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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **EX.S.A. 2/2017 & CM APPL. 26926/2017**
GULBADAN SINGH (DECEASED DH THR LRS)

..... Appellant

Through: Ms. Rashmi Chopra, Mr. V.S. Dubey,
Ms. Asiya and Mr. Shorya,
Advocates.

versus

VIMLA DEVI SHARMA

..... Respondent

Through: Mr. Tarique Siddiqui, Mr. Tanveer
Ahmed and Ms. Reetika Gupta,
Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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30.01.2018

1. This appeal seeks the setting aside of an order dated 28.09.2016 passed by the Additional District Judge -02 (NE), Karkardooma Courts, Delhi in M.C.A. No. 18/2016.
2. The appellant/plaintiff had filed a suit for permanent injunction against the defendant for taking the possession of suit property bearing no. N. 307, Pal Market, Teliwara, Shahdara, Delhi-32, where the latter had been inducted as a tenant. The suit was filed in terms of the settlement dated 02.02.2011, whereunder the defendant/present respondent was given five years' time to vacate the said premises i.e. by 31.01.2016. Two reminders were sent in January, 2016 by the decree holder to the respondent, alerting him of his duty to hand over possession of the said property by the end of the month, but this was not done. Hence, an Execution Petition was filed, in

which the respondent raised an objection primarily to the effect that the appellant was not the owner of the property, therefore, the property could not be delivered to him. This stance being so, because in the interim, the respondent had come across another person who claimed to be the real owner of the said property, so he purchased the latter's interests and claimed himself to be the owner of the property. The learned counsel for the respondent relied upon the judgment of the Supreme Court in ***Silverline Forum Pvt. Ltd. vs. Rajiv Trust & anr.*** (1998) 3 SCC 723, which held that the Executing Court is competent to look into the objections raised in the Execution proceedings. This Court would note that the issue of competence of the Trial Court is hardly the question to be determined in this case. The objections raised by the respondent had been dismissed by the Executing Court but in the respondents' appeal against it, the impugned order dated 28.09.2016 had remanded the case to the Executing Court to arrive at a merit, after framing and determining the issues.

3. The question of law raised in this appeal is: Whether without modification of a decree by consent, the Judgment Debtor can unilaterally dispute and renege his own acknowledgement therein, of the Decree Holder as the landlord of the suit property?

4. Pursuant to the aforesaid reminder letters by the appellant, the respondent by letter dated 27.01.2016, intimated the appellant that he had come across another person who claimed to be the owner of the property and till the time the appellant and this other individual did not come forward to prove their ownership apropos the said property, he would not vacate the same. In other words, despite the decree by consent and settlement dated 02.02.2011, in which the respondent/tenant had recognized the appellant as

the landlord and owner of the property, he now arraigns rights to himself as the owner of the property.

5. This position is most untenable. If the respondent had already recognised the appellant as the owner and landlord of the suit property, he, of his own volition and pleasure could not dispute it and accept another person as the owner, all the more so in the face of a Consent Decree. If the respondent wanted to purchase the rights of a third person, he did so at his own cost and peril. It would not alter the finality and sanctity of the decree. If the respondent thought that the consent decree was obtained through fraud, it was always open to him to move an application for modification of the same. The circumstances brought about after the Consent Decree were entirely of his own making. He cannot use the same as a shield against complying with and honouring the Consent Decree. Therefore, he would have no right to stay in the said property.

6. The learned counsel for the respondent submits that in terms of Order 21 Rule 101 CPC, the respondent has a right to raise objections to the execution of the decree in view of the valid documents of Transfer of Title in his favour and the Executing Court is bound to determine the issues. The said provision of law reads as under:

“101. Question to be determined.- All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the court dealing with the application, and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

7. The Court would note that in view of the Consent Decree as a result of settlement between the parties, the issues raised by the respondent will be of no consequence vis-a-vis the appellant/ decree holder. Hence, the objections raised would be untenable unless the decree itself is altered. The respondent had purportedly purchased rights in the suit property after the expiry of the period of vacation of the premises in terms of the decree. The alleged Sale Deed was registered on 03.02.2016 and the Execution Petition was filed on 26.02.2016. It is clear that the respondent had sought to create rights in his own favour after the expiry of the period, for which he was permitted to stay in the said premises. He had no right to stay in the said premises after expiry of the period, i.e., 31.01.2016. Any right or claim which may accrue, vis-a-vis, the Sale Deed dated 03.02.2016 may well be a subject matter of any such separate legal proceedings between the respondent and the purported other party to the Sale Deed. It would have no bearing on the decree dated 02.02.2011 and on the appellant's rights accruing therefrom. Accordingly, the question of law raised is answered in the negative.

8. In view of the aforesaid, the impugned order dated 28.09.2016 is set aside and the appeal is allowed.

9. Trial Court Records be returned.

NAJMI WAZIRI, J

JANUARY 30, 2018

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