

\$~

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

Reserved on: 18th July, 2019

Pronounced on: 6th August, 2019

+ **CM(M) 1048/2019 & CM APPL. 31391-31392/2019**

ROHIT RAJPAL Petitioner

Through: Mr. Sunil Satyarthi & Mr. Raman
Gandhi, Advocates.

Versus

OM PRAKASH SEWANI & ANR. Respondents

Through: Mr. Amit Gupta, Advocate.

%

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. This petition under Article 227 of the Constitution of India is directed against a judgment dated 06.06.2019 passed by the Executing Court (ADJ-02, [South] Saket Courts, New Delhi) in Ex.No. 357/2018, titled *Om Prakash Sewani vs. Rajesh Rajpal*.

Facts

2. The execution proceedings were filed by the respondent herein for execution of a decree dated 17.02.2018, passed in CS No. 207367/2016. The petitioner herein was not a party to the suit, which was filed by the respondents against one Rajesh Rajpal, who is the brother of the petitioner. The respondents claimed to be the absolute owners of the lower ground floor of the suit property (NIL-4B, Malviya Nagar, New Delhi, 110017), having purchased the same

under a registered sale deed dated 23.01.2014. They claimed to have leased the premises to the defendant under an agreement dated 11.03.2014 at a monthly rent of ₹45,000/- for a period of 11 months. They sued the defendant for possession and recovery of arrears of rent as well as mesne profits. In the written statement filed by the defendant on 30.03.2016, it was *inter alia* averred that the defendant had never been in possession of any portion of the suit property, at any point of time, in the capacity of a tenant under the plaintiffs. The Trial Court recorded the statement of the defendant on 21.11.2017 to the following effect:-

“Statement of Rajesh Rajpal S/o Sh. R.K. Rajpal, aged 43 years, R/o JH-42, Second Floor, Khirki Extension, New Delhi-110017.

On SA

I entered into rent agreement dated 11.3.2014 with the plaintiffs in respect of property no. LGF, NIL 4B, Malviya Nagar, New Delhi-110017. However, I never took possession of the rented premises at any point of time.

RO & AC

*(Dr. AJAY GULATI)
ADJ-02/SOUTH
SAKET/NEW DELHI
21.11.2017”*

3. The plaintiffs made an application on 11.04.2016 under Order XII Rule 6 of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”], claiming a decree upon admission, in view of the fact that the execution of the rent agreement had been admitted by the

defendant. Although the application was contested by the defendant, it resulted in a decree dated 17.02.2018. The plaintiff pressed for a decree upon admission only in respect of possession, and not for the arrears of rent or mesne profits. The judgment of the learned Trial Court recorded the following submissions on behalf of the defendant:-

“4. Defendant, on entering appearance, admitted the execution of rent agreement dated 11.03.2014 but disputed the right of the plaintiffs to recover possession of the suit property or the arrears of rent, on 3 grounds i.e. plaintiffs are not the owners of the suit property i.e. whole of the Lower Ground Floor of property bearing No. NIL-4B, Malviya Nagar, New Delhi; the rent agreement was insufficiently stamped; and that the defendant never took possession of the suit property. On 02.05.2016, defendant submitted before the Court that it is his brother who is running a documentation office in part of the suit premises in the status of being the owner of the premises. Consequently, it was argued that since defendant has never been in possession of the suit premises, there can possibly be no question of recovery of possession of suit premises from him.”

4. The surviving controversy today is in respect of the contention that the plaintiffs are not the owners of the whole of the lower ground floor of the suit property, but only of a part thereof. As far as this objection is concerned, the Trial Court held as follows:-

“7. Though the defendant has asserted that he has never been in possession of the suit premises, sight cannot be lost of the fact that he admitted to having executed the rent agreement in respect of the suit premises. In the written statement, no assertion was made that the suit premises is in occupation of the brother of the defendant. Consequently, the right of the

plaintiffs to seek possession of the suit premises can only arise qua the defendant and none else. If the defendant claims that he is not, and in fact never has been in possession of the suit premises, he cannot possibly object to the right of the plaintiffs to recover the possession of the suit premises. The plaintiffs, claiming to be the owner of suit premises vide a registered sale deed cannot be rendered remedy-less in so far as seeking possession of the suit premises is concerned only because the tenant i.e. defendant claims that he is not in possession. Defendant can also not object to the prayer of the plaintiffs to seek possession of the suit premises on the ground that plaintiffs are not the owners of the entire Lower Ground Floor of property No. NIL-4B, Malviya Nagar since the defendant has not set up any counter title.

8. In so far as the plea of the defendant is concerned to the effect that plaintiffs cannot seek possession of entire Lower Ground Floor since the title document i.e. Sale Deed only speaks of 47.48 sq. yards of the Lower Ground Floor, needless to say that plaintiffs can only seek possession of the property which they assert to be their own, which assertion cannot obviously go beyond the title documents relied upon by the plaintiffs themselves. In any case, the Sale Deed mentions that the Lower Ground Floor of property No. NIL-4B, Malviya Nagar is constructed in an area of 47.48 sq. yards on a plot of 100 sq. yards which means that the area of Lower Ground Floor is in fact 47.48 sq. yards.”

5. The operative portion of the Trial Court judgment is as follows:-

“10. In view of the above, the application under Order XII Rule 6 of the Code of Civil Procedure, 1908 is allowed and a decree of possession in respect of the Lower Ground Floor of property bearing No. NIL-4B, Malviya Nagar, New Delhi-110 017 is passed in favour of the plaintiffs. Consequently, defendant is

directed to hand over the vacant physical possession of the suit premises i.e. Lower Ground Floor of property bearing No. NIL-4B, Malviya Nagar, New Delhi-110 017 to the petitioner within 45 days from today. No orders as to cost.”

6. The decree sheet, in terms of the judgment, reads as follows:-

“Claim for: Suit for possession, recovery of rent damages mesne profit.

Plaint presented on: 07.10.2015

This suit is coming for disposal of the application under Order XII Rule 6 of the Code of Civil Procedure, 1908 before me today i.e 17.02.2018 in the presence of none for the parties. It is ordered that the application under Order XII Rule 6 of the Code of Civil Procedure, 1908 is allowed and a decree of possession in respect of the Lower Ground Floor of property bearing No. NIL-4B, Malviya Nagar, New Delhi-110 017 is passed in favour of the plaintiffs. Consequently, defendant is directed to hand over the vacant physical possession of the suit premises i.e. Lower Ground Floor of property bearing No. NIL-4B, Malviya Nagar, New Delhi-110 017 to the petitioner within 45 days from today. No orders as to cost.”

7. The plaintiffs filed for execution of the decree, at which stage the petitioner entered the picture, and filed objections to the execution under Order XXI Rule 97 and 101 of the CPC. The contention of the petitioner was that he was the owner of 53 sq. yards of the basement/lower ground floor of the suit property, measuring 100 sq. yards (83.6 sq. metres). The petitioner's claim was that the basement of the suit property, in fact, measures 100 sq. yards, and the plaintiffs are entitled only to 43 sq. yards thereof, being the area mentioned in the sale deed executed in their favour. The petitioner contended that he

was not aware of the proceedings in the suit until the plaintiffs attempted to take possession of his property. He also stated that he had filed a separate suit for declaration against the plaintiffs, in respect of the property in question. The case pleaded by the petitioner was that he had taken a loan of ₹6,00,000/- from a third party, in lieu of which he executed an irrevocable power of attorney in respect of the suit property. He contended that the plaintiffs derived titled from the said person.

8. The petitioner's objections were considered and disposed of by an order of the Executing Court dated 03.08.2018. The case pleaded by the petitioner has been rejected by the Executing Court with the following observations:-

“5. In so far as the plea taken by the Objector regarding taking of a loan from Ms. Megha Nanda and in lieu of the same, executing an irrevocable power of attorney in her favour is concerned, the plea appears to be frivolous on the face of it. It is highly unlikely that in lieu of obtaining a loan, in respect of an immovable asset a loanee would execute an irrevocable power of attorney in favour of the lender which confers wide and almost unlimited authority on the attorney holder. Further, assuming that such a transaction did occur, a loan agreement is the most probable document that would have been executed simultaneously so as to protect the interest of the loanee. However no such document has been filed nor is there any averment in this regard. Going a step further and assuming the best in favour of the Objector, the GPA dt. 21.09.2010 confers due authority on the attorney holder (i.e. Ms. Megha Nanda) to sell the decretal premises and receive consideration in regard to the sale. Relevant clause of the GPA document is clause 10. Consequently,

the attorney holder had all authority vested in her to execute a sale deed which she exercised and that is how the decree holder became owner of the decretal premises vide a registered sale deed having been executed in his favour.

6. The Objector cannot establish his right of ownership in the present execution. Further, his prayer for adjudicating the title of the decree holder in the present proceedings is also without merit as this aspect is not in the domain of the executing Court. Objector has already availed his remedy for seeking a declaration in respect of the sale deed which stands registered in favour of the decree holders and thus, must establish his right over the decretal property in those proceedings.

7. Objector has also raised the issue of decree holder's efforts to take possession of an area of 100 sq. yards when in fact the decretal premises consists of 47 sq. yards. This aspect has already been clarified in the order dt.17.02.2018 in respect of which the present execution petition has been filed. It was specifically observed that area of the lower ground floor/basement is 47 sq. yards which has been constructed on a plot of 100 sq. yards. Thus 100 square yards is the total area of the plot in which lower ground floor/ Basement has been constructed in an area of 47 sq yards.

8. The Objector has not made out any ground for ruling in his favour. Consequently, the objections are declined. Period for preferring an appeal against the decree has already elapsed. Ld. Counsel for the decree holder had submitted that Decree Holder has till date not received any notice from the Hon'ble High Court in respect of the order dt. 17.02.2018 passed by this Court. Further, ld. Counsel for the Decree Holder also stated at the Bar that even in the suit for declaration which has been instituted by the Objector, interim relief has been declined by the ld. Court. In view of the above, issue

warrants of possession in respect of the decretal premises against the Judgment Debtor on filing of PF. Decree Holder is directed to appear before the Learned ACJ on 31.08.2018.”

9. The petitioner thereafter filed further objections under Order XXI Rule 101 of the CPC stating that the finding in the judgment under execution dated 17.02.2018, that the area of the basement was 47.84 sq. yards, is incorrect. He therefore requested a clarification that the decree passed was only in respect of the said area. The Executing Court dealt with this second objection of the petitioner in an order dated 16.08.2018 as follows:

“The objector Rohit Rajpal has moved the present objections seeking directions to the bailiff to attach only an area of 47.84 sq. yds while executing the warrant of possession, which has been issued in favour of the Decree Holder in respect of the decretal premises.

Since the objections filed by Rohit Rajpal were dismissed vide detailed order dated 03.08.2018, the present objector has no locus to file the present objections, yet in the interest of justice, it is made clear that the Decree Holder will only be entitled to recover the possession of the area which he claims to have purchased vide Sale Deed dated 23.01.2014 in respect of House No.NIL-4B, Malviya Nagar, New Delhi-110 017

In view of the above observations, the present objections stand disposed off.”

10. The suit filed by the petitioner was admittedly withdrawn on 11.12.2018.

11. It appears that the Executing Court thereafter called for a report from the South Delhi Municipal Corporation [“SDMC”] with regard

to the extent of the property, and a report was furnished stating that the sanctioned area is 44.59 sq. metres, whereas the existing area was 56.70 sq. metres.

12. In the impugned order, the Executing Court has once again considered the petitioner's argument regarding the area, subject to the decree. As far as the petitioner's reliance on the order dated 16.08.2018 is concerned, the Executing Court has recorded as follows:-

“Although it is the grievance of the Learned counsel for the objector that it was on the basis of order dated 16.08.2015 that the objector withdrew the civil suit wherein declaration was sought to the effect that the plaintiff therein i.e. Rohit Rajpal is the legal owner of 56.70 sq. yds of the suit property and that Om Prakash Sewani and Mrs. Pooja Prakash Sewani are absolute, lawful and legal owners of the remaining 47 sq. yds, the said contention cannot be accepted for the reasons more than one.

In the said order there is no direction or modification of the decree and the Learned Predecessor has simply held that Decree Holder would be entitled to recovery of possession of area which claims to have been purchased vide sale deed dated 23.01.2014. There is no order as to review/ modification of the relief granted to the plaintiff, in terms of the order dated 17.02.2018. Besides, the above contention is not acceptable on the ground that the matter was taken up on the oral request of the objector in between dates and the Decree Holder was not heard. Thirdly, there is no mention in the order, relating to any intention of the objector for withdrawal of any suit on the basis of the said order. It appears that the Court was never informed, at that stage, that the objector wishes to withdraw the suit, or the reasons for such proposed

withdrawal. The subsequent withdrawal of the suit cannot be attributed to this order of the Learned Predecessor as is sought to be done by the objector and Judgment Debtor, as of now.”

13. The Executing Court has thereafter held as follows:-

“Although there is some ambiguity in so far as the actual area at site is concerned, the Court has all the reasons to believe that the sanctioned area is 44.59 sq. meters only, as mentioned in the report dated 28.05.2019 of the Assistant Engineer, SDMC. The Judgment Debtor as well as the objector have been taking incoherent stand in so far as the total area, sanctioned area and actual constructed area are concerned. For any such reasons, however, the objections raised by the Judgment Debtor and the objector cannot be allowed to come across in execution, so far as the possession of the Decree Holder over the 40 sq. meters of constructed area is concerned.

Though the Judgment Debtor and objector side has proposed that the Decree Holders may take their 40 sq. meters towards the rear side of the property, the said proposal has not been accepted by the Decree Holder side for the reasons that it is only 44.59 sq meters which has been sanctioned and rest of the construction would be illegal construction.

If this Court goes with the report that the sanctioned area is 44.59 sq. meters only and the fact that the Decree Holder has only acquired 40 Sq. meters/47 sq. yards, the difference would be, at best, 4.59 sq. meters. In the opinion of the Court for the purpose of 4.59 sq. meters, if at all belonging to the Judgment Debtor or the objector, as the case may be, the Decree Holder cannot be allowed to suffer in terms of delay and being out of possession.

In so far as the contentions of the Learned counsel for the Judgment Debtor and Learned counsel for the objector are concerned, although there is a necessity for determination of the balance area, in the opinion of the Court the same can neither be done by the Executing Court, nor can be a reason for stalling the execution proceedings nor can even be a reason for adjourning the present proceedings sine die, as has been proposed by the Learned counsel for the Judgment Debtor and Learned counsel for the objector. It may be relevant to point out here that there is no challenge to decree or dismissal of objections.

At best, Rohit Rajpal- objector is having 4.59 sq. yds out of the sanctioned area, and in the opinion of the Court, the same can be allocated/ determined by a competent court of law, as all the attempts of this Court for an amicable settlement or to find an alternative suitable to both the sides have failed.

In so far as the area under execution is concerned, the order under execution records the property as “lower ground floor” which is to be handed over to the Decree Holder. By no means it can be presumed that it is only a part of the lower ground floor. As such, the oral submissions of the Learned counsel for the Judgment Debtor and Learned counsel for the objector are rejected.

On steps being taken within 6 weeks from today, warrant of possession in respect of the property bearing No.NIL-4B, Malviya Nagar, New Delhi be issued against the Judgment Debtor.

Decree Holder is directed to appear before the Learned ACJ on 19.07.2019

Court bailiff to get the possession delivered to the Decree Holders, as per the process of law.

Bailiff would be at liberty to seek police help, if necessary to break open the locks. Copy of the order be forwarded to the SHO concerned.

For the purpose of clarification, it is recorded herein that Rohit Rajpal would be considered as a joint owner of the property so far as the area 4.59 sq. meters out of sanctioned area is concerned. Both the parties would be at liberty to approach the civil court for the determination of the entitlement of the objector or sharing of the area of 4.59 sq. meters.

Objector and the Judgment Debtor are directed to cooperate with the Bailiff and Police Authorities and it is clarified that any physical resistance by the Judgment Debtor or the objector would be viewed as seriously.

Needless to say that the objector would also be at liberty to get his suit revived or file a fresh suit for the same relief, on its own merits lest that there is any injustice to the objector.

List on 13.08.2019 for report.”

Submissions

14. Learned counsel for the petitioner submitted that the petitioner's objections regarding the area to which the plaintiff was entitled, in terms of the decree, ought to have been determined by the Executing Court under Order XXI Rule 97 and 101 of the CPC. He argued that the determination of this question, by reference to the report of the Assistant Engineer, SDMC and delegation of the task to the bailiff, was illegal. He relied upon the judgments of the Supreme Court in *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust & Anr.*, (1998) 3 SCC 723, *Niyamat Ali Molla vs. Sonargon Housing Co-operative Society Ltd. & Ors.*, AIR 2008 SC 225, and *Shubh Karan Bubna @ Shub Karan*

Prasad Bubna vs. Sita Saran Bubna & Ors., (2009) 9 SCC 689 in support of his contention that the Executing Court was duty bound to enter into this question. In the written submissions, learned counsel has also referred to the judgments of the Supreme Court in *Asgar & Ors. vs. Mohan Varma*, 2019 SCC OnLine SC 131 [Civil Appeal No. 1500/2019, decided on 05.02.2019], *Ramesh Chand Ardawatiya vs. Anil Panjwani*, (2003) 7 SCC 350, *A.V. Papayya Sastry & Ors. vs. Govt. of A.P. & Ors.*, (2007) 4 SCC 221, and *Badami vs. Bhali*, (2012) 11 SCC 574.

15. Learned counsel for the respondents placed considerable emphasis on the documentary evidence which, according to him, does not support the petitioner's contention that the basement of the suit property is built up to the extent of 100 sq. yards, which is, in fact, the extent of the entire plot. He submitted that the factual findings recorded repeatedly by the Trial Court and Executing Court in this regard were not susceptible to interference under Article 227 of the Constitution. He urged the Court not to permit or require the Executing Court to go behind the decree and enter into this question once again. Learned counsel also submitted that the plaintiffs have been out of possession, without any compensation for their property, since the year 2014.

Analysis

16. While considering the correctness or otherwise of the orders passed in execution, it is important to note at the outset that, in the suit itself, the defendant (who is the brother of the petitioner herein) had raised the objection that the plaintiffs were not the owners of the entire

basement of the suit property. It had been contended that the area of the lower ground floor was about 100 sq. yards, and the sale deed in favour of the plaintiffs was for an area of 47.48 sq. yards only. The same contention was also taken in the defendant's reply to the application filed by the plaintiffs under Order XII Rule 6 of the CPC. As extracted above, while disposing of the said application vide order dated 17.02.2018, the Trial Court accepted the defendant's contention that the plaintiffs can take possession only of property which they assert to be their own, but also recorded the finding that the sale deed in their favour mentions that the area of the lower ground floor is 47.48 sq. yards on a plot of 100 sq. yards. Having come to this conclusion, the Trial Court, in paragraph 10 of the said judgment, did not qualify the decree of possession or consequent direction upon the defendant to give possession in terms of the area of the premises. The premises was described as the "Lower Ground Floor of property bearing no NIL-4B, Malviya Nagar, New Delhi – 110 017". The decree was also drawn up in the same terms. A proper interpretation of the judgment does not support the petitioner's case that the area of the lower ground floor is, in fact, more than the area mentioned. This judgment and decree have remained unchallenged.

17. In the course of execution also, this finding has been reiterated by the order of the Executing Court dated 03.08.2018. The petitioner's case that he issued a power of attorney in respect of a valuable immovable property, which is the subject matter of the suit, to a third party as security for a loan of ₹6,00,000/-, has been disbelieved by the Executing Court. The Court has also noted the absence of any loan

agreement. Subsequent objections disposed of on 16.08.2018 yielded the observation that the decree holder would be entitled to recover the possession of the area which he claims to have purchased. However, the Executing Court, in that order, did not vary or disturb, in any way, the finding in the judgment under execution that the area was, in fact, the same as that purchased by the plaintiffs.

18. The record produced before this Court also does not reveal any documentary evidence in support of the petitioner's case that the area of the basement is, in fact, 100 sq. yards. Although learned counsel for the petitioner was at pains to argue that the construction of a basement of 100 sq. yards is permissible on a plot of the same area under the relevant building regulations, that is not the controversy with which the Court is concerned in the present petition. The following documents, in fact, support the conclusion arrived at by the Trial Court and the Executing Court:-

- a) The petitioner claims to have derived his title under an agreement to sell dated 13.07.2000, executed by one Kiran Nayyar and others in his favour, along with a general power of attorney. He subsequently, as attorney of Kiran Nayyar and others, executed a sale deed dated 06.05.2009, in his own favour. While these documents described the land in the suit property as measuring 100 sq. yards, the property under transfer is described as the "entire lower ground floor" of the suit property. The documents presented for registration of the sale dated 06.05.2009, signed by the petitioner, both as transferor and transferee, specifically state that the plinth area under

transfer is 38 sq. meters, which is equal to 45.45 sq. yards. Although, in the written synopsis filed by the petitioner, this has been sought to be explained as an “error”, that *per se* cannot assist the petitioner is displacing a valid and unchallenged decree in favour of the respondents.

- b) The petitioner has placed on record a rectification order dated 28.02.2006, passed by the SDMC, stated to be in respect of the suit premises. In that order also, the area of the flat is stated to be 530 sq. feet, which is equivalent to 49.24 sq. metres or 58.89 sq. yards.
 - c) The petitioner has also relied upon an irrevocable power of attorney dated 21.09.2010, executed by him in favour of Megha Nanda. In that document as well, the area of the land is stated to be 100 sq. yards and the premises under consideration is the entire lower ground floor. While presenting this document for registration once again, the “plinth area under transfer” is stated to be 40 sq. metres.
 - d) The sale deed dated 23.01.2014, executed by Megha Nanda in favour of the plaintiffs, refers to the lower ground floor of the property as measuring 47.84 sq yards, erected on a plot measuring 100 sq. yards The Schedule also describes the transfer plinth area as 40 sq. metres. There is no indication in this sale deed that the area being transferred was only a part of the lower ground floor.
19. The above conclusion is fortified by the confusion displayed by the petitioner himself regarding the actual constructed area of the

lower ground floor of the suit property. In the application dated 11.08.2018 filed before the Executing Court, the petitioner claimed that the construction was of 100 sq. yards. Paragraph 4 of the said application is reproduced below:-

“That it has been noticed by this Hon’ble Court in para No.7 the constructed area on the lower ground floor is only 47.84 sq. yds. but this is incorrect and the actual construction existing at the lower ground floor area of the above property is over complete 100 sq. yds. of plot area in other words, there is complete construction of 100 sq. yds at the lower ground floor area on plot size of 100 sq. yds.”

This contention is also reflected in the impugned order dated 06.06.2019 and the present petition filed before this Court. In paragraph 11 of the petition, which is set out below, the petitioner claims that the construction is 83.6 sq. meters, which is equivalent to 100 sq. yards:

“That this dispute has also arisen because the Ld. Trial Court has not accepted the contention of the petitioner that the area at Lower Ground Floor is 83.6 sq. mtrs. and the whole of the lower ground floor portion is constructed from which the respondents are only entitled to 40 sq. mtrs./47.8 sq. yds. as per the registered Sale Deed dated 23.1.2014 executed in their favour by Megna Nanda.”

In oral arguments before me also, this was the position taken on behalf of the petitioner. However, an inconsistent assertion is sought to be advanced in the written synopsis dated 23.07.2019, filed by the counsel for the petitioner. The petitioner has filed with the petition, a site plan which certifies the total constructed area of the suit property

as 67.13 sq. meters, which is equivalent to approximately 80 sq. yards. The synopsis seeks to support the petitioner's case on this basis, as would be evident from the following extract:-

“...However, at page 204 of the petition filed by the petitioner, the petitioner has filed a site plan prepared by an approved architect for the actual area constructed and existing at the site, which according to the petitioner is 67.13 sq. mtrs. Thus the extent of area existing at the property is 67.13 sq. mtrs. and the petitioner is entitled to surplus 27.13 sq. mtrs. area at the Lower Ground Floor portion of the property which is the actual position as well as construction existing at the site.

xxxx

xxxx

xxxx

xxxx

...Thus. as per MPD 20-21, the petitioner will be entitled to additional area in excess of 40 sq. mts to the extent of 75 sq. mtrs. but as the present construction has been done only till 67.13 sq.mtrs. the petitioner is the owner and is entitled to the balance 27.13 sq.mtrs. of area.

The last precedent of the Hon'ble Supreme Court, i.e., Ramesh Chand vs. Anil Panjwani has been relied upon without prejudice to the contention of the petitioner that the petitioner is the owner of additional 27.13 sq. mtrs. of area and on this basis cannot be dispossessed without a proper adjudication.”

20. The documentary evidence referred to hereinabove, and the inconsistent position taken by the petitioner himself, make it clear that the factual findings returned by the Executing Court are not entirely unsupported by evidence or manifestly arbitrary. The petitioner's admittedly erroneous title document dated 06.05.2009, and dispute as to the SDMC report make it impossible to adjudicate this issue in the

present proceedings, invoking the supervisory jurisdiction of this Court.

21. In these circumstances, the petitioner has not been able to make out a case on facts to support his contention that the lower ground floor of the suit property, in fact, exceeds the area sold to the plaintiffs, or that the plaintiffs have purchased anything less than the entire lower ground floor. The factual findings of the Trial Court, to this effect, do not display any perversity of a nature calling for interference under Article 227 of the Constitution. None of the orders of the Trial Court or the earlier order of the Executing Court were challenged. In the suit filed by the petitioner also, which was ultimately withdrawn on 11.12.2018, he did not succeed in obtaining interim orders. In fact, the petitioner's right to revive the suit, as contained in the impugned order of the Executing Court provides sufficient protection by granting him an opportunity to prove his case in duly constituted civil proceedings. In the facts of this case, therefore, the order of the Executing Court does not occasion any irretrievable injustice upon the petitioner. He has been given liberty to demonstrate in civil proceedings that he is entitled to 4.59 sq. metres, or any other area, of the suit premises.

22. The exercise of jurisdiction by the High Court under Article 227 of the Constitution does not extend to correcting every error of the Trial Court or into entering upon an adjudication of disputed questions of facts. Reference may be made, in this regard, to paragraph 49 of the judgment of the Supreme Court in *Shalini Shyam Shetty vs. Rajendra*

Shankar Patil, (2010) 8 SCC 329, wherein principles regarding exercise of jurisdiction under Article 227 were crystallized, thus:-

"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

xxxx

xxxx

xxxx

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

xxxx

xxxx

xxxx

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised."

23. Learned counsel for the petitioner relied on the judgments of the Supreme Court in *Asgar* (supra), *Silverline Forum* (supra), and *Niyamat Ali Molla* (supra), to support his contention regarding the maintainability of an application under Order XXI Rule 97 of the CPC in execution proceedings. As the present matter is not being decided on this issue, consideration of these judgments is not required. The judgment in *Ramesh Chand Ardawatiya* (supra) was relied upon to

assert that the respondent cannot dispossess the petitioner without due process of law from the excess area claimed. This judgment cannot come to the aid of the petitioner either. In view of the findings of the Executing Court that the respondents are entitled to the possession of the entire lower ground floor (subject to the petitioner's entitlement to the 4.59 sq. metres), and that the petitioner herein may proceed in an appropriate civil suit regarding the 4.59 sq. metres of the property, it cannot be said that due process of law has not been followed. The judgments in *Pappaya* (supra) and *Badami* (supra) were relied upon by the petitioner to support the position that fraud vitiates a decree, and such a ground could be taken at any time. In the present case, the petitioner's contention regarding fraud in obtaining the decree has not been established. He has been granted liberty to revive his civil suit in which he can establish his right to any part of the suit property, if so entitled in law. Until he does so, the plea of fraud is unsustainable. The judgment relied upon by the petitioner in *Shubh Karan Bubna* (supra) relates to proceedings in a partition suit, and is not applicable in the facts of this case.

Conclusion

24. For the reasons aforesaid, the impugned judgment of the Executing Court does not call for interference under Article 227 of the Constitution. The petition is dismissed alongwith the pending applications.

PRATEEK JALAN, J.

AUGUST 06, 2019/ 'j'