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

+ **EX.F.A. 15/2018 & C.M.No.15163/2018**

MAKHAN LAL Appellant
Through: Mr. Kuldeep Kumar, Advocate.

Versus

ALIMUDDIN & ANR.Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% 18.04.2018

1. This execution first appeal impugns an order dated 02.02.2018 passed by the learned Additional District Judge, Karkardooma Courts, Delhi in Execution Petition No.62/2015, which granted the relief of de-sealing of her premises i.e. property bearing No.S-21, Welcome, Seelampur, Delhi-110053. The said property had been attached by an order dated 13.02.2017 pursuant to an application by the appellant-Decree Holder (DH) against Respondent No. 1 – the Judgement Debtor (JD). R-2 proved before the Trial Court that she and not the JD, was the owner of the property. She relied upon the following documents executed on 05.02.2004:-

- (i) Original General Power of Attorney;
- (ii) Agreement to Sell;
- (iii) Will; and
- (iv) Receipt.

All the aforementioned documents were executed by the JD in her favour.

2. She also produced the original Agreement to Sell, Deed of Indemnity, Affidavit, Deed of Will and Payment Receipt, all dated 27.11.2000, executed by the erstwhile owner Mr. Jai Kumar in favour of the JD, who in turn had transferred his rights and interests in the property in favour of the respondent.

3. The impugned order opines: i) that the appellant had not brought before it any shred of evidence or document to show that the JD was the owner of the said premises; ii) that the JD's residing in the said property would by itself not lend him any right, title and interest therein, as he may at best have been permitted by the objector-respondent to stay in it especially since he is the son; and iii) that the non registration of the said documents would not be fatal to the claim of R-2, because the view of the Supreme Court in SLP No.13917/2009, titled as '**Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana**', would be applicable prospectively. R-2 had claimed that all the aforesaid documents had been executed before the judgement of **Suraj Lamps** (supra). On the basis of the documents relied upon by her, the rights in the property stood transferred in her favour on 05.02.2004; the decree was pronounced on 01.06.2015; the property was attached by order dated 13.02.2017; the latter two orders cannot disturb the pre-existing rights claimed by R-2. The impugned order found that the respondent-objector had a right to seek de-sealing of the said premises and for release of the attachment, and accordingly, it was so ordered.

4. The learned counsel for the appellant states that the respondent-objector has not produced any documents to show that utility bills such as electricity or water connection were ever issued to her; that the SDM concerned had visited the said property in February and not in March, 2018.

5. Be that as it may, neither of the two aspects would create any right or interest in favour of the JD. Since the objector has been able to show that she owns the property in view of the documents presented by her and in the absence of any evidence to the contrary, the impugned order could not have reached any other opinion than what it did.

6. Apropos the contention of the learned counsel for the appellant, that the documents of R-2, ought to have been registered, the Court is of the view that even if they are not registered, in view of the judgment of the Supreme Court in ***Suraj Lamps*** (*supra*), they would nevertheless create transfer of rights therein in favour of the respondents.

7. For the aforesaid reasons, the Court is of the view that no case is made out for interference in the impugned order. The appeal is without merits. It alongwith pending application stands dismissed.

NAJMI WAZIRI, J.

APRIL 18, 2018

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