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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **EX.F.A. 6/2013 & CM No. 2414/2013 (stay)**

NORTH DELHI MUNICIPAL CORPORATION

..... Appellant

Through: Mr. Sanjay Poddar, Sr. Adv. with Ms. Mini Pushkarna, standing counsel with Ms. Vasundhara Nayyar, Ms. Anushruti and Mr. Govind Chaudhary, Advs.

versus

PREM SINGH

..... Respondent

Through: Mr. H.M.Singh, Mr. D.R.Tomar and Mr. Mohit Verma, Advs.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **13.10.2017**

1. It is not disputed that this Execution First Appeal arises with respect to a judgment and decree dated 24.3.1976 by which the suit filed by the plaintiff/decreed-holder/ Sh.Prem Singh was decreed against the present appellant with respect to the suit property. The suit was dismissed by the trial court, but in the first appeal, the suit was decreed by the judgment of the Additional Senior Sub-Judge dated 24.3.1976. The suit was decreed for possession in favour of the respondent/decreed holder/plaintiff of Khasra No.

2/2 situated at Sadhura Kala, Delhi measuring 3 bighas and 2 biswas.

2. The judgment of the first appellate court was confirmed when a learned Single Judge of this Court dismissed the appeal of the present appellant vide judgment dated 8.4.1992. An SLP bearing no. 14037/1992 filed by the appellant before the Supreme Court was dismissed vide order dated 22.2.1993.

3. Learned senior counsel for the appellant states that the appellant who is a judgment-debtor is no longer in possession of the suit land and that the appellant is not maintaining the same. The possession of suit land it is stated effectively with the Central Government through the PWD.

4. Appellant does not dispute the finality of the judgment and decree dated 24.3.1976, and it is only disputing execution of the decree against it on the ground that it does not have possession. In fact I would like to note that scope of objections in execution which are filed by a defendant in a suit are very limited in scope since the defendant is bound by the doctrine of res judicata.

5. I put it to learned senior counsel for the appellant that once judgment and decree dated 24.3.1976 is final and the appellant is only disputing

execution on the ground that it does not have possession on the land because the case of the appellant is that it is not in possession of the suit land, then how can the appellant file this appeal. I may note that the decree is binding not only against the defendant in the suit but all persons who claim through defendant in the suit. Therefore whether or not it is the Central Government who is entitled to continue in possession of suit land will be an issue which will have to be dealt with when the Central Government will file objections in execution of the judgment and decree dated 24.3.1976, and as the appellant does not admit to be in possession of the suit land hence the appellant does not press the present appeal.

6. The present appeal is therefore dismissed as not pressed on the ground that appellant does not claim to be in possession of the decreed land and hence cannot give possession to the respondent/decreed holder possession of the suit land.

VALMIKI J. MEHTA, J

OCTOBER 13, 2017
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