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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 13th March, 2018

+ C.R.P. 91/2012 & CM Nos. 5539/2015, 17257-59/2015

MOHD. ISMILE MULLAI & ANR. Petitioners

Through: Mr. Gaurav Bhardwaj, Adv.

versus

DDA & ORS

..... Respondents

Through: Mr. Pawan Mathur, Standing
counsel for DDA.

Mr. Varun Goswami, Mr. Sahil
Agarwal & Mr. Rahul Sinha,
Advts. for LR's of R-8.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. This petition under Section 115 of the Code of Civil Procedure, 1908 questions the correctness, legality and propriety of order dated 14.02.2012 passed by the Additional Senior Civil Judge (Central) on the file of execution case no. 51/10 of 1983 whereby the application of the petitioners under Section 146 CPC read with Order 21 Rule 16 CPC praying for liberty to take over the execution proceedings from decree holder Lala Ram Kanwar Gupta was dismissed.

2. The execution proceedings related to the final decree of partition passed by the Court of Sub Judge, First Class, Delhi in partition suit bearing no.484/1976 following the preliminary decree

that had been earlier granted on 26.09.1978. A copy of the decree-sheet dated 27.01.1979 (pages 19-20 of the paper book) would indicate that Ram Kanwar Gupta was party to the said suit for partition, he having been impleaded as fourth defendant. The final decree for partition had allocated portion mark “M” as depicted in the site plan in his favour. For completion of narration, it may also be added that a party named Shedu, son of Haider, resident of 1219, Mohalla Raquab Ganj, Delhi was also a party to the suit as defendant no.7, but no share was apportioned to him, he statedly being a stranger who had been impleaded on his own motion.

3. The execution proceedings had been initiated by Ram Kanwar Gupta in 1982. It is the case of the petitioners that they had purchased portion “M” falling to the share of the said decree holder Ram Kanwar Gupta by Sale Deed executed on 05.05.1998, it having been registered on 08.05.1998.

4. The eighth respondent Mohd. Hanif who had already died during the proceedings before this Court had filed objection before the executing court, his prime contention being that he was owner of property bearing municipal No. 547, Chatta Lal Mian, behind Delight Cinema, Delhi-06 and that under the cover of the execution of the partition decree, as aforesaid, effort was being made to oust him from the said property. He had earlier filed a civil suit (presently registered as bearing CS SCJ 1222/16) in April, 2010 seeking a decree of permanent injunction, *inter alia*, against the petitioners herein from dispossessing him from the aforesaid property bearing Municipal No.

547, Chatta Lal Mian, behind Delight Cinema, Delhi-06. It appears that in the course of the proceedings before the first appellate court (Additional Senior Civil Judge) in the context of the prayer for *ad interim* injunction under Order 39 Rule 1 & 2 CPC, it came to be observed that it was appropriate that the executing court in the case of partition decree were to adjudicate on the rights of the parties including the rights of the obstructionist i.e. Mohd. Hanif, if any, in terms of Order 21 Rule 101 CPC. The eighth respondent Mohd. Hanif thus approached the executing court and his pleadings before the Civil Court were treated as objection petition in the execution proceedings. The said objection petition concededly remained pending and unaddressed till the impugned order was passed.

5. It is against the above backdrop that the application, as aforesaid, was moved by the petitioners herein seeking liberty to take over the execution proceedings from Ram Kanwar Gupta with reference to the sale deed dated 05.05.1998 registered on 08.05.1998.

6. While these proceedings have been pending before this Court, Mohd. Hanif died and in that context four applications have come to be filed, they being CM Nos. 5539/15 (under Order 22 Rule 4 CPC), 17257/15 (for cononation of delay), 17258/15 (under Order 22 Rule 9 CPC) and 17259/15 (for condonation of delay). The counsel representing the legal heirs of eighth respondent submitted no objection to the said applications being allowed and the legal heirs to be substituted, for facilitating the disposal of the petition at hand though reserving his contentions *qua* the *locus* of the petitioners in the

execution matter to be agitated separately. The applications, thus, stand allowed, and the legal heirs of eighth respondent (since deceased) are brought on record of the present petition.

7. During the hearing before this Court, it was pointed out by the counsel representing the legal heirs of eighth respondent that the ninth respondent has also passed away. His knowledge about the death of the said party (decree holder) arises out of the proceedings recorded before the Civil Judge on 08.01.2018 in the civil suit of the eighth respondent (CS SCJ No. 1222/16) where besides the said Ram Kanwar, the petitioners are also party defendants.

8. After some hearing, the learned counsel for the eighth respondent, who only has been contesting the present petition before this Court, fairly conceded that the application of the petitioners seeking to take over the execution proceedings from Ram Kanwar, invoking the provision contained in Section 146 read with Order 21 Rule 16 could not have been adjudicated upon without notice being issued to Ram Kanwar Gupta, the decree holder.

9. In the opinion of this Court, omission on the part of the executing court to issue notice to the decree holder vitiates the proceedings and the order dated 14.02.2012. The impugned order, thus, must be set aside. Ordered accordingly.

10. It is a natural corollary of the above result of the petition at hand that the objection petition of the eighth respondent also stands revived

on the file of the executing court which will have to be decided in accordance with law by appropriate proceedings.

11. While the objection petition of the eighth respondent is to be considered by the executing court, it will also be duty bound to decide on the application of the petitioners under Section 146 CPC read with Order 21 Rule 16 CPC, after notice to the legal representatives of Ram Kanwar Gupta (the decree holder), for which suitable steps will have to be taken by the petitioners.

12. Needless to add, the eighth respondent being the objector who was already present before the executing court when the application, as aforesaid, of the petitioners came to be filed will also be entitled to be heard and his objections, if any, in law, suitably dealt, considered and adjudicated upon. Needless to add, the executing court while deciding the application will approach the matter uninfluenced by the view taken in the impugned order.

13. The parties are directed to appear before the executing court on 9th April, 2018.

14. The petition and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

MARCH 13, 2018

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