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

+ W.P.(C) 7833/2015

% *Judgment dated 17th August, 2015*

SANDEEP YADAV

..... Petitioner

Through : Mr.Bharat Bhushan Bhatia and Ms.Vijay
Lakshmi, Advs.

versus

BANK OF INDIA AND ORS.

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CM APPL. 15555/2015.

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 7833/2015

3. Present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India seeking a direction to set aside the Order dated 13.5.2015 passed by Debts Recovery Appellate Tribunal (hereinafter referred to as “DRAT”) in Misc.Appeal No.150/2015 and the Order dated 24.3.2015 passed by Debts Recovery Tribunal-III (hereinafter referred to as “DRT”). The petitioner also seeks to restrain the respondents for conducting sale of the suit property bearing Khasra No.126, measuring 250 sq. Yards situated at Lal Dora of Village Nangloi Jaat, New Delhi. It is also prayed that respondents be directed to desal the property and return the goods lying in the property.
4. The facts of the case are that the petitioner claims that his father,

Sh.Nahar Singh, had sold 1000 sq. yards of land and built up area in terms of Sale Deed dated 1.3.1999 to one Sh.Sanjeev Malhotra. Sh.Sanjeev Malhotra thereafter sought financial assistance from the respondent Bank and created a mortgage of the land by deposit of title deeds. Aggrieved by the notice of auction affixed at the property bearing Khasra No.126, measuring 250 sq. Yards at Lal Dora of Village Nangloi Jaat, New Delhi, led to the filing of SA before the DRT.

5. The case set up by the petitioner before the DRT was that the petitioner was a *bonafide* purchaser of the property in question on the basis of a Khatauni, in which his father, Sh.Nahar Singh, was shown as the owner of the property. With regard to the Sale Deed executed in favour of Sh.Sanjeev Malhotra, the stand of the petitioner was that no money had been paid and time was sought to file a civil suit. The DRT noticed in the Order dated 24.3.2015 that as per Page 3 of the Sale Deed amounts to the tune of Rs.2.00 lakhs were paid by a cheque. Since the SA filed by the petitioner was dismissed on 24.3.2015, the petitioner approached the DRAT by filing Miscellaneous Application No.150/2015, but met with the same fate, as the DRAT dismissed the appeal of the petitioner herein for similar reasons.
6. Mr.Bhatia, learned counsel for the petitioner, submits that the impugned Orders dated 13.5.2015 and 24.3.2015 are erroneous and bad in law. It is further submitted that the DRT and DRAT have failed to take into account that the petitioner is a *bonafide* owner of the property measuring 250 sq. yards, which is in his occupation and possession and which was gifted out of the ancestral property by his father, who is one of the recorded legal heirs as per the revenue records. Learned counsel also contends that the documents placed on record *prima facie* establishes the petitioner to be the owner of the land measuring 250 sq. yards.

7. During the course of hearing, we had requested learned counsel for the petitioner to point out a single document to show that the petitioner is the owner of the land in question. We had also requested counsel for the petitioner to point out as to whether any gift deed or sale deed was executed by the father of the petitioner in favour of the petitioner, however, no such documents was pointed out.
8. Having perused the impugned Order dated 13.5.2015 passed by DRAT and the Order dated 24.3.2015 passed by DRT, we find that no such ground was raised by the petitioner either before the DRT or the DRAT. There is also nothing on record to show that the petitioner is the owner of any part of the property/land in question. Accordingly, we find no infirmity in the impugned Orders passed by the DRT and DRAT. There is no merit in this petition and the same is accordingly dismissed.
9. At this stage, learned counsel for the petitioner submits that the goods of the petitioner are lying in the property in question and further the Tribunal has published an auction notice with respect to the land, which does not form part of the sale deed and, thus, prior to the auction the property should be demarcated. Learned counsel for the petitioner submits that he would seek demarcation of the land as his father was the owner of 5000 sq. yards and only 1000 sq. yards is alleged to have been sold.

CM APPL. 15554/2015 (STAY)

10. Application stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 17, 2015 msr