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HIGH COURT OF DELHI AT NEW DELHI

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Ex. S.A. No.5/2014 & C.M. Nos.13749/2014, 13751/2014

Decided on : 3rd May, 2016

KEWAL KRISHAN JAITLEY

..... Appellant

Through: Mr. Ajay Malhotra & Ms. Hema Arora,
Advocates.

Versus

**ACHARAJ RAM KAPOOR @ ASCHARAJ RAM KAPUR THRU. HIS
LEGAL HEIRS**

..... Respondent

Through: Mr. Ashok Kapoor, R-2 in person.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a regular second execution appeal filed by the appellant under Section 100 CPC against the order dated 26.5.2014 by virtue of which the Execution first appeal of the appellant against the rejection of his objections by the executing court on 22.7.2013 was challenged and got dismissed.

2. Before dealing with the submissions of the appellant, it may be pertinent here to give brief background of the facts of the case. The respondent Acharaj Ram Kapoor (since deceased) file a suit for injunction on 30.10.1980 against the present appellant that the appellant

was paying a rent of Rs.100/- per month as fixed profit in respect of Shop No.25, Old Rajinder Nagar, New Delhi to him. This suit was withdrawn by the deceased respondent on 11.2.1982. On 2.11.1982, Acharaj Ram Kapoor filed another suit bearing No.826/1982 alleging that a strip of land measuring 19.11 square yards was allotted to him by the Ministry of Rehabilitation on 18.11.1965 on which the appellant had taken illegal possession thereof.

3. The present appellant/defendant filed his written statement and took a plea that he was in possession of the aforesaid strip of land measuring 19.11 square yards right from 1961. The aforesaid suit was also disposed of on the basis of the statement got recorded by Acharaj Ram Kapoor that he will file a separate suit for possession.

4. On 27.4.1985, Acharaj Ram Kapoor filed a suit for possession in respect of the said strip of land bearing No.167/1985. On 28.3.1998, the learned Civil Judge decided the said suit in favour of Acharaj Ram Kapoor. The appellant filed an appeal before the learned ADJ which was dismissed on 11.3.2005. A regular second appeal was also filed by the appellant before this court which was also decided against the appellant. In the meantime, during the pendency of the above litigations, Acharaj

Ram Kapoor died on 12.3.2002 and his legal heirs were brought on record. One of the legal heirs of Acharaj Ram Kapoor, namely, Ashok Kapoor, filed an application and stated that he has 1/5th undivided unspecified share not only in the shop but also in the strip of land and that all other legal heirs have also relinquished their 1/5th share each in his favour. Further, he has stated that Ajay Kapoor, another legal heir of Acharaj Ram Kapoor, had sold his 1/5th undivided share in respect of the shop as well as the strip of land to the appellant and this sale transaction was not allowed by Government of India, Ministry of Urban Development, L & DO Department. The appellant filed objections under Section 47 CPC on the ground that he has become owner of 1/5th share which is purported to have been sold to him by one Ajay Kapoor and accordingly, he sought being impleaded as a party. The objections of the appellant were dismissed on 22.7.2013. Thereafter, he filed review application under Section 114 CPC, which was also dismissed on 22.1.2014 and the necessary consequence of this is that the question which became a bone of contention between the parties was whether the decree which was in favour of the respondent stood satisfied or the decree

was satisfied so far as the recovery of possession of the property is concerned.

5. Against the order of eviction, the present appellant preferred first appeal which was dismissed. Second appeal was filed which was also dismissed and thus, the order of eviction became final qua the appellant. Respondent/ Judgment holder thereafter, filed an Execution petition. In the meantime, Ajay Kapoor is purported to have sold his undivided unspecified share in favour of the appellant. Based on the aforesaid agreement to sell which is purported to have been executed by one of the legal heirs of Acharaj Ram Kapoor, namely, Ajay Kapoor, the appellant filed the objections under Section 47 CPC and contended that he has become the co-owner to the extent of 1/5th undivided share of the land of the said shop along with additional strip of land which is subject matter of execution and accordingly, execution of decree cannot proceed further.

6. The objections of the appellant were dismissed by the Ld. Civil Judge vide order dated 22.07.2013 and subsequently, a review filed by the appellant was also dismissed vide order dated 22.01.2014. Thereafter, the appellant filed an Execution First appeal and contended that Ajay Kapoor one of the legal heirs of the Respondent Acharaj Ram Kapoor,

sold his undivided 1/5 share to the appellant by way of registered agreement to sell and GPA dated 16.10.2009 executed in favour of the appellant.

7. The learned ADJ rejected the objections of the appellant and took the plea that as the agreement to sell 1/5th undivided unspecified share by Ajay Kapoor to the appellant was although a valid document, as the same was registered with the Sub-Registrar's office, but nevertheless merely, on the strength of this agreement to sell and the power of attorney, the appellant could not forestall the recovery of possession of the premises in question by the decree holder. It was contended that not only the decree of eviction has been confirmed by the High Court in second appeal but even the objections by the first executing court have been dismissed. The first appellate court also dismissed the execution appeal. Therefore, the decree having become final, it cannot be forestalled by the appellant. It was further stated that on the strength of *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana*; AIR 2012 SC 206, the appellant, at best, could perfect his title by filing an independent suit and could not forestall the decree.

8. Second appeal can be entertained by the court only when a substantial question of law is involved. In the instant case, the appellant has prepared number of questions in the appeal but all these questions, in my considered opinion, are questions of fact and not substantial questions of law. No doubt, the two judgments which have been referred to in the first order passed by my learned predecessor has taken note of the fact that the appellant is relying upon the case titled *Jagdish Dutt & Anr. vs. Dharam Pal & Others*; (1999) 3 SCC 644 but nevertheless the court itself has pointed out that the aforesaid judgment has been overruled by another judgment titled *Indian Umbrella Manufacturing Co. & Ors. vs. Bhagabandei Agarwalla (Dead) by LRs Smt. Savitri Agarwalla & Ors.*; (2004) 3 SCC 178. The law which is laid down in the latter judgment is that a decree which is passed in favour of one of the co-parceners is a decree in favour of all the co-parceners and can be executed by any of the co-parcener or a member of a joint hindu family.

8. Having regard to the aforesaid legal position, I feel that the appeal which has been filed by the appellant does not involve any substantial question of law. The so-called questions of law which has been stated in the paper book itself run into almost 15 questions which are essentially

questions of fact and not questions of law. Further, the appellant being unsuccessful before as many as five courts; three courts while the matter was being contested by the parties on merits and two forums by way of executing court and the first appellate court and having rejected the plea of the appellant, it is not open for him now to re-agitate the entire issue afresh by relying on certain exotic reasons. I, therefore, feel that the present appeal does not raise any question of law and the decree deserves to be executed. Accordingly, the appeal is dismissed.

MAY 03, 2016/‘AA’

V.K. SHALI, J.

