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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 217/2017 & CM No.15322/2017 (for directions)
DALEL SINGH (SINCE DECEASED) THR LRS Petitioner
Through: Mr. Arunav Tewari & Mr. Rahat
Bansal, Advs.
Versus
LAXMAN (SINCE DECEASED) THR LRS & ORS.... Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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03.11.2017

1. This petition under Article 227 of the Constitution of India impugns the order [dated 5th November, 2016 in Ex.No.09/2014 of the Court of Senior Civil Judge (SCJ), New Delhi District, Patiala House Courts, New Delhi] and seeks directions to the Executing Court to reappoint the Bailiff for re-execution of the decree for specific directions to get the decreetal property situated over land in Khasra No.736 measured by the Patwari. Relief also of return of surplus land belonging to the petitioner / defendant / judgment-debtor in Khasra No.734 which has been given in excess to the respondents / plaintiffs / decree-holders is also sought.

2. The petition came up first before this Court on 21st February, 2017 when it was found that the relevant documents had not been placed before this Court by the petitioner/judgment-debtor. "Last opportunity" was granted to the petitioner / defendant / judgment-debtor to place on record copies of relevant documents.

3. Though thereafter relevant documents were filed but when the matter was listed on 24th April, 2017, the proxy counsel for the petitioner / defendant / judgment-debtor sought adjournment on the ground of main counsel being not well.
4. On the next date i.e. 8th August, 2017, the matter could not be taken up owing to paucity of time.
5. Today, Mr. Arunav Tewari, Advocate appears and seeks adjournment stating that Mr. Venkta Subramaniyam, Advocate is to argue and he is unwell.
6. Finding that nearly nine months have elapsed since the petition had come up first and notice of the petition also has not been issued as yet, adjournment has been refused and Mr. Arunav Tewari, Advocate has been heard.
7. I may mention that Mr. Arunav Tewari, Advocate had appeared along with Mr. Venkta Subramaniyam, Advocate on 21st February, 2017 also and though on 8th August, 2017, the hearing could not be taken up but on that date also it was Mr. Arunav Tewari, Advocate only who had appeared and Mr. Venkta Subramaniyam, Advocate had not appeared on that date as well.
8. In a suit for possession filed by the respondents / plaintiffs / decree-holders against the petitioner / defendant / judgment-debtor, vide judgment dated 1st May, 1976, a decree was passed in favour of the respondents / plaintiffs / decree-holders and against the petitioner / defendant / judgment-debtor directing the petitioner / defendant / judgment-debtor to deliver possession of “suit land Khasra No.736 shown in plan Ex.-P1 within two months” was passed failing which the respondents / plaintiffs / decree-

holders were held entitled to take possession through Court. The judgment records the suit land with respect to which decree for possession was passed to be ad-measuring 5 Bighas.

9. The petitioner / defendant / judgment-debtor evidently did not comply with the judgment and decree compelling the respondents / plaintiffs / decree-holders to apply for execution thereof. Warrants of possession were issued with respect to land in Khasra No.736, Khewat Khatoni No.58/27/223, measuring 5 Bighas situated at Mauza Munirka, New Delhi as per site plan Ex.P1.

10. The Bailiff, in his report dated 2nd November, 2016, reported demarcation of the land with respect to which warrants of possession were issued having been got done and possession of 5 Bighas of land, as per site plan having been got delivered.

11. The petitioner / defendant / judgment-debtor filed the application aforesaid on or about 5th November, 2016 under Section 151 CPC pleading i) that the respondents / plaintiffs / decree-holders right from inception of the proceedings had been contending that the petitioner / defendant / judgment-debtor is in possession of part of the property owned by the respondents / plaintiffs / decree-holders; ii) that PW1 Laxman in his deposition has very clearly admitted that the petitioner / defendant / judgment-debtor is in possession of 11-12 Biswas of land belonging to the respondents / plaintiffs / decree-holders; iii) that it is thus admitted by the respondents / plaintiffs / decree-holders that the petitioner / defendant / judgment-debtor is the owner of the remaining property; iv) that as per the site plan proved in the suit, the land in possession of the petitioner / defendant / judgment-debtor was 12

Biswas; v) that the respondents / plaintiffs / decree-holders are entitled to 12 Biswas of land alone and not to any other land; vi) that the total area in possession of the petitioner / defendant / judgment-debtor was more than 12 Biswas; v) that it was the bounden duty of the Bailiff to measure the property and to only thereafter handover the possession to the respondents / plaintiffs / decree-holders; vi) that despite protest from the petitioner / defendant / judgment-debtor, the land was not measured by the Bailiff; vii) that the Bailiff thereby has handed over certain property which belongs to the petitioner / defendant / judgment-debtor; and, viii) that it is therefore imperative and expedient and in the interest of justice that 11-12 Biswas of land as shown in site plan Ex.P1 be measured and the excess land restored to the petitioner / defendant / judgment-debtor.

12. The learned SCJ, vide the impugned order has rejected the aforesaid request of the petitioner / defendant / judgment-debtor reasoning i) that Order XXI of the CPC is a complete code in itself and the petitioner / defendant / judgment-debtor had failed to disclose the provision thereunder which was being invoked and the application under Section 151 of the CPC was no maintainable; ii) that as per the report of the Bailiff, possession of the land with respect to which decree had been passed and as demarcated in the site plan in Ex.P1 had been got delivered to the respondents / plaintiffs / decree-holders; iii) that the Executing Court could not go behind the decree; iv) that the petitioner / defendant / judgment-debtor by moving such application was wanting to change the measurement of the land as shown in the site plan and which cannot be done in execution proceedings; and, v) that the petitioner / defendant / judgment-debtor had made a bald claim that

the respondents / plaintiffs / decree-holders have been handed over excess land without any material in support thereof.

13. The counsel for the petitioner / defendant / judgment-debtor has referred to Section 47 of the CPC.

14. However, the petitioner / defendant / judgment-debtor before the SCJ / Executing Court did not invoke Section 47 of the CPC.

15. The counsel for the petitioner / defendant / judgment-debtor then states that after the impugned order, an application under Section 47 of the CPC was also filed and which has been dismissed; however he does not have available with him a copy of the said order.

16. Once, the petitioner / defendant / judgment-debtor has raised an argument of Section 47 of the CPC and states that the application filed thereunder has been dismissed by a separate order which has not been impugned in this petition, this petition in any case is liable to be dismissed. If the petitioner / defendant / judgment-debtor impugns the order of dismissal of the application claim to have been filed under Section 47 of the CPC, the same shall be considered on its own merit.

17. Else, no error is found in the impugned order.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 03, 2017

‘gsr’