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

+ CM(M) 330/2019 and CM APPL. 8606/2019 (stay)

RAKESH KUMAR

..... Petitioner

Through: Mr. Amit Gupta and Mr. Shiv
Verma, Advs.

versus

JOGINDER CHADDA

..... Respondent

Through: Through: Ms. Ankita Baluni,
Ms. Tanishq Mehta and Mr. Deepak Kumar,
Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(ORAL)

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20.07.2022

1. This petition under Article 227 of the Constitution of India assails the order dated 30th November 2018, passed by the learned Senior Civil Judge (“the learned SCJ”), as the Executing Court in Execution 192/2017 (*Joginder Chadda v. Rakesh Kumar*).

2. Given the submissions made by learned Counsel and the nature of the controversy, it is not necessary to deal with the factual disputes between the parties. A brief recital of facts would suffice.

3. Civil Suit 87/2005, filed by the respondent against the petitioner was initially dismissed by the learned Civil Judge by an order and judgment dated 18th March 2014. The said judgment dated 18th March 2014 was affirmed by the learned Additional District Judge (“the learned ADJ”) *vide* judgment and order dated 28th November 2015 in CM(M) 330/2019



RCA 35/2015.

4. The respondent carried the matter further to this Court in second appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) *vide* RSA 112/2016 (**Joginder Chadda v. Rakesh Kumar**). This Court, *vide* judgment dated 24th April 2017, reversed the decisions of the learned SCJ as well as the learned RCT.

5. Again, it is not necessary to enter into the details of the findings returned by this Court. Suffice it to reproduce para 11 of the judgment, which read thus:

“11. In view of the above discussion, the substantial questions of law are answered in favour of the appellant/plaintiff and against the respondent/defendant and consequently the suit for possession of the appellant/plaintiff would stand decreed with respect to the Shop No.1, Khasra No. 301/223, Chaddha Market, Village Mukundpur, Delhi and duly shown red in the site plan Ex. PW1/1. Since no evidence has been led with respect to the damages/*mesne* profits by the appellant/plaintiff and as conceded by the counsel for the appellant/plaintiff, hence, no money decree can be passed for damages/*mesne* profits.”

6. The petitioner assailed the aforesaid judgment dated 24th April 2017, passed by this Court in RSA 112/2016, by way of SLP(C) 19136/2017, which was dismissed *in limine* by the Supreme Court *vide* order dated 17th September 2018, observing that there was no reason to interfere with the order passed by this Court.

7. Para 11 of the judgment dated 28th April 2017, of this Court in



RSA 112/2016 is clear and categorical. This Court has decreed the suit filed by the respondent with respect to Shop No.1, Khasra No. 301/223, Chaddha Market, Village Mukundpur, Delhi, shown in red in the site plan exhibited as Ex. PW1/1, during the course of the trial in the suit.

8. The lone contention of Mr. Amit Gupta, learned Counsel for the petitioner, is that the site plan, which was filed by the respondent in Execution 192/2017, wherein the impugned order dated 30th November 2018 has come to be passed, is different from Ex. PW1/1, which was exhibited during the course of proceedings in the suit, and to which para 11 of the judgment dated 24th April 2017 of this Court in RSA 112/2016 makes reference.

9. The dispute, therefore, is easily resolved. Without entering into the issue of whether there is any difference between the site plan filed with the Execution Petition and the site plan which was exhibited in the suit as Ex. PW1/1, it is clear, in view of para 11 of the judgment dated 24th April 2017 of this Court in RSA 112/2016, as affirmed by the Supreme Court, that, by way of execution of the judgment dated 24th April 2017, the respondent is required to be placed in possession of Shop No.1, Khasra No. 301/223, Chaddha Market, Village Mukundpur, Delhi, shown in red in the site plan Ex. PW1/1.

10. The Executing Court would, therefore, ensure that the area of which the respondent is placed in possession by way of execution of the decree is the area shown in red in the site plan Ex. PW1/1 as



exhibited during the course of proceedings in the trial in the suit, and not any other site plan, which may have been filed in the Execution Petition.

11. This assuages the sole grievance urged by Mr. Amit Gupta, learned Counsel for the petitioner.

12. As such, with the aforesaid directions, this petition stands disposed of with no order as to costs. Miscellaneous application stands disposed of.

JULY 20, 2022
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C.HARI SHANKAR, J



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