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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 152/2012

VED KUMARI

..... Petitioner

Through Mr.Raj Shekhar Rao, Mr. Adit
S.Pujari and Mr. Rohit Bhardwaj,
Advocates.

versus

MUNICIAPL CORPORATION OF DELHI

..... Respondent

Through Mr.G.D. Mishra, standing counsel.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **07.04.2016**

The petitioner is aggrieved by the order dated 11.09.2012 passed by the Civil Judge in Execution No. 347/2008 wherein he had held that the decree is not executable and the petition was disposed of accordingly. Relevant extract of the said order reads herein as under:-

“So from the perusal of the record and demarcation report dated 24.07.2002 which was carried out on the order of Hon’ble High Court as well as the demarcation report dated 13.04.2011 carried out on the order of this Court, it reveals that suit land is not under the possession of MCD School. The land is encroached upon by the encroacher and this observation has already clearly made by the Hon’ble High Court in its order dated 20.02.2003. The Hon’ble High Court has also directed the Decree Holder to take steps for getting the encroacher evicted under the law of present decree. The plaintiff cannot get possession of the land, claimed by her from the

encroachers under the garb of present judgement / decree passed in the suit. The reason being that the encroacher was not party to the suit, in which the present judgement and decree was passed. It may be possible that they may reside there since very long. It is also not clear at which portion, who encroacher is sitting. In these facts and circumstances, the decree cannot be executed. Same is disposed off being not executable.”

The decree holder is aggrieved by the said findings. He submits that the provisions of Order XXI Rule 97 of the CPC are applicable and if the Executing Court was of the view that the decree is not executable against the judgment debtor (Municipal Corporation of Delhi), the right, title and interest in the property was to necessarily to be adjudicated upon. The petitioner has no remedy; he is barred from filing a suit; the impugned order is an illegality; it is liable to be set aside. Learned counsel for the petitioner in support of his submission has placed reliance upon (1997) 3 SCC 694 Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and Another; submission being that the provisions of Order XXI Rules 97 to 101 of the CPC which have been discussed in the aforementioned judgment clearly envisages such a situation and where the decree holder was trying to execute the decree but was opposed with an obstructer, the proper course for the Executing Court was to decide the objections in terms of Order XXI Rule 97 of the CPC.

These arguments have been refuted.

The judgment debtor before this Court is the MCD.

Record shows that the present suit was a suit for possession which had been decreed vide judgment and decree dated 23.03.1990. Contention of the petitioner was that he was entitled to execute the decree against the MCD but all along the MCD had stated that they are not in a position to handover the property to the decree holder as the suit property which was the subject matter of the decree was never a part of their school which was being run by the MCD and as such any direction qua the MCD could not be passed.

Record further discloses that two demarcation reports were placed before the Trial Judge and before the High Court for the purpose of identification of the suit property. The demarcation report placed before the Trial Court was 13.04.2001 and that placed on record of the High Court pursuant to the order of the High Court was dated 24.07.2002. On 20.02.2003, an order was passed by a Bench of this Court in C.C.P No.126/1999. The decree holder had appeared before the High Court and had made the same submission; his submission was that he had a decree against the MCD in respect of 400 square yards which had been given to the MCD on lease. He had a decree in his pocket which was dated 23.03.1990. The Bench of this Court vide order dated 20.02.2003 had noted that there was a dispute over the identification of the land and as such, the demarcation reports placed on record had been perused by the Court. The affidavit of the MCD had stated that the land in question is outside the boundary of the primary school and the MCD was not in a position to deliver the said land as it was not in their possession. The Court had noted that

this land for which the decree holder had got a decree was probably encroached upon by a third party and thus it had given to the decree holder/petitioner to take recourse to such steps as may be permissible to him to get the encroachers evicted.

The relevant extract of that order reads herein as under:-

“It appears that there was dispute about the identification of the land and in these circumstances in that very order Court also directed Deputy Commissioner, MCD to demarcate the land for which purpose date 26.02.2001 was fixed. CCP was disposed of with aforesaid directions. However, as demarcation could not take place on 26.02.2001 petitioner filed this CM. Thereafter, pursuant to orders passed in CM demarcation has been done and respondent – MCD has filed an affidavit on 07.11.2002 enclosing therewith copy of the proceedings showing the demarcation. In this affidavit, it is further stated that as a result of demarcation it is found that the land in question is outside the boundary of Primary School and MCD is not in a position to deliver the said land. It appears that the said land is encroached upon by the third party. In that view of the matter no further directions can be given in this CM. It would be open to the petitioners to take recourse to such steps as may be permissible for the petitioner under the law for getting the encroachers evicted.”

Admittedly no substantive proceedings have been taken by the decree holder to get the encroacher evicted. Who are the encroachers and whether there is any encroacher is thus not known.

Subsequent to the orders passed by the High Court, an

application had been filed by the MCD before the Executing Court wherein the MCD had set up a prayer that in view of the order passed by the High Court on 20.02.2003, warrants of possession should not be issued against them. This had been noted by the Trial Judge and the Trial Judge had accordingly held that the warrants of possession cannot be issued against the MCD; the warrants of possession can be issued in respect of the persons who is in illegal possession of the suit property but at the cost of repetition, which is the suit property and who is in possession of the suit property is not yet known.

Admittedly the suit which had been filed by the petitioner was against the MCD. Adequate opportunity had been given to the petitioner to take recourse and to get the said encroacher evicted. This is clear from the order passed by a Bench of this Court on 20.02.2003. At the cost of repetition, the petitioner had not taken any steps pursuant to the order dated 20.02.2003. The petitioner in fact is standing at the same corner where he was in the year 2003; he has not attempted to take the case any further; he has not, inspite of specific directions in his favour, taken any steps to get the encroacher identified. The two demarcation reports as noted supra are not in favour of the petitioner. The subsequent demarcation report filed by the MCD coupled with the affidavit of the MCD had clearly disclosed that the decree for which the decree holder is seeking possession was outside the boundary of the school which is in possession of the MCD and as such the MCD was not in a position to handover the land to the decree holder.

Order XXI Rule 97 presupposes a situation where there is any obstruction by a judgment debtor/third party qua the suit property, the right, title and interest qua that the suit property in that eventuality would be decided by the Executing Court. This is not so in this case as identification of the suit property is yet not clear. It was for the decree holder to get the suit property identified and to disclose before the Court as to who had encroached/obstructed his extension process. This was specifically contained in the order of the High Court dated 20.02.2003.

The Executing Court having passed the impugned order in this background thus suffers from no infirmity. Petition is without any merit. It is in fact malafide. Dismissed with costs quantified at Rs.20,000/-.

INDERMEET KAUR, J

APRIL 07, 2016

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