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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 17th January, 2018

+ CM (M) 68/2018

INDERJEET KAUR & ORS Petitioners
Through: Mr. Sanjay Gupta, Advocate.

Versus

EKTA GULATI & ORS Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

CM Nos.1802-1803/2018 (exemption)

Allowed, subject to all just exceptions.

CM(M) 68/2018 & CM No.1801/2018

1. The petition seeks to challenge the order dated 16.12.2017 passed by the Additional District Judge on the file of Execution case No. 405/2017 which was taken out by the first, second and third respondents herein. The execution proceedings arise out of Suit No.27/2010, which had been instituted by the first respondent (the plaintiff).

2. From the observations made in the copies of the judgment dated 31.01.2012 (Annexure P-1), judgment dated 16.08.2012 in RFA No. 166/2012(Annexure P-2), order dated 03.03.2016 of the Supreme

Court in Civil Appeal No. 7332/2013 (Annexure P-3) and the impugned order (Annexure P-6), it emerges that the litigation relates to the prayer in the suit of the plaintiff seeking reliefs in the nature of partition, rendition of accounts and permanent injunction in respect of the premises described as shop (including basement), bearing No. 66, Bhagat Singh Lane, Gole Market, Connaught Place, New Delhi the controversy relating to the claim of possessory rights, he claims to be one of the legal heirs of Purshottam Singh. The petitioners claim under Manjeet Singh, who was one of the legal heirs of Purshottam Singh, his share in the subject property admittedly being only 1/5th. It appears the second, third and fourth respondents were also impleaded as defendants, their share also being 1/5th each in the subject property. On the basis of evidence led, the Additional District Judge by her judgment dated 31.01.2012 granted a preliminary decree of partition in favour of the plaintiff (first respondent) declaring share of each party to the case as 1/5th, the claim of the petitioners herein, under Manjeet Singh, having thus crystalised to the extent of 1/5th only.

3. It is an admitted case of the petitioners that they are in use and possession of a large portion admeasuring 12'8" X 19'4" at the ground floor portion of the subject shop as reflected in the site plan (page 27 of the paperbook), the rear portion described as 12'1" X 9'6" statedly being in the possession of a third party, the basement admeasuring 12'1" X 9'4" being in use and occupation of yet another stranger to the proceedings, who was allegedly inducted by Mr. Surjeet Singh, husband of fourth respondent, during his life time.

4. The preliminary decree was challenged by the abovesaid Surjeet Singh (now represented by fourth respondent after his death), and by the petitioners herein, claiming under Manjeet Singh, by RFA No. 166/2012. The said appeal, however, was dismissed by order dated 16.08.2012. Pertinent to note that the Court observed in the said order that the premises could not be appropriated by some of the legal heirs to the exclusion of others, the claim being for possessory rights. The decision in the RFA by this Court was challenged by a Special Leave Petition before Supreme Court in Civil Appeal No. 7332/2013. The said appeal was dismissed by order dated 03.03.2016. It is necessary to extract the said order, it reading as under:-

“The appeal is dismissed.

However, we make it clear that the execution of the decree shall be deferred till 30th June, 2017 and on 1st July, 2017, the appellants shall deposit the key of the premises before the Executing Court.

We direct the appellants to file an undertaking before this Court to the above effect within two weeks from today and if not, the above concession will stand vacated.”

5. It is against the above backdrop that while some proceedings in the wake of preliminary decree have remained pending before the civil court, the execution petition No. 405/2017 was taken out by the first, second and third respondents for enforcement of above orders which have merged in order dated 03.03.2016 of the Supreme Court. At the same time, an application was also moved for appointment of a Local Commissioner so that it could be examined whether the shop in

question could be partitioned by metes and bounds. It is, however, admitted by the counsel for the petitioner at the hearing that given the nature and dimensions of the premises, it is not possible to divide the property amongst the five shareholders by metes and bounds. Thus, the only mode of partition is by sale of the property and division of the respective shares.

6. In the given facts and circumstances, the objections raised by the petitioners that they cannot be ousted from the use and occupation of the portion of the subject property based on the ruling in *Shub Karan Bubna @ Shub Karan Prasad Bubna v. Sita Saran Bubna & Ors. (SLP(C) No. 17932/2009 decided on 21.08.2009)*, are found to be devoid of substance.

7. It is vivid from the order dated 03.03.2016 of the Supreme Court in Civil Appeal that the petitioners had agreed that they would be obliged to hand over the vacant possession of the premises for which they had sought time till 30.06.2017. The directions of the Supreme Court are clear to the effect that the petitioners would be obliged to deposit the key of the premises before the executing court on 01.07.2017. Of course, extended time was granted as a concession, subject to the undertaking being submitted. The fact that the petitioners did not furnish any undertaking cannot be used by the defaulters to their advantage for avoiding compliance with the letter and spirit of the said order dated 03.03.2016.

8. In above view, the petition is found devoid of substance and merit. It is dismissed *in limine*. The application filed therewith is rendered infructuous and stands disposed of accordingly.

9. *Dasti* under the signatures of Court Master.

R.K.GAUBA, J.

JANUARY 17, 2018

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