- per month from 1st March 2006, as directed by the High Court to make over, till the date on which the Appellant offered possession of Plot No. 4/4 to the Respondent.

48. The question is whether the Respondent can take possession of any part of Plot No. 4/5 or any other plot in execution of the decree in suit being C.S.(O.S.) No. 1828 of 2006 which is only in respect of Plot No. 4/4. The answer to the aforesaid question is obviously in the negative.

55. This Court cannot shut its eyes to the fact that part of the land belongs to the Delhi Government for which Appellant is paying Revenue to the Delhi Government.”

31. Per contra, Ms. Rama Goel Bansal, learned counsel for the respondent submits that Order 21 Rule 101 C.P.C. defines what issues are to be determined by the Court while considering the application under Order 21 Rule 97 C.P.C.

32. It is contended that it is manifest from the reading of Order 21 Rule 101 C.P.C. that the Trial Court while considering the application under Order 21 Rule 97 C.P.C. shall determine all the question including the question of right

title or interest in the property. It is submitted that the application of the revisionist under Order 21 Rule 97 C.P.C. is nothing but an abuse of the process of the Court inasmuch as revisionist could not file any document on record proving his title over the Shop No.27.

33. It is submitted that it is admitted on record that the revisionist is brother-in-law of respondent no.1 and the respondent no.1 in collusion with revisionist was instrumental in filing application under Order 21 Rule 97 C.P.C. by the revisionist so as to protract the execution of decree. It is submitted that such conduct of the revisionist has kept the respondent no.2 away for years to enjoy the fruits of the decree which had been passed in the year 1990.

34. She further submits that the objection of the respondent no.1 under Section 47 C.P.C. was rejected in the year 1998 and immediately after rejection of the said application, revisionist file application dated 01.08.1998 under Order 21 Rule 97 C.P.C. Accordingly, it submitted that it is a fit case where the Court should not exercise power under Section 25 of Provincial Small Causes Court Act.

35. She further contends that the Trial Court has compared the boundaries of the Shop No.24 and Shop No. 27 as alleged by the revisionist and after detailing the reason how the boundaries of two shops are identical concluded that there was no difference between the boundaries of the two shops. She submits that the finding in this regard is a finding of fact and this Court in exercise of revisional power under Section 25 of The Provincial Small Causes Court Act cannot re-appreciate

the evidence on record and interfere with the finding of fact recorded by the Trial Court unless the finding returned by the Trial Court is in contravention of law or perverse or is based on misreading of evidence. She submits that the finding of the Trial Court based on the comparison of the boundaries of both the shops that the boundaries of both the shops are identical has not been assailed by the revisionist.

36. She further contends that the documents of revenue record are not the documents of title. In this respect, she has placed reliance upon the judgement of the Apex Court in the case of **P. Kishore Kumar Vs. Vittal K. Patkar, 2024 (1) ALD 106**. Relevant paras 11 to 15 & 23 are reproduced hereinbelow:-

“11. It is trite law that revenue records are not documents of title.

12. This Court in Sawarni v. Inder Kaur and Ors. MANU/SC/0730/1996: (1996) 6 SCC 223 held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question.

13. This was further affirmed in Balwant Singh and Ors. v. Daulat Singh (Dead) by LRS and Ors. MANU/SC/0736/1997: (1997) 7 SCC 137 wherein this Court held that mere mutation of records would not divest the owners of a land of their right, title and Interest in the land.

14. In Jitendra Singh v. State of Madhya Pradesh and Ors. MANU/SC/0684/2021, this Court after considering a catena of judgments, reiterated the principle of law as follows:

*6.***mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose.*

15. We may also profitably refer to the decision of this Court in Sita Ram Bhau Patil v. Ramchandra Nago Patil (Dead) by LRs. and Ors. MANU/SC/0285/1977: (1977) 2 SCC 49 wherein it was held that there exists no universal principle that whatever will appear in the record of rights will be presumed to be correct, when there exists evidence to the contrary.

23. This Court, in Union of India and Ors. v. Vasavi Co-operative Housing Society Limited and Ors. MANU/SC/0001/2014: (2014) 2 SCC 269, held as under:

15. It is trite law that, in a suit for declaration of title, the burden always lies on the Plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the Defendants would not be a ground to grant relief to the Plaintiff.”

37. She has also relied upon the judgement of the Apex Court in the case of **Rahul S. Shah Vs. Jinendra Kumar Gandhi & Others (2021) 6 SCC 418**. She has also placed reliance upon para 42.10 and also para 42.12 which reads as under:

“42.10. The court must in appropriate cases where it finds objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.”

38. She has further placed reliance upon the judgement of the Apex Court reported in Shreenath and Another Vs. Rajesh and others, **AIR 1998 SC 1827** with respect to suffering and pain of decree holder.

39. She has also placed reliance upon the judgement of this Court in the case of ***Seth Daryablal Manik Lal Tadaiya and another Vs. Siddh Gopal Kudariya and Another, 2022 2 AWC 1960.*** Relevant paras-29 & 30 of the said judgement are reproduced hereinbelow:.

“29. This Court finds that Apex Court had clearly interpreted Rule 97 read with Rule 101 of Order 21 post amendment wherein the executing court has to determine under Rule 101 Order 21 of the Code that the question raised has legally arisen between the parties and secondly the question must be relevant for consideration and determination between the parties.

30. In the present case, this Court finds that the application moved under Order 21 Rule 97 does not raise any question to be determined and is only an application by the sister-in-law of respondent no.2 trying to stall and delay the execution proceeding filed by decree-holder.”

40. I have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

41. So far as contention of learned counsel for the revisionist that the Trial Court has not considered the Amin Report which establishes that the boundaries of Shop No.24 and Shop No. 27 are different, this Court may note that the Amin Report is dated 29.07.1998 and the application under Order 21 Rule 97 C.P.C. of the revisionist was filed on

01.08.1998 in which the revisionist has not placed any reliance upon the Amin Report.

42. The record further reveals that the Amin Report was not relied upon by the revisionist before the Court below inasmuch as it was not proved as per law. If the revisionist was relying upon the Amin's Report, he should have filed it in evidence and proved it so that the respondent/landlord had an opportunity to rebut the Amin Report.

43. Perusal of the memo of appeal indicate that the revisionist has not set out any ground challenging the order of the Trial Court on the ground that the Trial Court failed to consider the Amin's report nor there is any ground set up in the memo of revision that the revisionist relied upon the Amin's Report before the Trial Court. In such view of the fact, non-consideration of Amin's Report by the Trial Court is not material and does not prejudice the revisionist in any manner.

44. Further, though the revisionist has filed certain records from Nagar Nigam like assessment of the shop etc., but he did not file on record any document proving his title over the Shop No.27. The documents of revenue record are not the document of title as has been held by the Apex Court in the case of **P. Kishore Kumar (supra)** .

45. The revisionist is claiming himself to be the owner of Shop No.27, but perusal of the Application under Order 21 Rule 97 C.P.C. does not disclose that the revisionist has made any assertion as to how he acquired the title of the alleged Shop No.27. This is admitted fact that the revisionist is

brother-in-law of the judgement debtor and immediately after the objection of the judgement debtor under Section 47 C.P.C. was dismissed, he filed application under Order 21 Rule 97 C.P.C. but he failed to establish his title and rights over the alleged Shop No.27. Thus, it is manifest from the record that the revisionist filed the application under Order 21 Rule 97 to delay the execution of decree.

46. Now, so far the contention of learned counsel for he revisionist that the boundaries of the two shops i.e. Shop No.24 and Shop No.27 are different which is evident from the Amin's Report, this Court may note that the Trial Court has threadbare discussed the aforesaid issue and concluded that the boundaries of the Shop No.24 and alleged Shop No.27 are the same. The finding returned by the Trial Court in this regard is reproduced herein-below:-

“प्रश्नगत दुकान की बावत निष्पादन वाद की पत्रावली पर उपलब्ध डिक्री में उल्लिखित दुकान सं०- 24 की सीमाओं के साथ-साथ पंजीकृत बैनामे 30 सी में विक्रीत सम्पत्ति, आपत्ति 3 ग में उल्लिखित दुकान सं०- 27 व परवाना दखल पर अमीन कमिश्नर द्वारा दी गयी आख्या 31 सी में प्रश्नगत सम्पत्ति की दी गयी सीमाओं का मेरे द्वारा विधिवत अध्ययन किया और पाया कि इन सभी अभिलेखों में वर्णित प्रश्नगत दुकान की उत्तर, पूरब व पश्चिम की तीन सीमायें आपस में मेल खाती है क्योंकि डिक्री में उल्लिखित दुकान सं०- 24 के पूरब में सड़क सरकारी, पंजीकृत बैनामा 30 सी में विक्रीत सम्पत्ति के पूरब में सड़क सरकारी, प्रार्थी/ आपत्तिकर्ता की आपत्ति 3 ग, लिखित बहस 43 सी व 44 सी में वर्णित दुकान सं०-27 के पूरब में सड़क सरकारी व अमीन आख्या 31 सी में भी वर्णित दुकान सं०-27 के पूरब में सड़क सरकारी बतायी गयी है। इसी प्रकार डिक्री में उल्लिखित दुकान सं०-24 के उत्तर में हरिश्चन्द्र की सम्पत्ति सं०-26 के समान पंजीकृत बैनामा 30 सी में विक्रीत सम्पत्ति के उत्तर में हरिश्चन्द्र की सम्पत्ति सं०-26, प्रार्थी/ आपत्तिकर्ता की आपत्ति 3 ग, लिखित बहस 43 सी व 44 सी में वर्णित दुकान सं०-27 के उत्तर में हरिश्चन्द्र की सम्पत्ति सं०-26 व अमीन आख्या 31 सी में भी वर्णित दुकान सं०-27 के उत्तर

में भी हरिश्चन्द्र की सम्पत्ति सं०-26 का उल्लेख है। इसी प्रकार डिक्री में उल्लिखित प्रश्नगत दुकान की पश्चिमी सीमा में सम्पत्ति हरिश्चन्द्र का उल्लेख है और पंजीकृत बैनामा 30 सी में बिक्रीत सम्पत्ति, प्रार्थी/ आपत्तिकर्ता की आपत्ति 3 ग, लिखित बहस 43 सी व 44 सी व अमीन आख्या 31 सी में भी वर्णित दुकान सं०-27 के पश्चिम में भी सम्पत्ति हरिश्चन्द्र का उल्लेख है। हालांकि आपत्ति 3 ग में प्रार्थी/ आपत्तिकर्ता द्वारा प्रश्नगत दुकान के उत्तर में ऊपर जाने के लिए जीना व गैलरी के बाद हरिश्चन्द्र की सम्पत्ति सं०-26 बताया है और इस आधार पर अपनी आपत्ति में वर्णित दुकान सं०-27 का डिक्री में वर्णित दुकान सं०-24 से भिन्न बताया है लेकिन मेरी राय में इस आधार पर डिक्री में वर्णित दुकान सं०-24 की उत्तरी सीमा आपत्ति 3 ग में उल्लिखित सम्पत्ति से भिन्न नहीं हो सकती। प्रस्तुत मामले में दोनों पक्षों द्वारा प्रश्नगत दुकान के उत्तर स्थित जीने व गैलरी को प्रश्नगत दुकान का हिस्सा माना है और मेरी राय में किसी भी सम्पत्ति के अपने हिस्से/ भाग के बाद ही उस सम्पत्ति की सीमा का उल्लेख किया जाता है।

अब जहां तक प्रश्नगत दुकान की दक्षिणी सीमा का प्रश्न है तो डिक्री में वर्णित दुकान सं०-24 के दक्षिण में विपक्षी/ डिक्रीदार की दुकान सं०-25 का उल्लेख किया गया है जिसे प्रार्थी/ आपत्तिकर्ता द्वारा डिक्री में वर्णित दुकान सं०-24 को 27 बताते हुए इसके दक्षिण में 28 नम्बर की अपनी दुकान बताया है लेकिन दुकान के नम्बरों को छोड़कर दोनों ही पक्षों द्वारा प्रश्नगत दुकान के दक्षिण में दुकान स्थित होना स्वीकार किया है जिसे दोनों पक्षों द्वारा अपनी-अपनी मिल्कियत की दुकान बताया है। इस सम्बन्ध में प्रार्थी/ आपत्तिकर्ता द्वारा पत्रावली पर दाखिल पंजीकृत बैनामे व अपनी आपत्ति के पैरा-3 व 4 में उल्लिखित कथनों से प्रश्नगत दुकान के दक्षिण में प्रार्थी/ आपत्तिकर्ता की दुकान सं०-28 गलत सिद्ध हो जाती है क्योंकि प्रस्तुत मामले में प्रार्थी/ आपत्तिकर्ता द्वारा पंजीकृत बैनामें 30 सी के आधार पर अपनी आपत्ति 43 सी के पैरा- 3 व 4 में अपनी प्रश्नगत दुकान सं०-27 को पंजीकृत बैनामे 30 सी में बिक्रीत कोठरी सं०-23, 24, 25 व 26 के पूरब स्थित बिक्रीत की गयी खाली जमीन पर बनी होना स्वीकार किया है, जबकि पंजीकृत बैनामे 30 सी में इस बिक्रीत कोठरी व जमीन के दक्षिण में बैनामा कर्ता विपक्षी/ डिक्रीदार के पिता शमशेर खां की सम्पत्ति सं०-25 का उल्लेख किया गया है और जैसा की विपक्षी/ डिक्रीदार के पिता शमशेर खां की सम्पत्ति सं०-25 का उल्लेख किया गया है और जैसा कि विपक्षी/ डिक्रीदार का कथन भी है कि उसके पिता शमशेर खां के देहान्त के उपरान्त प्रश्नगत दुकान सं०-24 के दक्षिण में उसके विरासतन दुकान सं०-25 मिल्कियत में प्राप्त हुयी।

इस प्रकार उपर्युक्त समस्त विवेचना से यह निष्कर्ष निकल रहा है कि

डिक्री में उल्लिखित दुकान सं०-24 की सीमायें प्रार्थी/ आपत्तिकर्ता द्वारा प्रस्तुत की गयी आपत्ति 3 ग में वर्णित दुकान सं०-27 की सीमाओं के साथ-साथ पंजीकृत बैनामा 30 सी व अमीन आख्या 31 सी में वर्णित दुकान सं०-27 की सीमाओं से पूर्णतया मेल खाती है और इस आधार पर यह नहीं माना जा सकता कि डिक्री में वर्णित दुकान सं०-24 व आपत्ति 3 ग में वर्णित दुकान सं०-27 भिन्न-भिन्न दुकानें हैं।"

47. From the extract of the judgement of the Trial Court reproduced above, it is evident that the Trial Court has threadbare discussed as to how the boundaries of Shop No.24 and alleged Shop No.27 are identical. The finding of the Trial Court in this respect is finding of fact based upon proper appreciation of evidence on record.

48. The aforesaid finding of the Trial Court has not been assailed by the revisionist in the memo of revision inasmuch as perusal of the revision reveals that no ground has been set out by the revisionist challenging the aforesaid finding of the Trial Court.

49. Further, learned counsel for the revisionist also could not point out that the aforesaid finding of the Trial Court is perverse and against the record. In such view of the fact, the judgement and order passed by the Trial Court is based upon proper appreciation of evidence and does not warrant any interference by this Court in its revisional jurisdiction.

50. Consequently, the present SCC Revision lacks merit, and is hereby **dismissed** with no order as to costs.

Order Date :-12.9.2024

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