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

+ CM(M) 1139/2017

SHASHI SINGH & ORS

..... Petitioners

Through: Mr. Hem C. Vashisht, Adv.

Versus

YOGENDER KUMAR ZONSA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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16.10.2017

1. This petition under Article 227 of the Constitution of India impugns the order [dated 5th July, 2017 in Ex.No.596401/2016 of the Court of Civil Judge-05, Central District, Tis Hazari Courts, Delhi] of dismissal of objections filed by the three petitioners, being the widow and children of the judgement-debtor, to execution sought by the respondent of a decree for specific performance of Agreement of Sale.
2. Though objections were also filed by the sister of the judgment-debtor, Smt. Krishna Devi of and which objections were also dismissed by the same order but the said Smt. Krishna Devi has not been impleaded as party to this petition and the counsel for the petitioners states that Smt. Krishna Devi has filed a separate petition which is listed on 11th November, 2017.
3. The learned Civil Judge, in the impugned order, has *inter alia* recorded that the objections of the petitioners and of the aforesaid Smt. Krishna Devi were the same.

4. The counsel for the petitioners however states that the objections of the petitioners and of Smt. Krishna Devi were different.
5. A perusal of the objections preferred by the petitioners shows the objections of the petitioners to be the same as the objections preferred by Smt. Krishna Devi aforesaid.
6. Both object on the ground that the property subject matter of the suit was inherited by the deceased judgment-debtor from his own father, who besides the judgment-debtor, also left three daughters including the said Smt. Krishna Devi as his natural heirs and thus the share of the deceased judgment-debtor which can be conveyed under the decree was only 1/4th undivided share in the suit shop and the deceased judgment-debtor was not entitled to enter into the agreement to sell with the decree-holder of the entire property.
7. The learned Civil Judge, in the impugned order, has reasoned i) that the petitioners as well as the said Smt. Krishna Devi could not demonstrate that the property was owned by the father of the deceased judgment-debtor; and, ii) that one of the sisters of the deceased judgment-debtor, during the pendency of the suit, had sought impleadment in the suit on the same grounds and which application was dismissed and which order had attained finality.
8. I may add that in any case, the petitioners, as the heirs of the deceased judgment-debtor, could have no right to object on the said ground and the cause of action if any was of the sisters of the deceased judgment-debtor.
9. I am refraining from making further observations so as not to prejudice the rights of Smt. Krishna Devi.

10. The petitioners, as legal heirs of the deceased judgment-debtor, decree against whom has been upheld till this Court in Second Appeal, are bound to comply with the decree.

11. The objections are in fact found to be in abuse of the process of the Court and in an attempt to deprive the decree-holder of the fruits of the decree.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 16, 2017
'gsr'..