

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

+ **EX.S.A. No. 6/2014**

% **8th May, 2017**

SALMA & ORS. Appellants

Through: Mr. Vireshwar Tyagi, Advocate.

versus

SHARDA DEVI & ANR. Respondents

Through: Mr. Ranbir Singh, Advocate for
R-2.

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

EX. S.A. No. 6/2014 and C.M. Appl. No. 15507/2014 (for stay)

1. This execution second appeal was filed by the appellants/objectors impugning the concurrent judgments of the courts below; of the Executing Court dated 19.1.2013 and the First Appellate Court dated 21.5.2014; dismissing the objections filed by the appellants to the execution of the judgment and decree dated 5.7.2012.

2. The facts of the case are that the respondent no.1 herein filed a suit for possession against one Md. Javed and which suit was decreed by the civil court by its judgment dated 5.7.2012. It is this judgment and decree dated 5.7.2012 which is sought to be executed by

the respondent no.1/plaintiff/decreed holder. This judgment decreed the suit for possession and *mesne* profits with respect to the property being shop no. 4 forming part of house No, 417, Gali No. 7/8, West Kanti Nagar, Delhi-110051.

3. As per the suit which was decreed by the judgment dated 5.7.2012, the respondent no.1/plaintiff/decreed holder pleaded that one Md. Shahid was the tenant of the suit premises being shop No. 4. It was further pleaded that the tenant Md. Shahid died and thereafter the possession of the suit property was taken by the defendant one Md. Javed, and who was the brother of Md. Shahid. Accordingly, it was prayed that the suit for possession be decreed against Md. Javed who was a trespasser in the suit shop/premises.

4. In the written statement filed by Md. Javed in the suit he pleaded that the deceased Md. Shahid had died leaving behind his widow Smt. Salma and a minor son, and who were said to be running the suit shop. The suit was therefore prayed to be dismissed.

5. It is therefore seen, that the admitted case is that the tenanted premises is a shop i.e a commercial premises. The rate of rent as per the respondent no.1/plaintiff/decreed holder was Rs.665/- per month. The premises in question, therefore, have protection of the

Delhi Rent Control Act, 1958. With respect to the tenancy of a commercial premises in Delhi on the death of the tenant the tenancy devolves upon all the legal heirs of the tenant as inheritance to an immovable property vide judgment of the Supreme Court in the case of ***Gian Devi Anand Vs. Jeevan Kumar and Others, (1985) 2 SCC 683.*** Therefore, if the deceased tenant Md. Shahid did in fact leave behind his legal heirs, then such legal heirs, would inherit the tenancy rights of the suit shop/premises. Appellants claim themselves to be the widow and children of the deceased Md. Shahid and admittedly the appellants were not parties to the suit resulting in the judgment and decree dated 5.7.2012. The judgment and decree dated 5.7.2012 therefore is not *res judicata* against the appellants. Appellants if they are the legal heirs of Md. Shahid have an independent title to the suit premises and because of which they are entitled to continue to occupy the suit shop/premises as tenants after the death of the original tenant Md. Shahid.

6. A reading of the judgments of the courts below show that the objections filed by the appellants have been dismissed *in limine* without giving an opportunity to the appellants to lead evidence in support of their case that they are the widow and minor son of the deceased Md. Shahid. The courts below have observed that they cannot look into the documents and that there is no need of trial with

respect to the objections filed by the appellants. I cannot agree with such conclusions of the courts below, inasmuch as, no doubt there is no fixed procedure with respect to deciding of objections filed against the execution of a decree, but once there are bonafidely disputed questions of fact which require trial, and for which purpose Order XXI of CPC was amended by Act 104 of 1976 by including therein provisions of Order XXI Rules 96 to 103, and which were to benefit persons in possession of the property against which a decree has been passed, and since admittedly Md. Shahid was a tenant, there is a valid disputed question of fact requiring trial/evidence with respect to whether or not the appellants are or are not the legal heirs of Md. Shahid. I may note that the defendant in the suit Md. Javed at the very first instance i.e while filing the written statement in the suit had taken up the objection that the suit was not maintainable against him because the deceased Md. Shahid had left behind the appellants as the legal heirs being his widow and children. Therefore, in the present case it is seen that a *bonafide* disputed question of fact exists requiring trial of the objections and the objections of the appellant therefore could not have been dismissed *in limine* as has been done by the courts below.

7. In view of the above discussion, this execution second appeal is allowed. The impugned judgments of the courts below dated

19.1.2013 and 21.5.2014 are set aside to the extent that the objections of the appellants are directed to be decided after issues are framed and trial is thereafter conducted meaning thereby evidence is led by the parties.

8. This second appeal is accordingly allowed and disposed of, leaving the parties to bear their own costs.

9. Parties to appear before the District and Sessions Judge (North-East District), Karkardooma Courts, Delhi on 30th May, 2017 and the District and Sessions Judge will mark the objections for disposal to the competent court in accordance with law and the observations made in the present judgment.

MAY 08, 2017

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VALMIKI J. MEHTA, J