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HIGH COURT OF DELHI AT NEW DELHI

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Ex.F.A. 5/2016 and CM APPL.5382/2016

Decided on: 27th April, 2016

**MAHAVIR EDUCATIONAL CULTURAL AND WELFARE
SOCIETY (REGD) Appellant**

Through: Mr. S.D. Ansari, Advocate

versus

GIRDHARI LAL DHARA & ORS Respondents

**Through: Mr. Rajesh Yadav, Advocate with
Mr. Neeraj Yadav, Adv. for R-1.
Mr. Ravi Joshi, Adv. with
Mr. Sanjay Gupta, Adv. for R-6.**

**CORAM:
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J. (ORAL)

1. This is an execution appeal filed by the appellant against the order dated 25.01.2016 passed by the Additional District Judge (Central)-01, Tis Hazari Courts, Delhi.
2. Briefly stated that facts of the case are that the present appellant filed objections under Order 21 Rule 97 read with Section 151 CPC on behalf of Professor Mahavir Educational Cultural & Welfare Society (Regd.), NCT Delhi filed by the respondent No.1/ plaintiff G.L.Dhara on 17.10.2014.

3. Shri G.L. Dhara, the decree holder had obtained a decree of possession after a contest against respondents Amin Chand, Jagan Singh, Prem Singh Verma and Dhiraj Singh in respect of 3 bighas 6 biswas of land measuring 4000 sq. yds., falling in Khasra No.742 in the revenue estate of Village Mandawali Fazalpur, Shahdara, Delhi. He had also obtained a decree for grant of mesne profits/damages. The judgment and decree was passed on 28.08.2001. The judgment-debtor had filed an appeal before the Division Bench of this Court and during the pendency of the appeal the execution proceedings filed by the decree-holder G.L. Dhara were adjourned sine die with the direction to revive the same as and when the appeal is disposed of. The Division Bench dismissed the appeal on 23.09.2008 and thereafter the SLP was also filed which was also dismissed.
4. The present execution petition was revived by respondent No.1/decreed-holder on 18.09.2009. It was contended by the appellant/objector that he had entered into agreement to purchase dated 30.09.2006 with the decree-holder for purchase of 2 bighas 6 biswas of land in the same khasra No.742, situated in the revenue estate of Village Mandawali Fazalpur, Shahdara, Delhi and an area of measuring 60 sq. yds. in Khasra No.743 by way of a passage.
5. The decree-holder Shri G.L.Dhara is alleged to have retraced his steps from going ahead with the sale of the aforesaid property in favour of the appellant/objector which led to filing of a civil suit for specific performance bearing No.360/2009 titled Professor Mahavir Educational Cultural Welfare Society vs. G.L. Dhara

which is pending before this Court. The decree-holder has also filed his written statement to the main suit and also replied to the application for an ad interim injunction where the parties were directed to maintain status quo in respect of the suit property.

6. The present appeal is after the disposal of the SLP by the Supreme Court filed by the judgment-debtor which were four in number. Thereafter, the judgment holder got his execution revived and in that execution petition, respondent No.6 Shri Kishan Pal Singh, who was an attorney holder of the decree-holder had filed objections under Order 21 Rule 97 CPC claiming that the property has been sold to him by Shri G.L.Dhara and therefore, he being in possession, he be permitted to retain the possession. These objections of respondent No.6 were dismissed by the executing court and the appeal which was taken out by Kishan Pal Singh was also dismissed. It is after the dismissal of the objections by respondent No.6 Kishan Pal Singh that the present appellant filed the objections under Order 21 Rule 97 CPC claiming himself to have purchased the part of the suit property from which eviction is sought from Shri G.L. Dhara, the decree-holder. These objections were dismissed by the executing court holding that the appellant does not have any right to resist the execution of the decree for the reason that what appellant has in his favour is only an agreement to purchase dated 30.09.2006 and not the Sale Deed. The executing court had relied upon a judgment in *Sunil Kapoor vs. Himmat Singh*, 2010 (167) DLT 806, wherein it has been held that mere agreement to sell of the immoveable property does not create any

right, title or interest except the right to enforce the agreement and therefore, even if the respondent No.1/deed-holder are found to have entered into an agreement to sell, the present appellant will not get the right to occupy the property. It has also referred to the judgment of the Delhi High Court in *Jiwan Das vs. Narain Das*, AIR 1981 Delhi 291, wherein it has been held that no interest or right is ensured to the agreement purchaser, not even after the passing of a decree for specific performance and until the execution of the Conveyance Deed is not executed, the appellant will not have any right to remain in occupation of the suit premises and the decree can be executed against him.

7. Similar is the observation passed by the Apex Court recently in the case of *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana*; AIR 2012 SC 206 wherein it has been observed that no right, title or interest is created in an immoveable property by an agreement to sell or by other documents like power of attorney, etc. It only enables the party in whose favour such documents are executed to go to the Court and get his title perfected whether he is in possession or he is not in possession.
8. On the basis of these two judgments and placing reliance on another judgment of the Bombay High Court in *Sujata Sanzigry vs. Ankush R. Naik*, AIR 2005 BOM 404, the executing court came to the conclusion that on the basis of the agreement to sell itself the transferee cannot claim any right under Section 19(b) of the Specific Relief Act and the objections under Order 21 Rule 97 CPC has to be dismissed.

9. Feeling aggrieved by the aforesaid judgment, the appellant has preferred the present execution appeal against the rejection of his objections under Order 21 Rule 97 CPC vide order dated 25.01.2016.
10. I have heard the learned counsel for the appellant as well as the learned counsel for the decree-holder and the counsel for respondent No.6.
11. The learned counsel for respondent No.6 has raised objection that since the decree-holder has sold the *Bhumidari* rights in respect of the land in question against the provisions of Land Reforms Act, therefore, the sanction which is provided under the Land Reforms Act deserves to be invoked and he ceases to be *bhumidar* and he cannot proceed ahead with the execution of the decree.
12. I do not accept this submission of the learned counsel for respondent No.6 that a party whose objections under Order 21 Rule 97 CPC have already been dismissed by two Courts should be permitted to raise an objection with regard to violation of a provision of law. If he has any *locus standi* to raise such an objection then he must take appropriate legal remedy available to him in an appropriate forum. So far as the present execution appeal is concerned, the only question to be considered by this Court is as to whether the objections which have been filed by the appellant under Order 21 Rule 97 CPC is sustainable and the decree-holder can or cannot be permitted to execute the decree against such an applicant/appellant.

13. The points which have been urged by the learned counsel for the appellant before this Court are the same which have been raised before the executing court. These points are three-fold; that he is a purchaser of the substantial part of the suit property from the decree-holder itself and the possession has already been given to him by respondent No.6 and, therefore, the decree cannot be executed against him. This argument has already been rejected by the executing court.
14. I have no hesitation in agreeing with the reasoning given by the executing court in rejecting this objection. The essential reasoning which has been given by the executing court while rejecting this objection is legally sound and tenable in law that the agreement to sell which is allegedly executed by the decree-holder in favour of the appellant does not record that he has been put in possession and at best only is executed by him which could be made a basis of protecting his title by filing a suit for specific performance. This suit for specific performance has already been filed by the appellant/objector. Till the time the appellant/objector does not perfect his title, he cannot claim that he be permitted to retain the possession even though his plea of being in possession is accepted to be correct. This reasoning is perfectly in line with the judgment of the Apex Court in *Suraj Lamp's case (supra)*.
15. So far as the possession of the suit property is concerned, the executing court has rightly disbelieved that the applicant/objector is not in possession of the suit property. This is because of the reason that in the agreement to sell there is no clause which records that

the possession of the suit property was ever handed over to him by the decree-holder. The case of the appellant/objector is also that he was put in possession by respondent No.6. Assuming that this submission made by the appellant/objector is correct then it ought to have matched with the contemporaneous conduct of the appellant/objector. The appellant has already filed a suit for specific performance against the decree-holder and it has nowhere been stated in the said suit that he is in possession. Much less the date, the time and the year when he has been put in possession has not at all been stated. This clearly shows that this plea of the appellant is a false plea raised by him before this Court.

16. The learned trial court has rightly relied upon the judgment of *Sunil Kapoor (supra)* and *Sujata Sanzigry (supra)* and rejected the objections of the appellant/objector that the decree of the execution cannot be executed against him because of Order 21 Rule 97 CPC.
17. For the reasons mentioned above, I am of the considered opinion that the appeal of the appellant does not have any merit and the same is accordingly dismissed.
18. The stay, if any, stands vacated and the respondent No.1/decreed-holder is free to execute the decree.
19. Pending applications also stand disposed of.

V.K. SHALI, J.

APRIL 27, 2016

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