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

Decided on: 06th February, 2018

+ CM(M) 298/2008 and CM nos.3421/2008, 5891/2010 and 37580/2017

**MAHABIR SINGH (SINCE DECEASED)
THROUGH LRs & ORS.**

..... Petitioners

Through: Mr. Rakesh Kumar Khanna, Sr.
Advocate with Mr. Pramod Kumar,
Advocate

versus

HARDEEP SINGH @ DEEPA & ORS. Respondents

Through: Dr. S. Sharma, Advocate for R-4
Mr. Shiv Kumar, husband of Rajesh Rani
(R1) in person
Mr. Vijay Bahadur Singh, husband of
Manorama Singh (R2) in person
Mr. Rajender Singh son of Bhupender Kaur
(R3) in person

+ CM(M) 415/2008

DAYAWATI

..... Petitioner

Through: Dr. S. Sharma, Advocate

versus

**MAHABIR SINGH (SINCE DECEASED)
THROUGH LRs & ORS.**

..... Respondents

Through: Mr. Rakesh Kumar Khanna, Sr.
Advocate with Mr. Pramod Kumar,
Advocate

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

ORDER (ORAL)

1. The order under challenge in these petitions was passed on 01.03.2008 by the Civil Judge in Execution case 22/2005, it having arisen out of *ex parte* judgment and decree dated 12.05.2005 on the file of civil suit (no.201/2004) which was instituted on 25.08.1989 by the petitioners in the first captioned petition [i.e. CM (M) 298/2008] (hereinafter referred to as “the decree holder”). In the civil suit, relief of possession and damages was sought against Hardeep Singh @ Deepa, son of Sh. Sant Singh in respect of property described as plot bearing no.129-130, measuring 200 sq. yds. situated in Block B, Pandav Nagar, Delhi. In the execution proceedings taken out in the wake of the said *ex parte* decree, warrants of possession was issued, which were executed on 07.09.2007. It appears four persons namely Rajesh Rani, Manorama Singh, Bhupender Kaur and Dayawati, they being respondents in CM (M) 298/2008 (hereinafter referred to as “the objectors”) were found in possession of certain super-structure existing on the said plot of land and stood evicted. The said persons (objectors) then filed objections in the execution proceedings on 27.09.2007 claiming independent right, title and interest in the respective portions from which they had been ousted. The objectors also sought restoration of possession.

2. It appears the fourth said objector Dayawati (fourth respondent in CM (M) 298/2008) who has also filed her own petition [i.e. CM

(M) 415/2008] had earlier moved an application in May 2004 seeking impleadment in the civil suit invoking the provision contained in Order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC). It is not disputed that the said application came to be dismissed in default and there was no follow up made by the said objector Dayawati in the matter.

3. Against the above backdrop, the executing court while entertaining the objection petitions and putting them to trial by the impugned order dated 01.03.2008 has allowed restoration of possession in favour of the three out of the four objectors namely Rajesh Rani, Manorama Singh and Bhupender Kaur. By the same order similar relief has been declined to Dayawati, this with reference to her conduct vis-à-vis her application under Order 1 Rule 10 CPC which was dismissed in default during the pendency of the civil suit.

4. The petition by the decree holder raises grievance about the order of restoration while the petition of objector Dayawati raises grievance about denial of relief of restoration to her.

5. Having heard the learned counsel for the decree holder and for objector Dayawati, as indeed the objectors who are present through their representatives, this court is of the view that it would be proper that the issue of restoration of the premises in question to the objectors is considered and decided upon at the same time as the objection petitions in as much as the documents on which the objectors claim right, title or interest in the subject property are yet to be tested and adjudicated upon, they being concededly in the nature of general power of attorney, agreement to sell, Will and receipt purportedly

executed by the persons from whom they had acquired the said premises statedly for consideration, they presently being not in position to produce the title deeds of the predecessor-in-interest of such person (s). The learned counsel for decree holder and objectors agree to this.

6. The court is informed by the counsel for the decree holder, and this is confirmed by the counsel for the objector Dayawati, that after the execution of the decree, the keys of the respective premises were deposited by the bailiff in the court and the same has been retained by the executing court. The same arrangement may continue till a decision is taken on the objection petitions.

7. With the above modification in the impugned order, these petitions and the applications filed therewith are disposed of.

Dasti under the signatures of the Court Master.

FEBRUARY 06, 2018

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R.K.GAUBA, J.