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IN THE HIGH COURT OF DELHI AT NEW DELHI

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EX.F.A. 5/2015

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Decided on: 14th May, 2015

DEWAN CHAND BATRA & ANR

..... Appellants

Through: Mr. Laxman Singh, Advocate.

versus

HARISH CHAND TANDON

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No. 8860/2015 and 8861/2015 (Exemption)

Allowed, subject to all just exceptions.

EX.F.A. 5/2015 and CM No. 8862/2015 (Stay)

1. Aggrieved by the order dated 25th April, 2015 dismissing the objections of the Appellants in Execution Petition filed by the Respondent, the Appellants prefer the present petition.
2. A suit was filed by Kamla Tandon and Harish Chand Tandon against Vijay Kumar Tandon, P.H. Bhatia, Dewan Chand Batra and Chander Kala Batra for possession, injunction and recovery of damages for use and occupation of the premises and mesne profit in respect of the suit property, that is, D-3, Green Park Extension, New Delhi.
3. In the suit Kamla Tandon and Harish Chand Tandon claimed that Rang Behari Lal, husband of Kamla Tandon and father of Harish Chand Tandon had purchased the suit property. On the death of Rang Behari Lal on

2nd July, 1979 the same devolved on his widow, that is, Smt. Kamla Tandon, the Plaintiff No.1 and Harish Chand Tandon, the Plaintiff No.2. Smt. Kamla Tandon also died during the pendency of the suit, thus Harish Chand Tandon was left as the only Plaintiff.

3. It was stated that Vijay Tandon and his mother Smt. Kashmiri Devi Tandon had requested the Plaintiff to allow them to reside in the suit property as they had to vacate their government flat at Gole Market which was allowed and thus they were only the licensees in the suit property. However, Vijay Tandon made unauthorized construction in the suit property and thus a suit for prohibitory injunction was filed. On 2nd June, 1995 the Plaintiff/Respondent terminated the license of Vijay Tandon. In the said suit a Local Commissioner was appointed on 12th July, 1995 who gave the report that Vijay Tandon was in possession of the suit property however, one room was in possession of Defendant No.2 P.H. Bhatia. On 10th December, 1995 Vijay Tandon removed his goods and inducted Defendant No.3 Dewan Chand Batra. Dewan Chand Batra claimed himself to be owner of property by virtue of GPA, Agreement to Sell, Possession Letter etc. In the suit Vijay Tandon and P.H. Bhatia were proceeded ex-parte and following issues were framed:

- “1. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? *OPP.*
2. Whether the plaintiff is entitled to the relief claimed? *OPP.*
3. *Relief.*”

4. After the parties led their evidence the learned Trial Court vide its judgment dated 23rd February, 2010 passed the following judgment and decree as under:

“In view of the above said findings the suit of the plaintiff is decreed against defendants no. 1, 3 & 4. Plaintiff shall be entitled to recover peaceful vacant possession of the suit property from defendant no.3 & 4. Suit against defendant no.2 is dismissed. The Plaintiffs are further held entitled for damages from defendant no.3 & 4 for an amount of Rs.1,600/- for the period prior to filing of the suit and @Rs.6,000/- p.m. from the date of filing of the suit till date of decree and further mesne profit @Rs.7,500/- p.m. from the date of decree till vacation of the suit property by defendant no. 3 & 4. Decree sheet be prepared. Decree sheet shall be prepared after the court fee on the damages from the date of filing of the suit till the date of decree is filed and for future damages court fee shall be payable at the time of execution. File be consigned to Record Room.”

5. The objection raised by Dewan Chand Batra and Chander Kala Batra in the execution petition is that since the suit was dismissed qua Defendant No.2 as he was held to be a tenant who could be dispossessed only by due process of law, the decree to the extent it seeks possession of the entire suit property is incorrect and thus not executable. Vide the impugned order dated 25th April, 2015 the learned Additional District Judge dismissed the objections of the Appellants, Dewan Chand Batra and Chander Kala Batra, Defendant Nos. 3 and 4 in the suit on the ground that in the judgment the learned Additional District Judge discussed the evidence and came to the conclusion that the Will purported to be executed by Rang Behari Lal in respect of the suit property in favour of Vijay Tandon was not proved and thus Vijay Tandon acquired no right, title in the suit property and Dewan

Chand Batra and Chander Kala Batra who claimed to be bona fide purchasers had not been able to prove that they were bone fide purchasers without any knowledge of the suit pending between Harish Chand Tandon and Vijay Tandon and thus the possession of Dewan Chand Batra and Chander Kala Batra was unauthorized and illegal. The Court noted that the Regular First Appeal No. 468/2010 filed by Dewan Chand Batra and Chander Kala Batra against the judgment dated 23rd February, 2010 was dismissed by this Court on 24th May, 2012 and the Special Leave to Appeal (Civil) No.30935/2012 against the judgment of the High Court has also been dismissed by the Supreme Court vide order dated 5th February, 2012 and thus the judgment dated 23rd February, 2010 has attained finality.

6. This Court is only concerned with the objections filed by Dewan Chand Batra and Chander Kala Batra as M.K. Jasswani who was the third objector has not filed any petition before this Court. As regards the present Appellants herein the judgment till the Supreme Court has become final however, they have not handed over the peaceful possession of the suit property to the Decree Holder on the ground that the decree is defective as it does not exclude one room under the tenancy of Defendant No.2 in the suit. The learned Trial Court vide the impugned order noted that admittedly now P.H. Bhatia, Defendant No.2 in the suit was not residing in the one room. The suit was decreed against the Defendant Nos. 1, 3 and 4 and since the possession of the entire suit property had been decreed the Defendant No.1 was liable to deliver the possession of the tenanted room to the Decree Holder. Once the tenant has vacated the room, the Defendant No.1 is bound to abide by the decree and thus it cannot be held to be unexecutable.

7. Besides the findings of the learned Trial Court as noted above, that the judgment dated 23rd February, 2010 has attained finality having been upheld by this Court in appeal and SLP having been dismissed by the Supreme Court and admittedly, the Defendant No.2 is no more in possession of one room in the suit property, I would further add that no objections have been filed by Defendant No.2. In the garb of Defendant No.2, the Appellants Dewan Chand Batra and Chander Kala Batra cannot claim the decree to be defective qua them as well, once the same has attained finality till the Supreme Court. The finding of the learned Trial Court that admittedly P.H. Bhatia is no more residing in the room and thus the Defendant No.1 Vijay Tandon is bound to abide by the decree against whom it has been passed cannot be said to be an illegal order unwarranted in the facts and circumstances of the case. Consequently, I find no merit in the appeal.

8. Appeal and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 14, 2015
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