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IN THE HIGH COURT OF DELHI AT NEW DELHI

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EX.F.A. 8/2020 and CM APPL. 9038/2020

KIRAN TANWAR & ANR.

..... Appellants

Through: Mr. D. Hasija, Advocate (M:
9810064629).

versus

KANWAR SINGH TANWAR & ORS.

..... Respondents

Through: Mr. Achal Gupta, Advocate for R-1
(M:9891191186)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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11.03.2020

1. The present petition has been filed challenging the order dated 18th January, 2020 by which objections filed by the Appellants/Judgment Debtor Nos. 3&4 (*hereinafter*, “*Judgment Debtor Nos. 3&4*”) were rejected by the Trial Court and the proforma sale deed has been directed to be executed. The operative portion of the impugned order reads as under: -

“32. Further, the objection of JDs no.3 and 4 that without there being any site plan, property cannot be identified, is required to be rejected as the suit property is clearly identifiable by its municipal number i.e. WZ- 523/30, Village Basai Darapur, New Delhi and by description given of the surrounding boundaries to the suit property in the proforma sale deed which has not been disputed by JDs no.3 and 4 during the course of arguments. Therefore, this contention is accordingly, rejected.

*33. In the light of above discussion, objections filed by JDs no.3 and 4 are not sustainable. Accordingly, **the objections filed by JDs no.3 and 4 are dismissed whereas objections filed by JD no.2 are allowed to the***

extent that DH to file on record the proforma sale deed in terms of para 30 of the judgment dated 15.04.2019 of the Hon'ble High Court of Delhi passed in RFA No. 695/16, within a week from today."

2. The present petition arises out of disputes which were decided in two appeals RFA No. 544/2016 and RFA No. 695/2016. As per the common judgment dated 15th April, 2019 in the two appeals, property bearing No. WZ-523/30, village Basai Dara Pur, New Delhi (*hereinafter*, "*suit property*") was to vest in Respondent No.1/Decree Holder (*hereinafter*, "*Decree Holder*") and the sale deed was to be executed by Ms. Pratibha and the Judgment Debtor Nos. 3&4 i.e., Ms. Kiran Tanwar and Mr. Dinesh Tanwar, being confirming parties. The operative portion of the judgment reads as under:

"30. It is, accordingly, directed that the sale deed shall be executed by Mrs. Pratibha with confirmation by Defendant Nos.3 & 4, Mrs. Kiran Tanwar and Mr. Dinesh Tanwar, within three months. Upon the sale deed being registered and the certified copy of the same being placed before the Executing Court, the amount of Rs.67,63,580/- lying deposited in the Tis Hazari Court, Delhi shall be released in favour of Mrs. Kiran Tanwar and Mr. Dinesh Tanwar in equal proportions. Any interest, which has accrued on the same, shall be reimbursed to the Plaintiff."

3. The SLP against the said judgment is stated to have been dismissed by the Supreme Court on 10th June, 2019. In the execution petition, the grievances of Judgment Debtor Nos. 3&4, who are to be the confirming parties to the sale deed, are –

- i. First, that the description of the suit property is wrong;

- ii. Secondly, the vendor's name ought to be Ms. Pratibha and Judgment Debtor Nos. 3&4's name ought to be mentioned as the confirming parties;
- iii. Further, it was submitted that the various indemnities sought from the confirming parties is contrary to the judgment.

The Executing Court has rejected these objections.

4. Ld. counsel for the Decree Holder submits that insofar as the description of the suit property is concerned, the same is in line with the sale deed dated 26th December 2011, executed in favour of Judgment Debtor Nos. 3 & 4, by Mr. Devender Kumar i.e., the brother of Ms. Pratibha. Thus, there is no error in the description. Secondly, ld. counsel submits that the indemnity also ought to be given by Judgment Debtor Nos. 3&4 as, after the sale deed dated 26th December, 2011, Judgment Debtor Nos. 3&4 ought to indemnify that no other interest has been created by them in the suit property.

5. This Court has heard ld. counsel for the parties. The background of this petition is clear from the judgment dated 15th April, 2019 passed in RFA No. 544/2016 and RFA No. 695/2016. An agreement to sell had been entered into between one Mr. Devender Kumar, who had ownership rights in the property and the Decree Holder in respect of the said property. The date of the agreement was 15th March, 2010. Subsequently, in respect of the same very property, a sale deed was executed on 26th December, 2011 in favour of Judgment Debtor Nos. 3&4. This Court had passed judgment dated 15th April, 2019 wherein the Court had considered the manner in which Mr. Devender Kumar's sister i.e., Ms. Pratibha, had acted unlawfully on behalf of her brother, created various third-party interests in the suit property and

other properties. She was finally held guilty of contempt and sentenced to three months imprisonment. Since various transactions had been entered into in respect of the same property, considering that the transaction with the Decree Holder was first in point of time and the sale consideration stood deposited in the Trial Court, it was directed that the sale deed would be executed in favour of the Decree Holder. Since the subsequent sale deed had been executed in favour of Judgment Debtor Nos. 3&4, they were directed to be the confirming parties and the amount lying deposited in the Trial Court was to be released to them.

6. To implement the judgment, a proforma sale deed was handed by the Decree Holder to the Judgment Debtors, in respect of which objections have been raised. The sale deed has been perused by the Court. Firstly, insofar as the description of the suit property is concerned, though in the agreement to sell the Khasra No. is not mentioned, in the sale deed which Judgment Debtor Nos. 3&4 have entered into, the Khasra No. is clearly mentioned. Thus, the addition of the Khasra No. cannot be faulted with in the proposed sale deed. The same would merely bring greater clarity to the property being sold. Insofar as the description of the parties is concerned, clearly Ms. Pratibha has to be described as the '*vendor*', the Decree Holder as the '*vendee*' and Judgment Debtor Nos. 3&4 as the '*confirming parties*'.

7. Insofar as the indemnities are concerned, it is made clear that absolute indemnities shall be obtained from Ms. Pratibha. Insofar as Judgment Debtor Nos. 3&4 are concerned, the indemnity shall only relate to the period between 26th December, 2011 till the date of execution of the sale deed.

8. The proforma sale deed shall, accordingly, be modified in terms of the above order. The amended proforma sale deed shall be presented before the

Executing Court, which shall ensure that the sale deed is in line with the order being passed today. Upon the draft proforma sale deed being confirmed by the Executing Court, the sale deed shall be executed on or before 15th April, 2020. If, on 15th April, 2020, Judgment Debtor Nos. 3&4 do not co-operate in the execution of the sale deed, the Decree Holder shall appear before the Sub-Registrar and the Sub-Registrar shall execute the sale deed. Upon Judgment Debtor Nos. 3&4 not appearing for the execution of the sale deed, no amount shall be released in their favour by the Trial Court.

9. Parties to appear before the Executing Court on 13th March, 2020.
10. With these observations, the petition and all pending applications are disposed of.
11. Order *dasti* under signature of the Court Master.

PRATHIBA M. SINGH, J

MARCH 11, 2020
MR/T