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

+ C.R.P. 40/2019 & CM APPL. 6846/2019

RAKESH GUPTA Petitioner

Through: Mr.Gurpreet Singh Sethi, Adv.

versus

RAMESH GUPTA Respondent

Through: Mr.Rajesh Baweja, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **28.08.2019**

1. Petitioner impugns order dated 26.10.2018 whereby objections filed by the petitioner to the execution petition filed by the respondents have been dismissed.

2. Learned counsel for the petitioner submits that the petitioner was directed to hand over the keys of the door/Gate on the staircase which led to the terrace of the Second Floor to the respondent/decreed holder. He submits that he has already handed over the keys of the said door, however, he is aggrieved by the finding of fact returned in paragraphs 9 & 12 of the order with regard to the title of the parties to portions of the subject property.

3. Learned counsel submits that the executing Court could not have returned findings of fact with regard to the title of the parties to portions of the property which was beyond the jurisdiction of the executing Court.

4. Learned counsel for the petitioner submits that petitioner has also filed a Suit *inter alia* for injunction restraining the respondent from raising illegal unauthorised construction over the property and the said Suit is pending. He submits that the observations in paragraphs 9 & 12 of the

impugned order are likely to prejudice him in the said Suit.

5. Learned counsel for the respondent submits that the rights of the parties inter-se with regard to the property and portions thereof already stand determined by judgment and decree dated 01.10.2014 in CS(OS) No.1518/2013 which judgment was upheld by the Division Bench of this Court by judgment dated 31.07.2015 in RFA(OS) No.19/2015 and the order of the Supreme Court dated 05.07.2017 in SLP(C) No.29192/2015.

6. Learned counsel for the petitioner submits that in case the observations do not come in the way of the petitioner in the suit filed by the petitioner, he would not press his petition and seeks leave to withdraw the same.

7. In view of the above, the petition is dismissed as withdrawn, however, it is clarified that the findings of fact returned by the Trial Court in paragraphs 9 & 12 will not come in the way of either parties and the rights of the parties would continue to be governed by the judgment and decree dated 01.10.2014 in CS(OS) No.1518/2013 as well as judgment dated 31.07.2015 in RFA(OS) No.19/2015.

8. All rights and contentions of the parties are reserved.

9. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

AUGUST 28, 2019/rk