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

% Judgment delivered on: 23.01.2020

+ C.R.P. 126/2019

CHAUDHARY RAJENDER PAWAR Petitioner

versus

GEETA SINGH & ANR Respondents

+ C.R.P. 129/2019

CHAUDHARY RAJENDER PAWAR Petitioner

versus

GEETA SINGH & ORS Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. A.K. Singh, Advocate.

For the Respondents: Mr. Sunil Prasad, Advocate for R-1.
Mr. Hardik Prakash, Advocate for R-2 with R-2 in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

C.R.P. 126/2019 & CM APPL. 25750/2019 (stay) & C.R.P. 129/2019 & CM APPL. 26032/2019 (stay)

1. None appears for Respondents Nos.3 to 7 in C.R.P. 129/2019 despite service, they are, accordingly, proceeded ex-parte.

2. In C.R.P. 126/2019, Petitioner, impugns order dated

15.03.2019, whereby, the Trial Court has *inter alia* stayed the execution petition filed by the Petitioner, *sine die* till the decision of the suit No.325/17, filed by the Respondent No.1, and has restrained the Petitioner from creating any third-party interest in the suit property.

3. In C.R.P. 129/2019, Petitioner, impugns order dated 15.03.2019, whereby, the Trial Court has dismissed the application filed by the Petitioner under Order 7 Rule 11 CPC seeking dismissal of the Suit for declaration filed by the Respondent No. 1.

4. This case has a very chequered history and throws up certain glaring facts and conduct on the part of the Respondents. This case is a classic example as to how a litigant can abuse the system and deprive the opposite party of the fruits of his success.

5. Petitioner had filed a Suit for possession against Respondent Nos.1 and 2, who are husband and wife contending that he had purchased the Suit Property from its earlier owner and Respondent Nos. 1 and 2 were tenants in the said Property.

6. During pendency of the said suit a compromise was arrived at between the Petitioner and Respondent Nos. 1 & 2 on 25.05.2011 and a Compromise Deed was executed.

7. As per the Compromise Deed, Respondent Nos. 1 & 2 agreed to handover the peaceful vacant possession of the suit property, i.e.,

House No.726 comprising of ground floor and first floor, built up on the area of 100 sq. yards in portion of Khasra No.749 of Revenue Village of Hari Nagar situated in Gali No.13, I – Block in Abadi known as Hari Nagar Extension, Badarpur, New Delhi on or before 30.09.2011 besides paying monthly rental of Rs. 11,000/-.

8. Thereafter an application under Order XXIII Rule 3 was filed in the suit for recording the compromise and passing a decree. The application was supported by an affidavit of the Petitioner and both Respondent Nos. 1 & 2.

9. On 07.06.2011, the statements of the Petitioner as well as the Respondent No.2 were recorded by the Court. Based on the statement and the compromise, the Suit was decreed as compromised in terms of the Compromise Deed.

10. Petitioner thereafter on 01.10.2011 filed an execution petition seeking execution of the Compromise Decree.

11. Objection petition was filed by the Respondent No.1 on 23.01.2011, under Order 21 Rule 26 Civil Procedure Code, objecting to the execution of the decree. It was contended that her husband is in the habit of drinking and she was not having cordial relations with her husband and on receipt of summons, she became aware that she had been cheated by the Petitioner in connivance with her husband. She alleged that she had even filed a complaint in the Police Station. She disowned the compromise and contended that her signatures had been

obtained on certain blank papers by her husband and he had misused the same to create the Compromise Deed.

12. Respondent also filed an application under Order 23 Rule 3A CPC on similar grounds impugning the Compromise Decree.

13. Objections filed by the Respondent No.1 under Order 21 Rule 26 CPC were dismissed by the Executing Court by order dated 18.05.2013.

14. On the application under Order 23 Rule 3A, on the same date i.e. 18.05.2013, the Executing Court framed issues and set the case down for evidence.

15. Respondent No. 1 thereafter filed a petition under Article 227 of the Constitution of India, being CM (M) 774 of 2013, before the High Court of Delhi, impugning the order dated 18.05.2013, whereby her objections under Order 21 Rule 26 CPC were rejected.

16. Said petition under Article 227 was dismissed on 20.08.2015 in default.

17. In the application under Order 23 Rule 3A, the Executing Court noticed that Respondent No.1 initially appeared for her cross-examination partly and thereafter failed to appear for further cross-examination. The Executing Court thereafter dismissed the application of the Respondent No. 1 seeking setting aside of the Compromise Decree, on 05.10.2015.

18. The order dated 05.10.2015 rejecting the application of the Respondent No. 1 under Order 23 Rule 3A CPC, seeking setting aside of the Compromise Decree, was impugned by the Respondent No.1 by filing an appeal before the Court of the District & Sessions Judge.

19. Said appeal was dismissed by the District Judge by order dated 27.01.2016 holding that the appeal was not maintainable.

20. Thereafter, the Respondent No.1 filed a petition before this Court under Article 227 of the Constitution of India being CM (M) 113/2016 challenging order date 05.10.2015.

21. Said petition was dismissed by this Court by a detailed judgment dated 03.02.2016. Costs of Rs.10,000/- were imposed on Respondent No.1.

22. Respondent No.1 thereafter filed a petition before the Supreme Court of India being SLP(C) No.10626/2016. Said special leave petition was dismissed by the Supreme Court on 03.05.2016 and further costs were imposed by the Supreme Court of Rs.40,000/- on Respondent No.1.

23. Thereafter, in terms of the warrants of possession issued by the Executing Court, possession was delivered by the bailiff to the Petitioner on 31.05.2017.

24. As per the Petitioner, immediately after the bailiff left the spot, Respondents broke open the locks and trespassed in the Suit property

and entered into physical possession thereof.

25. Petitioner was thereafter constrained to file a complaint with the police on which an FIR has been registered and Charge Sheet has been filed.

26. Petitioner also initiated proceedings under Section 6 of the Specific Relief Act, 1963 claiming possession. Respondent Nos. 1 & 2 opposed the relief. However, by an Order under Order XII Rule 6, said suit was decreed by a judgment dated 29.10.2018.

27. The Judgment dated 29.10.2018 decreeing the Suit filed by the Petitioner under Section 6 of the Specific Relief Act, 1963 was not assailed by Respondent No. 1.

28. Thereafter, Petitioner once again filed an execution seeking warrants of possession.

29. Respondent No. 1 filed a Suit Declaration, Mandatory and Permanent Injunction once again contending that the Compromise Decree was obtained by fraud and forgery. She sought a decree of declaration declaring that the Petitioner and his family members had been debarred from moveable and immovable property of the Respondent No. 1; a mandatory injunction against the petitioner and his family from entering in the Suit property and setting aside and declaration as null and void the Compromise Decree in the Suit filed by the Petitioner.

30. Said Suit was withdrawn by the Respondent No. 1 on 06.07.2017 with liberty to file a fresh Suit.

31. Thereafter, another Suit for declaration, Mandatory and Permanent injunction was filed on 07.07.2017 seeking a declaration that Respondent No. 1 be declared as the owner of the Suit Property and for restraining the Petitioner from creating any third party rights in the property and a restraint from entering in the property.

32. In the Execution Petition filed by the Petitioner seeking execution of the Decree of Possession under section 6 of the Specific Relief Act, Respondent No. 1 once again filed objections under Order 21 Rule 29 CPC, which were dismissed by the Executing Court by order dated 14.12.2018 and costs of Rs. 20,000/- was imposed on the Respondent No.1.

33. Respondent No. 1 did not impugn the order dated 14.12.2018 but filed fresh objections under Section 47 CPC objecting to the execution, on which the impugned order has been passed staying the execution proceedings *sine die*.

34. The Trial Court in the impugned order has clearly noted that Petitioner has two decrees of possession in his favour and despite the same has not been able to obtain the possession of the suit property.

35. The ground of Respondent No.1 to challenge the compromise decree was that a fraud had been played upon her by her husband in

connivance with the Petitioner. It was contended that her husband is in the habit of drinking and she was not having cordial relations with her husband and on receipt of summons, she became aware that she had been cheated by the Petitioner in connivance with her husband. She alleged that she had even filed a complaint in the Police Station. She disowned the compromise and contended that her signatures had been obtained on certain blank papers by her husband and he had misused the same to create the Compromise Deed.

36. Same plea has been taken by the Respondent No. 1 in (i) her application under Order 23 Rule 3A; which application was dismissed by order dated 05.10.2015, (ii) her appeal to the District Judge; which was dismissed as not maintainable on 27.01.2016, (iii) her petition under Article 227 of the Constitution of India before this court; which was dismissed with costs on 03.02.2016, (iv) her Special Leave Petition to the Supreme Court; which was also dismissed with costs on 03.05.2016, (v) her defence to the Suit for possession filed by the petitioner under section 6 of the Specific Relief Act; which Suit was decreed by Judgment dated 29.10.2018 and no further appeal was filed by Respondent No. 1, and (vi) objections under Order 21 rule 29; which were dismissed on 14.12.2018 with costs and no further appeal filed there from.

37. This plea of the Respondent No.1 has been tested before 6 forums including this Court and the Supreme Court of India. The rejection of the said plea has also become final on the principles of *res*

judicata because Respondent No. 1 has not even assailed some of the orders. Even, costs were imposed by the High Court and the Supreme Court on Respondent No.1 for filing frivolous proceedings.

38. Though the contention of the Respondent No.1 is that there are strained relations between her and her husband (Respondent No. 2), it is an admitted position that both of them reside together and have always been residing together. Even after the compromise deed dated 25.05.2011, both the Respondent Nos.1 and 2 have been residing together and there is no dispute pending between them in any Court of law.

39. In the impugned order, the Trial Court though notices that Petitioner has been successful in all these proceedings and has two decrees in his favour, has held that he is not entitled to execution of the decree of possession.

40. It is surprising to note that the same presiding officer, on 29.10.2018 had decreed the Suit filed by the Petitioner under section 6 of the Specific Relief Act and on 14.12.2018 had dismissed the objections of the Respondent No. 1 under Order 21 rule 29 CPC with costs, from which no also appeal was filed. The same Presiding Officer in his order dated 14.12.2018 had held that

“2.....In the present application, similar stands/pleas have been raised which were already raised in the main suit and the same were dealt with and decided against the JD no. 1 mainly on account of the fact that the suit of the plaintiff was under Section 6 of the Specific Relief

Act, 1963 in which the question of title is completely irrelevant.

3. *In the suit as well as present objection, counsel for JD no.1 / objector has again raised the same issues of title and claimed stay of the present execution on account of pendency of another suit titled as Geeta v. Rajender Pawar & Ors. If the aforesaid prayer of the JD no. 1 is accepted, there will be no occasion when a DH can realize the fruit of the decree.*

4. *It is pertinent to mention that before filing of present suit (and current execution thereof), DH had filed a suit bearing no. 202/11 and after holding trial, the said suit was decreed in favour of plaintiff and when the defendants (including JD no. 1) did not succeed up to the level of Hon'ble Supreme Court of India, the DH initiated the execution proceedings, wherein the DH obtained the possession of the suit property but the JDs broke open the lock of the said property and took forcible possession after breaking of its lock. Consequently, the plaintiff was compelled to file the suit under execution under Section 6 of the Specific Relief Act.*

5. *In these circumstances, this court does not find any justifiable ground to stay the present execution petition. Accordingly, the application/objection under Order 21 Rule 29 CPC is dismissed with cost of Rs.20,000, out of which Rs.10,000 shall be paid to the DH and Rs. 10,000 to be deposited to DLSA within 15 days."*

41. As noticed hereinabove, order dated 14.12.2018 has not been challenged by Respondent No. 1, but she has filed a second objection petition on 18.12.2018 primarily on the same grounds.

42. The same presiding officer even after noticing the various

proceedings between the parties has held that despite the Petitioner holding two decrees, he is not entitled to execution of the same.

43. The reasoning give by the Trial Court is that in exercise of powers under Order X CPC Trial Court had examined the original owner of the property, who is alleged to have owned up to the copies of the sale documents of the Respondent No. 1 and disowned the title documents of the Petitioner. The Trial Court has held that as the original owner has owned up to the documents of Respondent No. 1, she is prima facie the owner.

44. Said finding is returned by the Trial Court despite noticing that Original Documents have not been produced by Respondent No. 1 and the case set up is that the said documents were removed by her husband in connivance with the Petitioner. This was exactly the story she had set up in all proceedings, which plea was negated upto the Supreme Court.

45. The Trial Court has held that great injustice would be done to the Respondent No. 1 if possession is delivered to the Petitioner and for the allegation of taking forcible possession of the Suit Property, she will face the consequences in the criminal trial, if it is proved.

46. Trial Court has clearly not noticed the provisions of Order 23 Rule 3A which clearly bars a Suit for setting aside of a Compromise decree on the ground that the compromise, on which the decree was passed, was not lawful.

47. The Trial Court, despite, noticing the orders of the High Court and of the Supreme Court and the orders passed in other proceedings and even its own orders, which had become final, has chosen to ignore the said orders/judgments and stayed the execution of the decree of possession.

48. Once the plea of collusion and fraud and fabricated settlement has already been tested up to Supreme Court unsuccessfully, it was beyond the powers of the Trial Court to have stayed the execution based on the same plea.

49. Clearly, the judgments and orders in the earlier rounds of litigation would operate as *res judicata*. The Supreme Court of India in *Hope Plantations Ltd. v. Taluk Land Board*, (1999) 5 SCC 590 has held as under:

“26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are “cause of action estoppel” and “issue estoppel”. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the

same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.”

(underlining supplied)

50. In view of the above, order dated 15.03.2019 is clearly unsustainable. Accordingly, the order dated 15.03.2019 is set aside, the objections filed by the Respondent No.1 to the execution of the decree of possession, are consequently dismissed.

51. As noticed, hereinabove, Petitioner in C.R.P. 129/2019, seeks to impugn the part of the order dated 15.03.2019, whereby, his application under Order VII Rule 11 CPC, seeking rejection of the Complaint of the Suit for declaration filed by Respondent No. 1, has been dismissed.

52. The facts as noticed above and various orders and judgments would clearly operate as *res judicata*. The issues sought to be raised

by the Respondent No. 1 in her suit would be barred on the principles of res judicata and issue estoppel and accordingly, Respondent No.1 is estopped from raising them again. The Trial Court has clearly erred in dismissing the application under Order VII Rule 11 filed by the Petitioner.

53. In view above, the order dated 15.03.2019, insofar as it dismisses the application of the Petitioner under Order VII Rule 11, is also set aside. Consequently, the application under Order VII Rule 11 filed by the Petitioner is allowed and the Suit filed by the Respondent No.1 is held to be barred under Order VII rule 11 CPC on the principles of *res judicata*.

54. Both the petitions are allowed in the above terms.

55. Order *Dasti* under signatures of the Court Master.

JANUARY 23, 2020
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SANJEEV SACHDEVA, J