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IN THE HIGH COURT OF DELHI AT NEW DELHI

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EX.S.A. 1/2017 and C.M. Appl. No. 22113/2017 (for stay)

MAHABIR SINGH YADAV

..... Appellant

Through: Mr. Atul Kumar Sharma, Advocate.

versus

SATISH KUMAR YADAV (SINCE DECEASED) THR LRS

..... Respondents

Through: Mr. Anurag Parashar, Advocate for
R-1 and 2.
R-3 in person.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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01.11.2017

1. This second appeal is filed by the objector in the execution proceedings impugning the judgments of the courts below; of the executing court dated 5.9.2016 and the first appellate court dated 3.4.2017; by which objections filed by the appellant to execution of the consent decree dated 5.4.2013 were dismissed.

2. It is seen that appellant/objector claims independent title to the suit premises and pleads that he is the owner of the suit property.

Appellant is the father of the plaintiff and defendant in the suit. Plaintiff in the suit Sh. Satish Kumar Yadav, represented through respondent no. 1 herein, pleads that the appellant/objector/father had transferred the suit property to Sh. Satish Kumar Yadav by executing documents such as agreement to sell, power of attorney, Will, receipt, etc. Appellant/objector admits to execution of the power of attorney and Will but denies of execution of agreement to sell, receipt, etc.

3. It is, therefore, seen that there is a dispute as to independent title to the premises as to whether the plaintiff in the suit Sh. Satish Kumar Yadav was the owner of the property or the appellant is the owner and therefore there cannot be execution of the judgment and decree against the appellant as he claims independent title.

4. Disputed questions of fact therefore can only be decided after trial, more so, because as per Order 21 Rule 101 CPC filing of a fresh suit is barred and all questions have to be decided in the objections and therefore objections will have to ordinarily take the procedure which is adopted in the suit viz. of framing of issues and parties are allowed to lead evidence in support of their cases.

5. In view of the above discussion, counsels for the parties agree and accordingly the impugned judgments dated 5.9.2016 and 3.4.2017 are set aside without making any observations on merits one way or the other for or against the appellant or plaintiff in the suit Sh. Satish Kumar Yadav and trial court will now after framing of issues in the objections will allow parties to lead evidence as per their respective cases, and thereafter, the objections of the appellant will be decided in accordance with law.

6. Parties to appear before the District and Sessions Judge, Patiala House Courts, New Delhi, on 28th November, 2017, and the District and Sessions Judge will now mark the objections filed by the appellant to a competent court in accordance with law and the observations made in the present order.

VALMIKI J. MEHTA, J

NOVEMBER 01, 2017

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