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

% Judgment delivered on: 11.04.2023

+ CM(M) 563/2023 & CM APPLs. 17008-09/2023

KHUSHI RAM

..... Petitioner

versus

RADHA KISHAN

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vineet Kumar Yadav and Mr. O. P. Sharma, Advs.

For the Respondent : None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 03.02.2023 in Execution Civil No. 392/2017 titled '*Radha Kishan Vs. Khushi Ram*' .
2. Mr. Yadav, learned counsel appearing for the petitioner/judgment debtor submits that the judgment and decree was passed by the learned Trial Court on a settlement agreement dated 22.01.2016 which was arrived at between the parties by virtue of the efforts of the mediation centre at Dwarka Courts.
3. Learned counsel appearing for the petitioner/judgment debtor also submits that the settlement agreement was converted into a decree which the respondent/plaintiff sought to execute.

4. Learned counsel appearing for the petitioner/judgment debtor submits that petitioner/judgment debtor had filed his detailed objections to the said execution by way of the application dated 28.02.2020. Learned counsel also submits that though the objections were filed way back in the year 2020, however, till the passing of the impugned order, the said objections were not decided.

5. Learned counsel submits that though the said agreement has not been executed by fraud or any mis-representation and that the petitioner/judgment debtor was fully aware of all the clauses of the said agreement, however, submits that the said agreement cannot be executed in the form that it has been drafted. Learned counsel submits that as per the clause 2 of the agreement, the construction of wall in between the property for partition by metes and bounds is certainly not acceptable for legal reasons.

6. Learned counsel in short, submits the following three objections:-
- (i) Learned counsel submits that the settlement agreement based whereon the compromise decree was passed, is void as per the Section 2 of the Partition Act r/w Section 23 of the Contract Act. Learned counsel submits that wherever the properties cannot be partitioned by metes and bounds, the only logical way follow up thereof would be to put up the property to sale. On that basis, learned counsel submits that the present suit property could not have been distributed by metes and bounds and is bound to be put up for sale.
 - (ii) Learned counsel also refers to the Master Plan Delhi and submits by referring to clause 4 in the introduction, that the sub

division of the plots is impermissible. He further submits that since there is a prohibition by statutory authority for sub division of a plot, the partition decree by metes and bounds during execution proceedings is impermissible under law. On that basis, learned counsel submits that the direction to erect a wall in the suit property is also beyond the jurisdiction of the executing court.

(iii) Learned counsel submits that having regard to the aforesaid legal objections, the only option left would be to put up the said property for sale for which the petitioner /judgment debtor is agreeable. On the basis of above, learned counsel submits that the impugned order suffers from above vice and ought to be set aside.

7. This Court has heard the arguments *in extenso* addressed by the learned counsel appearing for the petitioner/judgment debtor, however, is not in agreement with the said contentions for the following reasons.

8. This Court has considered the settlement agreement which is admittedly signed and executed by both the parties without any demur. It is also admitted by the petitioner/judgment debtor that neither the said settlement agreement nor the judgment and decree based on the settlement agreement has been challenged by him at all.

9. Learned counsel also did not dedicate his arguments regarding the settlement deed having been executed on the basis of either any fraud or mis-representation and has blindly signed terms.

10. It would be apposite to extract the clauses 2 and 5 of the said settlement agreement:-

“2. That it has been agreed between the parties that they will partition the above said property by metes and bound with mutual consent.

5. That it has been agreed that both the parties shall withdraw all the cases, complaints etc. from the Hon'ble Courts, from police stations and authorities, if any, filed by any of them against each other. “

11. The plain reading of the clause 2 of the aforesaid agreement would make it clear that with open eyes and full senses, the petitioner /judgment debtor had agreed that the partition will take place of the property by metes and bounds as mutually agreed upon. Now having not challenged the said settlement agreement, it appears that the petitioner/judgment debtor has devised the present contrivance to short-circuit and create unnecessary obstructions in the execution proceedings by way of the present petition.

12. The grouse of the petitioner/judgment debtor appears to be stemming from two points which are as follows:

- (i) The petitioner/judgment debtor was remitted to the civil prison by the executing court at the insistence of the respondent/decree holder.
- (ii) The respondent /decree holder appears to have not yet withdrawn all the cases and complaints filed by him against the petitioner/judgment debtor in terms of the clause 5 of the said settlement agreement.

13. The petitioner having failed in taking appropriate legal steps to challenge either the settlement deed or the decree appears to be now creating hindrances in the execution proceedings.

14. The argument that the agreement is void as per the Partition Act as well as Section 23 of the Contract Act, is liable to be rejected for the simple reason that even in the present petition there is nothing to show

that the settlement agreement was forced upon or its a creation of forgery or fabrication or that the petitioner/judgment debtor was in some kind of a mis-representation while appending his signatures as also thumb impression on the said settlement agreement.

15. The reference to the master plan does not come to rescue of the petitioner/judgment debtor for the aforesaid reasons.

16. It is also to be considered that the said settlement agreement had been finalized under the aegis of the Mediation Centre at Dwarka Courts.

17. It has also been submitted by learned counsel that so far as clause 5 of the settlement agreement is concerned, the judgment debtor himself has filed an execution petition against the respondent/decree holder seeking execution of the clauses of the terms in clause 5 whereby the respondent/decree holder was to withdraw his case filed against the petitioner/judgment debtor.

18. The arguments put forth by the petitioner/judgment debtor appears to be a clear cut case of approbation and reprobation which is impermissible in law, in that, on one hand, the petitioner/judgment debtor has filed the execution petition on the basis of the same settlement agreement which he now seeks to challenge and withdraw his statement contained therein by way of the present petition under Article 227 of the Constitution of India.

19. Though learned counsel had stressed on the fact that, these objections have been argued before the learned Trial Court, however, reading of the impugned order does not show that any such arguments were addressed before it.

20. The petitioner/judgment debtor appears to be dishonest and has used all contrivances to defeat the execution proceedings by any which way and has filed the present petition for delaying the execution proceedings.

21. On a query, learned counsel appearing for the petitioner/judgment debtor submits candidly that neither the settlement agreement nor the decree could have been challenged by him since the same is barred under law. From the aforesaid statement, it appears that keeping in view the legal constraints, the petitioner/judgment debtor has devised the present petition as a means to obstruct the execution proceedings in the present matter.

22. On an overall conspectus and keeping in view the aforesaid observations, this Court is of the opinion that such dishonest litigants have to be dealt sternly.

23. In that view of the matter, the present petition is dismissed with cost of Rs.50,000/- to be paid by the petitioner/judgment debtor to the South-West District Legal Services Authority (DLSA), Dwarka Courts within two days from today, the receipt whereof will be filed by 17.04.2023 before this Court, failing which strict action in accordance with law may be undertaken against the petitioner/judgment debtor.

24. The petition is dismissed. Pending applications also stand disposed of.

25. However, the case will be listed on 18.04.2023 for compliance.

TUSHAR RAO GEDELA, J.

APRIL 11, 2023/ms