

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

+ **Ex.F.A. No.19/2017**

% **24th July, 2017**

SUMATI WADHWA Appellant

Through: Mr. Surjeet Singh, Advocate.

versus

PRINCE TANDON & ANR. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.25728/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

Ex.F.A. No.19/2017 and C.M. No.25727/2017 (stay)

2. This Execution First Appeal is filed by the objector against the impugned order of the executing court dated 26.5.2017 dismissing the objections filed by the appellant/objector and who is claiming through the defendant/judgment debtor.

3. The facts of the case are that the suit was filed by the plaintiff/Mr. Prince Tandon/respondent no.1 seeking partition of the suit property bearing no.7/544, Indira Park, Jwala Nagar, Shahdara, Delhi-110032. In this suit, the predecessor of the appellant, being defendant in the suit namely Sh. Rajender Kumar Tandon, took up a stand that he had become owner of the suit property on account of the mother Smt. Nirmala Devi who owned the suit property had bequeathed the same to Sh. Rajender Kumar Tandon in terms of the Will executed by Smt. Nirmala Devi. There was no merit found in this defence of the defendant/judgment debtor/Sh. Rajender Kumar Tandon and the suit was decreed in terms of the judgment and decree dated 9.5.2008. The judgment dated 9.5.2008 was challenged before this Court in RFA No.260/2008 and this first appeal of Sh. Rajender Kumar Tandon was dismissed. Thereafter Sh. Rajender Kumar Tandon filed an SLP bearing no.16776/2016 in the Supreme Court and which SLP was also dismissed vide its order dated 16.9.2016. Therefore the partition decree passed on 9.5.2008 by the trial court achieved finality and the defence of Sh. Rajender Kumar Tandon with

respect to his being sole owner of the suit property on account of bequest by Smt. Nirmala Devi stood rejected.

4. The present appellant is claiming her rights through Sh. Rajender Kumar Tandon inasmuch as it is pleaded that defendant/Sh. Rajender Kumar Tandon had executed a gift deed agreement in favour of his wife Smt. Neeru Tandon and Smt. Neeru Tandon executed a registered gift deed in favour of the appellant/objector Smt. Sumati Wadhwa. Admittedly Smt. Sumati Wadhwa is none else but the daughter of Smt. Neeru Tandon and Sh. Rajender Kumar Tandon.

5. In my opinion, no fault can be found with the impugned order of the executing court inasmuch as the judgment and decree in a suit, in view of Section 11 CPC not only binds the parties to the suit but binds all the persons who claim through the parties to the suit. In the present case, the appellant/objector daughter of Smt. Neeru Tandon and Sh. Rajender Kumar Tandon is claiming through Smt. Neeru Tandon and Sh. Rajender Kumar Tandon on account of first Sh. Rajender Kumar Tandon transferring the suit property to Smt. Neeru Tandon and then Smt. Neeru Tandon transferring the suit property by a registered gift deed to the appellant/objector. Once Sh. Rajender

Kumar Tandon had not succeeded in his defence of his being the exclusive owner, and which has been rejected right till the Supreme Court, obviously then the appellant/objector who is claiming through Sh. Rajender Kumar Tandon cannot succeed because Sh. Rajender Kumar Tandon was not the sole owner of the property so as to transfer the suit property firstly to his wife Smt. Neeru Tandon and for Smt. Neeru Tandon to further transfer the same to the appellant/objector.

6. Dismissed.

JULY 24, 2017

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VALMIKI J. MEHTA, J