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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 21st December, 2021

+ EX.S.A. 1/2021, CM APPLs. 46086/2021 & 46089/2021

SUNITA GOEL Appellant

Through: Ms. Manmeet Arora, Advocate.

versus

MAMAN CHAND & ANR. Respondents

Through: Mr. Manish Bansal and Ms. Aarti Tyagi, Advocates. (M:9811415557)

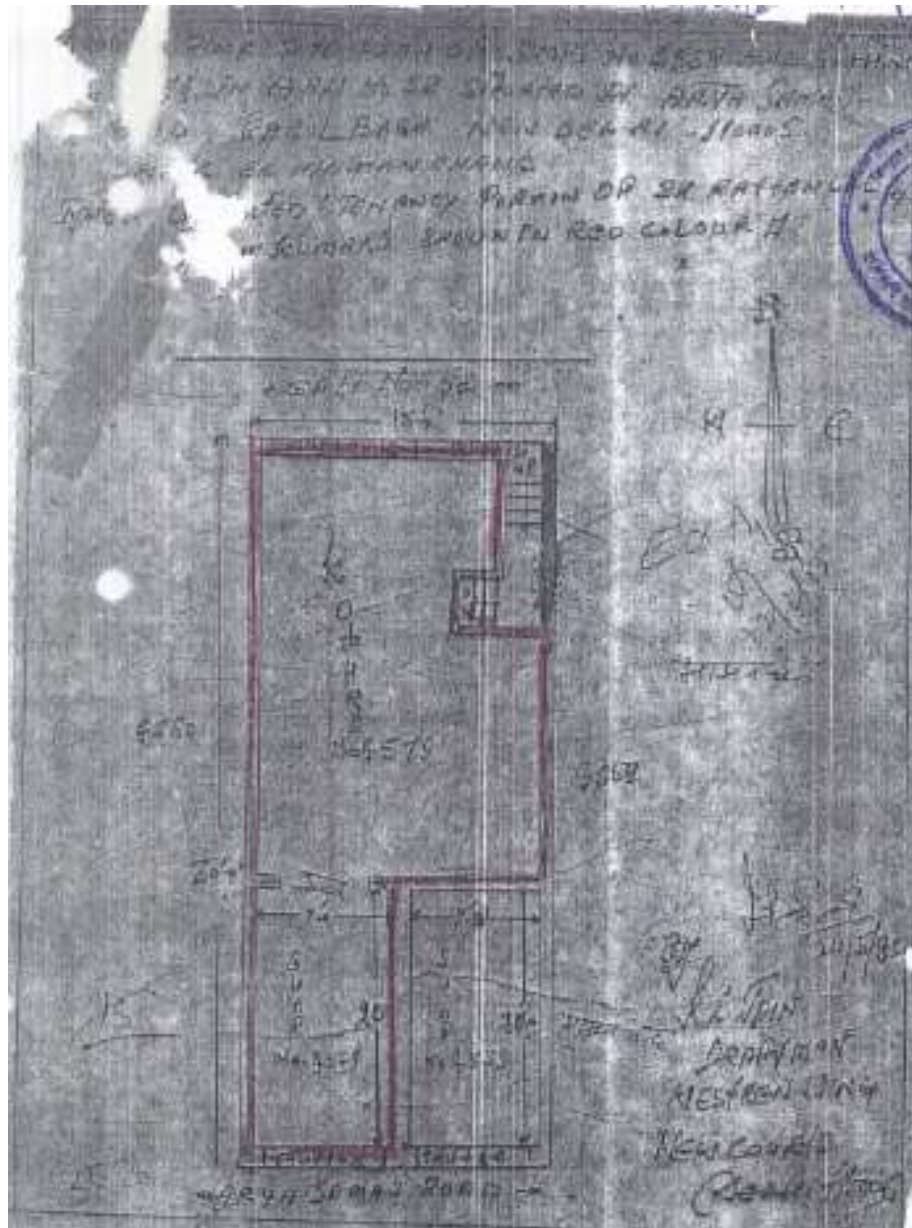
CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. The present execution second appeal arises out of judgment dated 3rd December, 2021 in *RCT no. 168/2019* titled *Smt. Sunita Goel v Shri Maman Chand & Ors.* passed by Id. *Principal District & Sessions Judge, Headquarters & Rent Control Tribunal, Central District, Tis Hazari Courts, Delhi* (hereinafter the “Appellate Court”) vide which the appeal filed by the Appellant herein has been dismissed.
3. The Respondent No.1/Landlord (hereinafter “Respondent No.1”), who is the Petitioner in the eviction petition, sought eviction of the Respondent No.2 – Mr. Rattan Lal Ram Kumar, the original Tenant (hereinafter “Tenant”) from the ‘L’ shape premises in the property bearing *No.4559 & 4579, Ward no. XVI Kh. No. 125, Gali No. 52 Main Arya Samaj Road, Karol Bagh, New Delhi* (hereinafter “suit property”). The site plan of the suit property which was annexed with the eviction petition is as

under:



4. The said eviction petition was dismissed by the Id. **Rent Controller, Delhi** vide order dated 18th August, 1992. The same was appealed to the **Additional Rent Control Tribunal** (hereinafter "RCT") in **RCA No.621/1992** titled **Maman Chand v. Shri Rattan Lal Ram Kumar** and vide

judgement dated 16th August, 2003, the appeal was allowed by the Id. RCT under section 14(1)(b) of the Delhi Rent Control Act, 1958 and the eviction order was passed against the Tenant. The operative portion of the order reads as under:

“27. Accordingly, an eviction order is passed against the Respondents U/s 14(1)(b) DRC Act with respect to property no.4559, Arya Samaj Road and 4579/52 Reharpura, Karol Bagh, New Delhi. Respondent No.1 individually & respondent no.2 through Rattan Lal & Ram Kumar are directed to pay to the appellant or deposit in court rent w.e.f. 1.7.1980 till date @ Rs.54/- p.m. within one month from the date of this order. Respondents now directed shall be entitled to deduct any amount which has been deposited for this period by Rattan Lal Ram Kumar either individually or in the name of the firm M/s. Rattan Lal Ram Kumar through them while making the deposit. In case the amount is deposited as directed the court below shall extend the benefit of Sec.14(2) DRC Act to the respondent Rattan Lal Ram Kumar firm M/s. Rattan Lal Ram Kumar through partners Rattan Lal or Ram Kumar. The parties shall appear before the court below for this purpose on 1.10.2003. The appeal is accordingly disposed of.”

5. Then the RCT's order was challenged before this Court vide **CM(M) No.83/2011** titled **Savitri Devi Gupta v Dharam Pal Tanvar**. In the meantime, the shop with dimension of 7 ft 6 inches x 20 ft was sold by the Respondent No.1 to one Smt. Sunita Devi vide a duly registered sale deed dated 4th February, 2011. Thereafter, vide another sale transaction dated 28th February, 2011 the said Smt. Sunita Devi sold the said shop bearing no.4559

to the Appellant i.e., Smt. Sunita Goel, who also happened to be the wife of the Tenant. The dispute continued to escalate between the parties. In the meantime, **CM(M) 83/2011** filed by the Appellant was dismissed by this court vide order dated 27th April 2012. Special leave petitions were preferred against the judgment of this Court before the Hon'ble Supreme Court of India bearing **SLP(C) No. 17581-17582** titled **Rattan Lal Ram Kumar & Ors v Maman Chand**. The same were dismissed vide order dated 25th February 2012 giving one year's time to the Tenant to vacate the suit property. In effect, therefore, the order of the RCT dated 16th August, 2003, stood affirmed right till the Supreme Court.

6. However, the story did not end here. Execution proceedings was commenced by the landlord. An execution petition was filed by the Respondent No.1 seeking possession of the tenanted portion. The said proceedings culminated in the order dated 22nd October, 2019 by which the objections filed by Appellant were dismissed by the Executing Court. This order was affirmed by the Appellate Court vide the judgment dated 3rd December, 2021. The present second appeal arises out of these proceedings.

7. The sole contention between the parties is the green wall identifiable from the site map attached to the sale deed executed by Maman Chand in favour of Smt. Sunita Devi dated 4th February 2011, which separates the "L" shaped property of the Respondent No. 1 from the shop of the Appellant which she had bought from Smt. Sunita Devi. Before the Executing Court, statements were made by the parties, some of which are recorded herein below:

“ Ld. Counsel for DH has submitted that if the said entire adjacent back portion beyond the depth of 20 ft is handed over to the DH, the DH shall not press for the demolition/removal of the intervening wall existing between the shop in question and the shop owned by the objector.

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Statement of the Appellant- Ms. Sunita Goel-

I am ready to hand over the possession of premises beyond the shop ad-measuring 7'-6" x 20' at the address which is owned by me to decree holder Sh. Maman Chand S/o Sh. Raghunath Sahai. In case my husband Sh. Rajinder Kumar is in possession of any portion beyond the abovesaid premises which is subject matter sale deed dt. 28.02.2011 that I shall ensure which I hereby undertake that he shall also deliver the actual, physical, vacant possession to the decree holder by 12 noon tomorrow i.e. 06.08.2019.

I am aware if I violate the undertakings I will be liable to be punished for contempt of court.”

8. Thus, there is no doubt that the Tenant has to hand over the entire tenanted portion to the Respondent No.1 and the Appellant would be entitled to enjoy the possession of the shop, which she has purchased from Smt. Sunita Devi vide sale deed dated 28th February, 2011.

9. Ms. Manmeet Arora, ld. counsel appearing for the Appellant submits that the green wall identifiable in the site plan attached to the sale deed dated 4th February 2011 was always identified as the portion supporting the Appellant's shop. She submits that the Appellant purchased not just the ground floor shop but also the first floor above the shop. Thus, the wall

supporting the first floor and the shop ought not to be permitted to be broken down. She relies upon the site plan annexed with the sale deed dated 4th February, 2011.

10. On the other hand, Mr. Dhir, Id. counsel appearing for the Respondent No.1 submits that the Appellant is guilty of having encroached upon the wall area and the rear portion, taking advantage of the fact that her husband was a tenant in the property. The eviction decree has to be given its full effect and except the shop the entire remaining portion should be handed over to the Respondent No.1. He submits that the litigation has had a long and chequered history, leading to the eviction decree and thereafter, the execution proceedings which are under challenge before this Court.

11. Heard. The position that emerges is that the Appellant is entitled to her shop with dimension 7 ft 6 inch x 20 ft. The Appellant cannot be entitled to anything more than the said premises. It is also not in doubt that she also purchased the first floor of the property, hence, the staircase access to the first floor is also to be given to the Appellant. Since the only dispute between the parties is as to how much is the area to which the Respondent No.1/Decree Holder is entitled to, the Executing Court and the First Appellate Court have made various observations making it clear that the Appellant is only entitled to her shop. But these observations do not solve the problem at hand.

12. The root cause of the problem is that the order of the RCT does not identify the area over which the decree has been passed in favour of the Respondent No.1. The Supreme Court has repeatedly observed that whenever a possession decree or eviction decree are passed, the Court ought to exactly identify the property in question along with the complete

description etc., in order to avoid long drawn litigation. In **Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan & Ors.** AIR 2003 SC 351 the Supreme Court observed:

“In the case at hand, a perusal of the reliefs prayed for in the plaint shows that the reliefs are not very happily worded. There are some reliefs which may not be necessary or may be uncalled for though prayed. The reliefs may have been considered capable of being recast or redefined so as to be precise and specific. May be that the Court was inclined to grant some other relief so as to effectually adjudicate upon the controversy and bring it to an end. Nothing is spelled out from the appellate judgment. The Trial Court, on whom the obligation was cast by second appellate judgment to draw up a decree, was also, as its order shows, not very clear in this mind and thought it safe to proceed on an assumption that all the reliefs sought for in the plaint were allowed to the plaintiffs. The learned single Judge allowing the second appeal, should have clearly and precisely stated the extent and manner of reliefs to which the plaintiffs were found to be entitled in this view of the findings arrived at during the course of the appellate judgment. The parties, the draftsman of decree and the executing Court cannot be left guessing what was transpiring in the mind of the Judge decreeing the suit or allowing the appeal without further placing on record the reliefs to which the plaintiff are held entitled in the opinion of the Judge.”

13. The observations of the Hon’ble Supreme Court in Lakshmi Ram Bhuyan (supra) have been reiterated by the High Court of Madras in **Samuthirapandi v Ramakrishnan and Ors.** C.R.P. (MD). No. 2325 of 2015. The Court observed:

“6 . According to the learned counsel for the revision petitioner, the Judgment is vague, not specific as to the relief granted and the decree drawn up is not in consonance with the Judgment. In this connection, he has cited Lakshmi Ram Bhuyan Vs. Hari Prasad Bhuyan and others (MANU/SC/1018/2002 : AIR 2003 SCC 351).

7 . I have anxiously considered the submissions of the learned counsel for the petitioner, perused the materials on record and the decision cited.

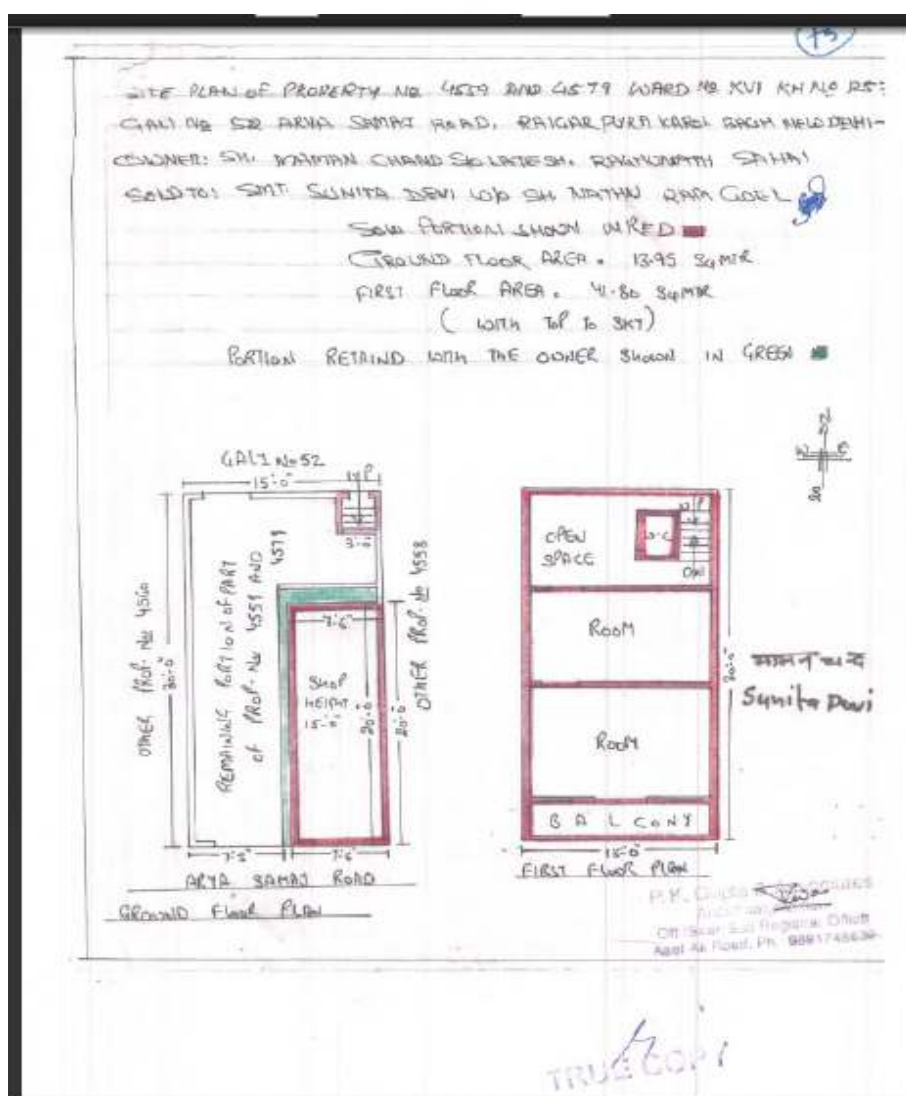
8 . It is needless to emphasis that writing/producing a Judgment is an essential function of a Court. Writing Judgment is an art. A Judge should approach the Judgment 'with delivery pain'. So much importance is attached to the Judgment of a Court. A civil Court decree must follow the Judgment. It should not be putting the cart before the horse.

9. A Judgment must be clear, then only the decree could be clear and the Judgment must tell very clearly what is the relief granted and what is the relief refused and the decree must be drawn up in consonance with that.”

14. The present case is one such case, which has resulted in so many years litigation between the parties and costs to the parties only because the original order of the RCT did not directly identify the suit property.

15. This Court is of the view that the Tenant is bound to hand over the tenanted portion to the Respondent. The Appellant is only entitled to retain the shop on the ground floor and the first floor, as per the plan attached to the sale deed dated 4th February 2011. To ensure that the decree is implemented in letter and spirit, without disturbing the Appellant's rights, the handing over of the possession of suit property and the execution of the decree ought to be done under the supervision of this Court. Accordingly, this Court is of the opinion that a Local Commissioner should be appointed

to supervise the handing over of the premises to the Respondent No.1. Since the sketch at page 75, which was in the sale deed executed by the Respondent No.1 to Smt. Sunita Devi dated 4th February 2011, from whom the Appellant has purchased, is the admitted sketch between the parties, the division of the possession shall be done by the Local Commissioner in accordance with the same. In order to avoid any ambiguity, the said plan is set out herein below:



16. It is clarified that the Appellant would only be entitled to the shop measuring 7 ft 6 inch x 20 ft along with the access to the first floor through the staircase, which will be 3 ft wide. Beyond the said premises, the entire ground floor of the suit property shall be handed over to the Respondent No.1. The Id. Counsel for the Appellant submits that the shop is used for the purpose of selling sanitary goods and there are goods that are currently kept inside the shop. Accordingly, it is directed that the said handing over/removal of the goods, if any, shall be carried out under the supervision of the **Local Commissioner– Mr. Mahesh Chander Gupta, Retd. DJHS Officer (Mobile No. 9910384727)**, who shall be present at the site along with a draftsman and supervise the handing over of possession of the tenanted premises. For the said purpose, the sketches which are extracted above, shall be relied upon by the Local Commissioner. The possession of the entire premises, except the shop with the dimension mentioned at the sketch as also the first floor of the property which belongs to the Appellant, shall be handed over by the Local Commissioner to the Respondent No.1. If the Local Commissioner is confronted with any situation at the time of handing over, the Local Commissioner is free to exercise his discretion. Further the Respondent No.1 is directed to ensure that no damage is caused to the shop while taking the possession of the suit property. If the wall is broken or damaged, in the process, the same shall be re-constructed at the expense of the Respondent No.1.

17. The local commission shall be executed on 27th December, 2021 at 11:30 am. The Local Commissioner shall seek the assistance from the local SHO to ensure that no disturbance is created in the implementation of this order. If the entire work is not concluded within one day, the Local

Commissioner may fix another date with the consent of the parties. The responsibility of providing labour/ masonry or the expenses of the same, shall be borne by the Respondent No.1.

18. The fee of the Local Commissioner is fixed at Rs.1 Lakh, which is to be shared equally by both the parties.

19. This Court does not find any substantial questions of law that arise in this appeal as the entire dispute between the parties is factual in nature.

20. Accordingly, with these observations, the present execution second appeal is disposed of.

21. List for receiving of Local Commissioner's report on 16th February, 2022.

22. This shall be treated as the part heard matter only for receiving the compliance report.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 21, 2021/dk/SK