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

+ EX.F.A. 17/2022 & CAV 310/2022, CM APPL. 42592/2022, CM APPL. 42593/2022

RAJAN SETHI

..... Appellant

Through: Mr. Samrat Nigam and Mr. Abhimanyu Walia, Advs.

versus

SAJAN SETHI

..... Respondent

Through: Mr. Varun Singh, Ms. Soujanya Khetraraj, Mr. Ytharth Kumar, Ms. Alankriti Dwivedi, Mr. Akshay Dev and Mr. Himanshu Yadav, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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12.10.2022

1. These proceedings emanate from judgment dated 18th February 2019, passed by a coordinate Bench of this Court in RFA 641/2018 (*Sajan Sethi v. Rajan Sethi*) in which the present respondent was the appellant and the present appellant was the respondent.

2. Under challenge, in the aforesaid RFA 641/2018, was the judgment and decree dated 20th April 2018 passed by the learned Additional District Judge ("the learned ADJ") in CS 11193/2016 (*Rajan Sethi v. Sajan Sethi*).



3. Inasmuch as the relevant facts, pertaining to the present dispute, stand crisply elucidated in the order dated 18th February 2019 passed by the coordinate Bench of this Court, one may distil the facts from the said order.

4. The learned ADJ, *vide* her judgment and decree dated 20th April 2018, directed partition of the property situated at D-1090, New Friends Colony, New Delhi-110065 (“the suit property”)

5. The parties are brothers. They are the sons of Mr. S.L. Sethi. According to the recital of facts, which find place in the judgment dated 18th February 2019, the suit property, consequent to Will executed by S. L. Sethi, devolved upon Krishna Sethi, the mother of the petitioner and the respondent. Krishna Sethi expired on 4th July 2005, leaving behind a Will dated 27th January 2005.

6. CS 11193/2016, instituted by the petitioner, sought partition of the suit property in terms of the said Will dated 27th January 2005.

7. It is not in dispute that, as per the aforesaid Will dated 27th January 2005, the ground floor of the suit fell to the share of the petitioner, and the first floor fell to the share of the respondent. We are not particularly concerned, in this writ petition, either with the ground floor or the first floor. The dispute pertains exclusively to the second floor of the suit



property.

8. The Will dated 27th January 2005 of Krishna Sethi required the second floor of the suit property to be divided equally between the parties, with the front portion of the property falling to the share of the respondent and the rear portion falling to the share of the petitioner.

9. RFA 641/2018, as already noted, impugned the judgment dated 20th April 2018, of the learned ADJ, which directed partition of the suit property. A considerable portion of the judgment dated 18th February 2019 relates to the ground floor and the first floor of the suit property and the area appurtenant thereto, which is not of particular relevance to the present dispute.

10. Insofar as the second floor of the suit property, to which the present dispute relates, is concerned, this Court has, in para 4(iii) of the judgment dated 18th February 2019, noted thus:

“4(iii). It is argued on behalf of the appellant/defendant that though the ground-floor vests in the respondent/plaintiff in terms of the Will of the mother, yet the appellant/defendant has a right to use the driveway on the ground-floor and the back courtyard and these should be held as common areas even though the Will does not designate such areas as commonly owned areas. *There is also a related issue to be resolved and that is with respect to allowing of another/additional entrance door by making an entrance door in the second-floor landing of the staircase, so that the respondent/plaintiff will have direct access/entrance to the*



back portion of the second-floor which falls to the share of the respondent/plaintiff.”

(Emphasis supplied)

11. It is clear, from a plain reading of para 4(iii) of the judgment dated 18th February 2019 that, “ the related issue” which, according to this Court, remained to be resolved, was “with respect to allowing *of another/additional entrance door by making an entrance door* in the second floor landing of the staircase”, so as to provide access to the petitioner to the rear portion of the second floor of the suit property which, according to the Will dated 27th January 2005, fell to the petitioner’s share.

12. Even from this recital, it is clear that this Court was, while passing the judgment dated 18th February 2019, clearly examining the question of whether the petitioner was to be permitted to make an additional door on the second floor to obtain access to the rear portion thereof, which fell to his share. *Prima facie*, even from this recital, it is clear that this Court was not envisaging use, by the petitioner, of any door *which was already in existence* on the second floor of the suit property.

13. One may, thereafter, proceed directly to paras 13 and 14 of the judgment dated 18th February 2019, which read thus:

“13. This takes us to the issue of access to be granted to the respondent/plaintiff for the back portion of the second-floor of the property. Thankfully, the same would also not be difficult



because the landing which presently exists on the second-floor portion, opening onto the second-floor, this landing is of such a size that *after the existing door on the second-floor is found to be used by the appellant/defendant for entering his front portion*, there will still be sufficient landing space left in this landing which abuts the wall or the portion adjoining the back portion of the second-floor falling to the share of the respondent/plaintiff. Therefore, *the respondent/plaintiff is given the right to open a door which directly opens to the back portion of the second-floor, falling to the share of the respondent/plaintiff.*

14. In view of the aforesaid discussion, the impugned judgment of the trial court directing the sale of the second-floor is set aside. So far as the other directions with respect to common areas are concerned, they have already been stated above, and in this regard the operative portion for disposing of the present appeal will be as under:

- (i) The appellant/defendant will not have a right to use the small driveway on the ground-floor of the property.
- (ii) The appellant/defendant will however have easementary right to use the water pipes and booster pump at the rear courtyard, which are the water pipes and booster pump, and which feed the first-floor and second-floor of the suit property falling to the share of the appellant/defendant”
- (iii) The respondent/plaintiff *will use a part of the landing of the staircase on the second-floor which adjoins the back portion of the second-floor of the suit property so that a door can be constructed on this second-floor landing which opens directly to the back portion of the second-floor of the suit property falling to the share of the respondent/plaintiff.*”

(Italics and underscoring supplied)

14. To my mind, it is clear, from a reading of paras 13 and 14 of the judgment dated 18th February 2019, that this Court, in the said judgment,



did not allow the petitioner access to any door on the second floor of the suit property which was already in existence on that date. Though the impugned judgment does, at one point, make it appear that the court was referring to “the existing door on the second floor”, making it appear that there was only one door on the second floor of the suit property, that aspect, according to me, is not of particular significance, as the right to use “the existing door” on the second floor has exclusively been granted to the respondent, and the right that the judgment dated 18th February 2019 confers on the petitioner is only to construct an additional door, through which the petitioner could have the access to the rear portion of the second floor of the suit property, which fell to his share as per the Will dated 27th January 2005.

15. Mr. Samrat Nigam, learned Counsel arguing for the appellant before me, produced a photograph which indicates that there are four doors on the second floor of the lending of the suit property. Mr. Nigam sought to contend that, of these four doors, three doors provided access to the front portion of the second floor of the suit property, which fell to the share of the respondent, whereas the fourth door provided access only to the rear portion of the suit property, which fell to the petitioner’s share. As such, he submits that the petitioner cannot be denied use of the said fourth floor.

16. Mr. Nigam submits that, in view of the said door, through which



the petitioner has access to the rear portion of the second floor of the suit property which falls to his share, the petitioner does not need to construct any additional door.

17. Allowing the petitioner use of one of the existing doors on the second floor of the suit property, and discharging the petitioner of the requirement of constructing an additional door would, in my view, amount to completely rewriting the judgment dated 18th February 2019, passed by this Court in RFA 641/2018, insofar as it deals with the second floor of the suit property.

18. Howsoever the said judgment may be read, it does not appear to be that the judgment dated 18th February 2019 envisages use, by the petitioner, to a door which was already in existence on the second floor of the suit property. Any doubt in this regard would not survive in view, especially, of the concluding direction (iii) in para 14 of the said judgment dated 18th February 2019 which, at the cost of repetition, may be reproduced thus:

“(iii) The respondent/plaintiff will use a part of the landing of the staircase on the second-floor which adjoins the back portion of the second-floor of the suit property so that a door can be constructed on this second-floor landing which opens directly to the back portion of the second-floor of the suit property falling to the share of the respondent/plaintiff.”

19. The judgment dated 18th February 2019 does not, therefore, permit



the petitioner to use any door which was already in existence on the second floor of the suit property. What is expressly permitted by the judgment dated 18th February 2019 is construction, by the petitioner, of an additional door, so as to enable access, to him, of the rear portion of the second floor of the suit property.

20. The operative paragraph of the judgment dated 18th February 2019 is para 14. It has only three directions. None of the said directions envisages use, by the petitioner, of a door which was already in existence on the second floor of the suit property. Direction (i) permits the respondent to use the small driveway on the ground-floor of the suit property. Direction (ii) grants the respondent easementary rights to use the waterpipes and booster pump in the rear courtyard. Direction (iii) permits the petitioner to use a part of the landing of the staircase on the second floor which adjoins the rear portion of the second floor of the suit property *so that a door can be constructed* on the second floor landing which opens directly to the back portion of the second floor of the suit property, falling to the share of the petitioner. Even usage, by the petitioner, of the landing of the second floor of the suit property is, therefore, by the judgment dated 18th February 2019, contemplated only *so that* the petitioner could, thereby, construct a door by which the petitioner could have access to the rear partition of the second floor of the suit property.

21. Construction of an additional door by the petitioner on the second



floor of the suit property, if the petitioner desires access to the rear portion on the second floor is, to my mind, a clear mandate of the judgment dated 18th February 2019.

22. The petitioner cannot, in view of the said judgment, be permitted to use any of the existing doors on the second floor of the suit property and, if the petitioner desires access to the rear portion of the second floor of the suit property, the petitioner has necessarily to construct a door for obtaining such access. There is no way out of this requirement, in view of the express directions contained in the judgment dated 18th February 2019.

23. Qua this aspect, no challenge was made, at any point of time, to the judgment dated 18th February 2019, either by way of review or by way of appeal, though it is stated that an SLP, on certain other aspects, was preferred by the respondent which was dismissed by the Supreme Court.

24. The judgment dated 18th February 2019 has, therefore, attained finality and is binding on the parties.

25. It is not for this Court, entertaining an appeal against an order passed in a petition seeking execution of the said judgement dated 18th February 2019, to second guess the judgement. Nor can the executing court, in the garb of “meaningful” interpretation of the said judgement, rewrite it. An executing court cannot go behind the decree which is



being executed. It has been so held in *Jaya Chandra Mahapatra v. Land Acquisition Officer*¹:

“The Executing Court in view of the decision in *Bai Shakriben v. Special Land Acquisition Officer*² (*supra*) itself could not have gone behind the decree. The Executing Court, thus, proceeded to pass the impugned judgment on a wrong premise. The Executing Court keeping in view its limited jurisdiction could not have gone into the question as to whether the Reference Court was correct in passing the order dated 8.10.1996 amending the decree or not. The Executing Court did not have any jurisdiction to go into the said question. A decree passed by a competent court of law can be suitably amended. A decree, so amended on an application filed by the claimant for review thereof, becomes final. If the State was aggrieved by and dissatisfied therewith, it could have taken the matter by filing an appropriate application before the High Court. But keeping in view of the fact that the said order was allowed to attain finality, the court could not have permitted the State to reagitate the said question before the Executing Court by filing an application under Section 47 of the Code of Civil Procedure or otherwise. In a case of this nature, the principle of estoppel by records shall come into play.”

Judgements on the proposition are legion. Several such decisions were noted in the following passages from the judgement of the Supreme Court in *Firm Rajasthan Udyog v. Hindustan Engineering & Industries Ltd*³:

“34. This Court, while considering the question of execution of a decree which only declared the rights of the decree-holder and nothing more, has in *State of M.P. v. Mangilal Sharma*⁴, held as follows :

¹ (2005) 9 SCC 123

² (1996) 4 SCC 533

³ (2020) 6 SCC 660

⁴ (1998) 2 SCC 510



“6. A declaratory decree merely declares the right of the decree-holder vis-à-vis the judgment-debtor and does not in terms direct the judgment-debtor to do or refrain from doing any particular act or thing. Since in the present case decree does not direct reinstatement or payment of arrears of salary *the executing court could not issue any process for the purpose as that would be going outside or beyond the decree.* The respondent as a decree-holder was free to seek his remedy for arrears of salary in the suit for declaration. *The executing court has no jurisdiction to direct payment of salary or grant any other consequential relief which does not flow directly and necessarily from the declaratory decree.*”

35. In *Coal Linker v. Coal India Ltd.*⁵, where this Court was considering an award of an arbitrator whereby interest was awarded for certain period but not for other period, and executing court had awarded interest for such period also, this Court held as under :

“16. Admittedly, in the instant case, interest has been granted by the arbitrator in the award for the first two periods. But interest has not been granted by the arbitrator in the award for the last period. As noted above, the appellant awardee herein, filed an application under Section 17 of the Act for pronouncing a judgment in terms of the award. So *there is no scope for the executing court to go beyond the award* and grant interest for the post-award period which was not granted in the award. Here *the executing court has gone beyond the award and thus had gone beyond its jurisdiction and passed a decree which thus becomes a nullity.*”

36. While considering the power of the executing court for granting promotion which was not part of the decree, this Court in *J & K Bank Ltd. v. Jagdish C. Gupta*⁶, held as under:

⁵ (2009) 9 SCC 491

⁶ (2004) 10 SCC 568



“2. The short question involved in the case is whether the executing court could go beyond the decree by directing that the respondent be promoted to the post of Chief Manager. *It is no more res integra that the executing court has no jurisdiction to go behind the decree.* It is not disputed that the decree did not contain any direction to promote the respondent to the post of Chief Manager. Under such circumstances, we are of the view that the executing court as well as the High Court fell in error in issuing directions in execution case that the respondent be promoted to the post of Chief Manager. The order under challenge, therefore, deserves to be set aside. We order accordingly. The appeal is allowed. There shall be no order as to costs.”

37. Similarly, in *Gurdev Singh v. Narain Singh*⁷, where the question of execution of a decree prayed for was beyond what was decreed, this Court held as follows :

“7. We agree with the said contention. A bare perusal of the decree in question would clearly demonstrate that the appellant herein was restrained by a permanent injunction from planting any tree on Khasra No. 17/2 on the one side and Khasra Nos. 218/1 and 17/1 on the other side. The decree did not speak of removal of any tree which had already been planted. The executing court, as noticed hereinbefore, while interpreting the said decree proceeded completely on a wrong premise to hold that there should not be any tree within two karams on either side of the common boundary of the parties. Such an interpretation evidently is not in consonance with the tenor of the decree. A jurisdictional error, thus, has been committed by the High Court.

8. It is well settled that executing court cannot go behind the decree. *As the decree did not clothe the decree-holder to pray for execution of the decree by way of removal of the trees, the same could not have been*

⁷ (2007) 14 SCC 173



directed by the learned executing court in the name of construing the spirit of the decree under execution.”

It is thus clear that execution of an award can be only to the extent what has been awarded/decreed and not beyond the same. In the present case, the arbitrator in its award had only declared the price of land and nothing more. Thus, the question of execution of a sale deed of the land at the price so declared by the arbitrator in its award, could not be directed.”

(Italics and underscoring supplied)

26. “Meaningful construction” of the judgement dated 18th February 2019, towards which end Mr Nigam would exhort this Court, cannot, therefore, entitle the petitioner to the relief that he seeks. The executing court could not – and, as a Court dealing with an appeal therefrom this Court cannot – in the garb of “construing” the said judgement, allow the petitioner to use one of the existing doors on the second floor of the suit property without having to construct an additional door to access the rear portion.

27. Though Mr. Nigam has fervently called upon the court to have a physical inspection of the suit property in order to ascertain the ground situation, I do not feel that any useful purpose would be served by such an exercise, for the simple reason that this Court, sitting in appeal over an order passed in execution proceedings, cannot, even on the basis of such exercise, modify the judgment which is under execution.

28. The impugned order has been passed on objections preferred by



the petitioner in Ex. 269/2020, filed by the respondent.

29. The only aspect, on which the parties are at issue, as per the submissions made at the Bar, is with respect one of the four doors on the second floor landing of the suit property, *which were all in existence on 18th February 2019 when the judgement under execution came to be passed.*

30. The contention of Mr. Nigam is that, through the said door, the petitioner already has access to the rear portion of the second floor of the suit property and that, therefore, no additional door is required to be constructed by him. The contention of learned Counsel for the respondent, *per contra*, is that the petitioner cannot be permitted access use of any of the doors which is already in existence on the second floor of the suit property and is required, mandatorily, as per the judgment dated 18th February 2019, if he so desires access, to construct an additional door.

31. The learned ADJ has, in paras 10 and 11 of the impugned order observed thus:

“10. The aforesaid discussion led to the conclusion that the judgment passed by Hon’ble Mr. Justice Valmiki Mehta, dated 18.02.2019 stands ground. It is pertinent to note here that vide said judgment of Hon’ble Mr. Justice Valmiki Mehta vide para no 14.3 suggested the mode as to how the door to be constructed at second floor and admittedly that door has not been constructed by the JD/Plaintiff. On the other hand JD has come with the



present objections pleading the same ground which was already been considered in the suit as well as in appeal.

11. In view of aforesaid discussion, objections are hereby dismissed of being without any merits.”

32. I am entirely in agreement with the afore-noted observations and findings of the learned ADJ. The learned ADJ has correctly noted that the mode by which the petitioner could obtain access to the rear portion of the second floor of the suit property has been delineated in para 14 (iii) of the judgment dated 18th February 2019. For the said purpose, the petitioner is required to construct an additional door. The objection of the petitioner, to the effect that, as the petitioner already has access to the rear portion of the second floor of the suit property, through the door which is already in existence of the second floor, no additional door is required to be constructed by him, has been correctly held to be without substance and contrary to the judgment dated 18th February 2019.

33. Mr. Nigam sought, repeatedly, to urge that the said fourth door did not provide any access to the respondent to any part of the front portion of the second floor of the suit property, which fell to his share. According to Mr. Nigam, the said fourth door only provided access only to the rear portion of the suit property, which fell to the share of the petitioner.

34. It is not possible for this Court to enter into that aspect of the matter, in view of the express mandate of the judgment dated 18th



February 2019. Accepting the contention of Mr Nigam would amount to no less than holding that direction (iii) in the said judgement was unjustified and that, without having to construct an additional door, the petitioner ought to have been permitted access to the rear portion on the second floor of the suit property through one of the existing doors. Such an exercise, if undertaken, would amount to gross transgression, by an executing court, of its jurisdiction.

35. At the cost of repetition, yet again, this Court is of the view that the judgment dated 18th February 2019 envisages access, by the appellant, to the rear portion of the second floor of the suit property, which fell to his share under the Will dated 27th January 2005 only by constructing an additional door for which sole purpose the petitioner has been permitted use of the landing on the second floor of the suit property.

36. In view thereof, I find no reason to interfere with the impugned order dated 22nd July 2022 passed by the learned ADJ in Ex. 269/2020.

37. This appeal is, therefore, devoid of merits and is accordingly dismissed. No costs.

C. HARI SHANKAR, J.

OCTOBER 12, 2022

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