

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

+ **Ex.F.A. 26/2017**

% **15th November, 2017**

RAMESH KUMAR & ANR. Appellants
Through Mr. Virender Mehta, Mr. Kunal
Mehta and Mr. Gautam Mehta,
Advocates
versus

B S OJHA & ANR. Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM Appl. No. 41204/2017 (Exemption)

Exemption allowed, subject to all just exceptions.

CM stands disposed of.

Ex.F.A. 26/2017 and CM Appl. No. 41203/2017 (stay)

1. By this execution first appeal, the appellants/objectors impugn the order of the executing court dated 02.11.2017 which has dismissed the objections filed by the appellants/objectors.

2. The objections were filed by the appellants/objectors on the ground that they are in possession of a room on the terrace and a

garage of the suit property and that in the guise of execution of the decree the appellants/objectors are being dispossessed of their aforesaid portions which do not form part of the judgment and decree being executed.

3. Admittedly what is being executed is the judgment and decree dated 19.01.2015. This decree is with respect to Flat No. 96, Mandakini Enclave, Alaknanda, New Delhi-110019 consisting of one drawing-cum-dining room, three bed rooms, kitchen, two bathrooms excluding the garage. The decree therefore will be executed in terms of what is decretal property and once the case of the appellants/objectors is that they are in possession of such portions of the property which portions are not the subject matter of the decree then the appellants/objectors cannot file objections in the execution petition, inasmuch as, the objections can only be filed by persons who are in possession of the decretal property and they claim independent title over the decretal property. In the objections which are filed, and for which procedure is prescribed under Order XXI Rule 96 to Rule 103 CPC, issues arise of independent title with respect to the suit/decretal property and not with respect to any portion/a particular property which is not the subject matter of the decree. The objections therefore were not

maintainable and as there does not arise any issue of an independent title with respect to the decretal property, and in case appellants/objectors were apprehensive that they had rights in a different property/properties which is not the subject matter of the judgment and decree dated 19.1.2015, and they were being illegally dispossessed under the subject decree for portions/area/property which is not covered under the decree, then the appellants/objectors had to file a suit and they would have no *locus standi* to file objections in execution.

4. I may note that appellants/objectors had earlier filed a suit, but for some reason that suit was not pursued and said to be dismissed in default, and I may note that dismissal in default does not operate as a *res judicata* under Section 11 CPC. Also because of Order XXI Rule 101 CPC there is no bar in filing of a suit, inasmuch as, bar under Order XXI Rule 101 CPC only applies with respect to the suit/decretal property and not to a totally separate property which is not covered in the judgment and decree which is being executed.

5. In view of the above discussion, the appellants/objectors have no *locus standi* to file the objections. Dismissed.

NOVEMBER 15, 2017/nn

VALMIKI J. MEHTA, J