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

+ C.R.P. 88/2016

ASHIT KUMAR ROHILLA Petitioner

Through Mr.Surendra Mishra, Advocate

versus

RAM KUMAR YADAV (D) THR LRS Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **16.12.2016**

1. By the present petition filed under Section 115 of the CPC, the petitioner seeks to impugn two orders dated 19.05.2016 and 03.07.2015.
2. The respondent had filed a suit for possession and recovery of Rs.2,50,000/- as general damages and of Rs.60,000/- for illegal use and mesne profits in respect of shop No.2 measuring 10 x 23 ft. situated on the ground floor of Property No.WZ-39A, Jwala Heri, Paschim Vihar, New Delhi- 110 063. The suit was decreed on 03.07.2015.
3. The present execution proceeding is now pending. The petitioner has now filed his objections.
4. As per the objections filed, the petitioner states to be in possession of 10 x 10 sq.ft.= 100 sq.ft. as owner and the entry of this shop is from the back/rear side corridor which is 8 sq.ft. wide. The judgment debtor is said to be in possession of a shop measuring 10 x 23 sq.ft. The total area is said to measure 330 sq.ft. It is urged that since the entire area of 330 sq.ft. is under

possession of judgment debtor, the father of the petitioner/ the objector, no partition wall was erected and the shop under possession of the objector/judgment debtor is joint and the decree is not executable. It is also urged that the decree is not executable due to site plan and ground reality.

5. The trial court by the impugned order dated 05.12.2015 appointed a local commissioner to partition the area by construction of a wall. The local commissioner gave his report where he has stated that the total carpet area is 31.25 x 9.3 ft. which is less than the mentioned area in the order. Basement is in the rear side of the shop and the partition wall could not be erected.

6. The trial court thereafter vide order dated 19.05.2016 has directed the local commissioner to measure 23 x 10 ft. from the shutter of the suit shop for partition of the same and to construct a wall out of total area of 33 x 10 ft. of the suit shop.

7. The learned counsel for the petitioner has argued that the entry to the basement cannot be blocked by the partition wall. He has also argued that his area is 10 x 10 ft. As per impugned order dated 19.05.2016, he will receive less than this area. Hence, he submits that the decree cannot be executed.

8. In view of the submission of the petitioner, the learned counsel for the respondent has stated that the impugned order may be modified and the local commissioner be directed to measure the area of 10 ft. x 10 ft. from the rear entrance. Hence, this way the petitioner would get his 10 ft. x 10 ft. area from the rear shutter and there can be no confusion.

9. The learned counsel for the petitioner has not accepted this proposition.

10. In my opinion, the offer is a fair proposition which takes care of the

objection of the petitioner. The petitioner has a right to his shop of 10 ft. x 10 ft. only. As far as the petitioner's entry to the basement is concerned, no such objection is raised by the petitioner in his objection petition.

11. The petition is accordingly disposed of with a direction to the local commissioner to measure the area of 10 x 10 ft. for partition purpose from the rear shutter of the shop, which falls in the share of the petitioner. The execution court may fix appropriate date for inspection by the local commissioner to the premises in question.

12. Dasti.

JAYANT NATH, J.

DECEMBER 16, 2016/v