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

Date of decision: 09.10.2023

+ EX.F.A. 34/2023 & CM APPL.46732/2023

ASHU SAINI

..... Appellant

Through: Mr. Shalinder Saini, Adv.

versus

AMARJEET SINGH

..... Respondent

Through: Mr. I.C. Mishra and Mr. Anwar
Ali Khan, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This execution first appeal impugns the order dated 26.05.2023 passed by the ADJ-04, South East District, Saket Courts, New Delhi ('Executing Court') in execution petition bearing EX. No. 136/2017, titled as '**Amarjeet Singh v. Joginder Singh Saini**'.

1.1. The Executing Court by the impugned order dismissed the objections filed by one Mr. Sunil Kumar Saini and directed attachment of the ground floor of House No. 265, Hari Nagar, Ashram, New Delhi – 110013 ('suit property'). Mr. Sunil Kumar Saini is the brother of the judgment debtor i.e., Mr. Joginder Singh Saini.

1.2. It is relevant to note at the outset that the Appellant herein was



not the applicant before the Executing Court and the impugned order has not been passed at her instance.

1.3. The Respondent is the decree holder and has been held entitled to recover a sum of Rs. 7 lacs with interest vide order dated 24.04.2016 in suit no. 232/2014 (filed on 21.02.2009). During the pendency of the suit, Mr. Om Prakash Saini, father of the judgment debtor and the owner of the subject property stood surety before the Court. The execution petition was filed in the year 2017 and no payments have been received by the decree holder till date.

2. The Appellant herein, who is the wife of Mr. Arun Kumar Saini, states that she has purchased the ground floor of House No. 265, Hari Nagar, Ashram, New Delhi – 110013 ('suit property') from Mr. Sunil Kumar Saini on 24.03.2023, vide a sale deed registered on 28.03.2023. Pertinently, the sale deed has not been placed on record.

2.1. Learned counsel for the Appellant states that the Appellant was unaware about the decree and the pendency of the execution proceedings. He states that the Appellant learnt about the issuance of warrants of attachment recently on 07.08.2023 from the wife of the judgment debtor. He states that the Appellant was not apprised about these facts by the seller i.e., Mr. Sunil Kumar Saini.

3. In reply, the learned counsel for the Respondent i.e., decree holder, states that this appeal is not maintainable as the impugned order was passed dismissing the objections filed by the seller i.e., Mr. Sunil Kumar Saini. The Respondent cannot maintain the appeal and this is an abuse of process.

3.1. He states that late Shri Om Prakash i.e., the father of judgment



debtor (Mr. Joginder Saini) and the seller, Sh. Sunil Kumar Saini, had filed the original documents of the suit property before the Executing Court as he had undertaken to be a surety for the judgment debtor. He states that the Appellant has failed to explain the circumstances in which she purchased the ground floor of suit property, when the property stands attached.

3.2. He further states that the Appellant herein is a close relative of Mr. Sunil Kumar Saini and the purported sale deed in her favour is a camouflage to frustrate the execution of the decree passed in favour of the decree holder herein.

3.3. He states that the Appellant has been running from pillar to post to recover his decretal amount i.e., principal amount of Rs. 7 lakh and interest of Rs. 5 lakhs (approximately Rs.12 lacs). He states that though the decree was passed in favour of the Appellant initially on 03.02.2009, and again in the year 2016, till date the decree holder has not received a single penny. He states that 14 years have lapsed since the filing of the suit.

4. In rejoinder, the learned counsel for the Appellant states that the liability of Mr. Sunil Kumar Saini cannot be more than 50% of the suit amount. He states that the suit amount is Rs. 7 lakhs and therefore, the liability of the Appellant, if any, can only be Rs. 3.5 lakhs. He states that the Appellant is not liable to pay the 50% of the decretal amount.

5. This Court has considered the submissions of the parties and perused the record.

6. The decretal amount as on date stands at Rs. 12 lakhs. It has been put to the Appellant if she is willing to deposit 50% of the



decretal amount i.e., Rs. 6 Lakhs. The Appellant has declined to do so.

7. This court is of the opinion that in the facts of this case no ground has been made out to maintain an appeal in fact or in law. Admittedly, the Appellant herein was not the objector before the Executing Court and it was the seller, Mr. Sunil Kumar Saini, who filed his objections under Order XXI Rule 58 of CPC claiming to be the owner of ground floor of suit property.

8. This Court finds merit in the submissions of the Respondent that the sale deed dated 28.03.2023 between the Appellant and Mr. Sunil Kumar Saini may be a subterfuge. There was no mention of execution of this sale deed by Mr. Sunil Kumar Saini before the Executing Court, which passed the impugned order subsequently, on 26.05.2023. The sale deed has not been placed on record of this Court so as to verify the flow of sale consideration from the Appellant to Mr. Sunil Kumar Saini and the value of the sale consideration paid to purchase the said property.

9. In fact, in the memorandum of appeal, it has been pleaded at paragraph no.3 that the Appellant wanted to extend financial assistance to Mr. Sunil Kumar Saini and had demanded a collateral security for the said loan; and it was in these circumstances that the sale deed was executed. The said averments substantiate the plea of the decree holder that the sale deed is a camouflage.

10. The Executing Court vide order dated 05.01.2023 issued warrant of attachment with respect to the ground floor portion of the suit property and has attached the same by its impugned order dated 26.05.2023, the Appellant herein is bound by the said order and she



cannot maintain separate objections after the objections of Mr. Sunil Kumar Saini stands dismissed.

11. Accordingly, the present appeal is dismissed.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 09, 2023/ns/aa