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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 30th October, 2019

+ RSA 370/2015 & CM Nos. 24480/2015, 42184/2018,
43217/2019

AMIR AIN

..... Appellant

Through: Dr. Amit George, Mr. Rishabh
Dheer, Mr. Amol Acharya &
Mr. Rayadurgam Bharat, Advs.
with appellant in person.

Versus

QAADIRA

..... Respondent

Through: Mr. Rajat Aneja, Ms. Jia Kapur
& Mr. Pranav Pathak, Advs.
with respondent in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent had instituted civil suit (CS No. 276/2013) against the appellant herein on 05.06.2013 seeking a decree of possession of one room with kitchen and bathroom at first floor of property bearing no. I-100, Muradi Road, Batla House, Village Okhla, Jamia Nagar, New Delhi. The suit was decreed, after contest, by the court of Administrative Civil Judge, by judgment dated 26.09.2014, the operative part reading thus:-

“The suit of the plaintiff stands decreed. A decree of possession of one room with kitchen and bathroom facility

at the first floor of property bearing no. I-100, Muradi Road, Batla House, Village Okhla, Jamia Nagar, New Delhi (constructed out of Khasra No. 282 of Village Okhla) is passed in favour of the plaintiff and against the defendant No order as to cost. The present suit of the plaintiff stands disposed off accordingly. Decree sheet be prepared. File be consigned to Record Room.”

2. The said judgment and decree of the trial Judge was challenged by the appellant herein (judgment debtor) before the Additional District Judge by first appeal (RCA 124/2015). The appeal was decided by judgment dated 15.09.2015, recording observations and partially modifying the decree as under:-

“39. Ld. Counsel for appellant has also drawn my attention to the fact that suit was decreed in respect of one room with kitchen and bathroom facility at the first floor of property bearing no. I-100, Muradi Road, Batla House, Village Okhla, Jamia Nagar, New Delhi, while the appellant has been shown to be in possession of one room only in the site plan filed by the respondent and therefore decree in respect of one room should have been passed and the Ld. Trial Court has erred in passing the decree in respect of one room with kitchen and bathroom.

40. I find substance in this contention of the Ld. Counsel for appellant. The respondent in the plaint prayed for recovery of one room with kitchen and bathroom facility at the first floor of the aforesaid property, but in the site plan Ex.PW1/D the appellant was shown to be in possession of one room as shown in red colour in the site plan. Therefore, decree should have been passed in respect of one room only as shown in the site plan. To that extent the impugned judgment is liable to be modified.

41. Except the aforesaid discrepancy, in my considered opinion, there is no illegality or infirmity in the impugned judgment. The impugned judgment is hereby modified to the

extent that decree is passed in respect of one room only at the first floor of property bearing no. I-100, Muradi Road, Batla House, Village Okhla, Jamia Nagar, New Delhi as shown in red colour in site plan Ex.PW1/D. The present appeal filed against the impugned judgment is devoid of any merit and hence same is hereby dismissed. No order as to cost. Decree sheet be prepared accordingly”.

3. The second appeal at hand was preferred by the judgment debtor challenging the aforesaid judgments of the courts below on which notice was issued, by order dated 20.10.2015.

4. During the pendency of the appeal at hand, the parties have amicably resolved the dispute and come up with a joint application (Ex.C-1) invoking Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC), the application dated 19.09.2019 having been presented supported by the affidavits of both parties (Ex.C-2 and Ex.C-3). The terms of settlement as set out in para 4 of the said application may be extracted as under:

“ (i) The Appellant/Defendant has agreed and undertaken to hand over and deliver the actual, physical and vacant peaceful possession of the property in occupation of the Appellant and his family, bearing no. I-100, Muradi Road, Batla House, Village Okhla, Jamia Nagar, New Delhi-110025 to the Respondent/Plaintiff on or before 15.11.2019, subject to such reciprocal obligations which have been undertaken by the Respondent/Plaintiff as stated hereinbelow.

(ii) In lieu of the Appellant/Defendant vacating and handing over the physical possession of the property as aforesaid, the Respondent/Plaintiff has agreed and undertaken to pay to the Appellant/Defendant a total sum of Rs. 5,00,000/- (Rupees Five Lakhs Only) towards additions/alterations carried out in the portion of the property in occupation of the Appellant/Defendant as well as to compensate the Appellant

towards acquisition of an alternate accommodation. Out of the said amount of Rs. 5,00,000/-, a sum of Rs. 1,00,000/- shall be paid by the Respondent to the Appellant at the time of hearing of the present application before this Hon'ble Court, whereas a further sum of Rs. 3,00,000/- has been undertaken to be paid by the Respondent to the Appellant at the time of vacation of the premises in occupation of the Appellant/Defendant and handing over of the same to the Respondent/Plaintiff, on or before 15.11.2019. The balance amount of Rs. 1,00,000/- has also been agreed and undertaken to be paid by the Respondent to the Appellant on or before 31.12.2019.

(iii) That it has also been voluntarily agreed and accepted by the Appellant/Defendant that the Property bearing No. I-100, Muradi Raod, Batla House, Village Okhla, Jamia Nagar, New Delhi-110025 is exclusively owned by the Respondent/Plaintiff on the basis of the registered documents dated 19.02.1994. It has also been agreed and accepted by the Appellant that the documents of transfer executed on 15.02.1982 by the erstwhile owner in favour of the husband of the Respondent/Plaintiff shall not be called into question, and therefore, for all intent and purposes, the Appellant/Defendant accepts the chain of ownership with respect to the entire property bearing no. I-100, Muradi Road, Batla House, Village Okhla, Jamia Nagar, New Delhi-110025, of which the Suit property on the first floor formed a part.

(iv) It is also clarified here that, though the impugned judgment dated 15.09.2015 has been passed by the Learned lower Appellate Court with respect to One room only of the First Floor of Property bearing No. I-100 as aforesaid; however, the Appellant/Defendant has agreed and undertaken to hand over and deliver the actual physical possession of the entire portion in his occupation on the First Floor to the Respondent/Plaintiff. Thus, to this extent, the parties herein have amicably resolved all their disputes between them fully and finally, and that the Appellant/Defendant shall vacate and deliver the entire portion in his occupation of the said property bearing No. I-100, Muradi Road, Batla House, Village Okhla, Jamia Nagar, New Delhi-110025 to the Respondent/Plaintiff.

5. *That the parties jointly submit that they have settled all their disputes and differences amicably and voluntarily, and of their own free will and accord, and without any pressure, undue influence, force or duress of any nature from any quarter whatsoever. They further undertake that they shall abide by the aforesaid terms of Settlement and shall remain bound thereby. In the unlikely event of any of the parties herein backing out of their undertaking(s) recorded above, the aggrieved party shall be entitled to enforce and execute the aforesaid Settlement in accordance with law, including by way of initiation of appropriate proceedings for Contempt of the Order/Undertaking under the relevant provisions of the Contempt of Courts Act, 1971."*

5. The statements of both parties have been recorded by the Joint Registrar (Judicial) in the proceedings of 17.10.2019. From the said statements and the joint application supported by the affidavits, as mentioned above, it is clear that parties have amicably resolved the dispute out of their own free will and volition and without any duress or undue influence.

6. In terms of the settlement, the respondent (decree holder) has handed over Banker's cheque bearing no. 055961 dated 23.09.2019 for a sum of Rs. 1,00,000/- issued by Jamia Cooperative Bank Ltd. as part payment owed to the appellant (judgment debtor) who has received the same in terms of the settlement.

7. The parties shall remain bound by the settlement terms and the undertakings given which are accepted and made rule of the Court.

8. In view of the above, the prayer in the application under Order XXIII Rule 3 CPC is granted. The decree as passed by the first

appellate court is modified in terms of the settlement noted above.
The joint application (Ex.C-1) shall be read as part of this judgment.

9. The appeal and pending applications are disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 30, 2019

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