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

Date of decision: 01.11.2023

+ CM(M) 1622/2023 & CM APPL. 51301-02/2023

KRISHNA & ORS.

..... Petitioners

Through: Mr. V. V. Singh, Advocate

versus

VINOD KUMAR & ORS.

..... Respondents

Through: Ms. Savita Aggarwal, Advocate
(Through VC)

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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 petition impugns the order dated 31.05.2023 passed by the Civil Judge- II, (South-West) Dwarka Courts, Delhi in Ex. No. 728/22, titled as **Vinod Kumar & Ors. v. Krishna & Ors.** ('Executing Court') whereby the Executing Court dismissed the objections filed under section 47 read with section 151 of Civil Procedure Code, 1908 (CPC) by the Petitioners i.e., judgment debtors.

1.1. The Petitioners are original defendants and the Respondents are legal heirs of the original plaintiff in the civil suit. The parties are being referred to by their original rank and status in the suit proceedings.

1.2. The original plaintiff was the father of the defendant no.1 (his



daughter). The defendant nos. 2 to 4 are the family members of defendant no.1 being her husband and two (2) sons.

1.3. The civil suit bearing suit no. 263/04 was filed by the original plaintiff late Shri Shiv Narayan, father of the defendant no.1 for recovery of possession of the room marked by letters D, E, F, G ('second room') in the site plan out of the property bearing No. RZ-36H, Harijan Basti, West Sagar Pur, New Delhi marked by the letters A, B, C, D ('entire property or suit property') against the defendants therein. The site plan was filed in the suit.

1.4. However, during pendency of the suit the original plaintiff i.e., Sh. Shiv Narayan had expired, therefore Respondents herein being the sons of late Shri Shiv Narayan were substituted as plaintiffs in the said civil suit as they relied upon a registered Will dated 01.03.2004.

1.5. The aforesaid civil suit was decreed by the Senior Civil Judge acting as Rent Controller of West District, Tis Hazari Courts, Delhi ('Trial Court') vide judgment dated 03.10.2017 wherein a decree of possession was passed in favour of the Respondents.

1.6. The said judgment dated 03.10.2017 was challenged by the defendants in regular civil appeal no. 141/2017 and the said appeal was dismissed by the Appellate Court vide judgment dated 02.04.2022.

1.7. The defendants did not file any further appeal and accordingly, the judgments of the Trial Court dated 03.10.2017 and the Appellate Court dated 02.04.2022 have become final.

1.8. However, the defendants failed to vacate the suit property and thereafter the execution petition has been filed by the plaintiffs i.e., decree holder for recovery of the possession of entire property.

2. Learned counsel for the Petitioners by referring to the site plan filed at



page '24' of this paper-book states that this is the same site plan, which was filed by the original plaintiff along with the civil suit before the Trial Court.

2.1. He states that the decree has been passed by Trial Court with respect to the portions marked as D, E, F, G i.e., the second room in the site plan. He states that the Executing Court, therefore, cannot issue warrants of possession with respect to the entire property i.e., A, B, C, D as seen in the site plan.

2.2. He states, even otherwise, this decree is unenforceable as there is no independent access in the plot to the portion marked as D, E, F, G in the site plan.

2.3. He states that since the defendants are in possession of the entire property marked as A, B, C, D on the site plan. And, therefore for the portion marked as D, E, F, G i.e., the second room this decree has become non-executable.

2.4. He fairly states in response to a query raised by this Court, that no such objection with respect to non-executability of the decree was raised before the First Appellate Court, which upheld the judgement of the Trial Court dated 03.10.2017.

3. In reply, learned counsel for the Respondents states that the suit was filed originally by Shri Shiv Narayan i.e., the father of the defendant no. 1, Smt. Krishna.

3.1. She states that the civil suit was filed by him during his life time for seeking recovery of possession of second room, in which, Smt. Krishna and her family members were permitted to reside.

3.2. She states that during the pendency of the civil suit, the father Shri Shiv Narayan passed away and the suit was thereafter contested by his three



(3) sons which are Respondents herein and they relied upon a registered Will dated 01.03.2004 to prove that they had succeeded to the title with respect to the entire property marked by the letters A, B, C, D on the site plan.

3.3. She states that the defendants i.e., judgement debtors contested the validity of the said registered Will and in fact, the suit for possession was converted into a suit for title and after a protracted trial, which lasted from 2004 to 2017, the Trial Court after being satisfied with respect to the validity of the said registered Will decreed the suit for possession in favour of the legal representatives of the original plaintiff i.e., Shri Shiv Narayan.

3.4. She states that as is evident from the plaint, the deceased plaintiff himself was in control and occupation of the room marked as B, E, F, H on the site plan (the first room) as well as the remaining portion of the plot other than the second room in which the defendants were permitted to reside.

3.5. She states that, however, due to the hostile relationship between the parties, the defendants did not permit Late Sh. Shiv Narayan, his wife and sons to use and occupy the said first room. However, the said first room always remain under their control and possession of original plaintiff i.e., Shri Shiv Narayan.

3.6. She states that the decree of the Trial Court has been upheld by the First Appellate Court by its judgement dated 02.04.2022 and no further second appeal has been filed by the judgement debtors.

3.7. She states that the judgement debtors instead of complying with the decree of the Court below have now filed these objections before the Executing Court to deny the decree holders the fruits of the decree despite



passage of 19 years.

4. This Court has considered the submissions of the counsel for the parties and perused the record.

5. The Trial Court by its judgement dated 03.10.2017 answered the issue of title categorically in favour of the plaintiffs i.e., decree holders by framing issue No. 5. The Trial Court after considering the evidence led by the parties, returned a finding that the registered Will dated 01.03.2004 executed by late Shri Shiv Narayan was valid and has been duly proved by the plaintiffs.

6. The Trial Court after returning a finding on the devolution of title in favour of the Respondents i.e., decree holders; thereafter, proceeded to pass the decree of possession on 03.10.2017 as per the issue No. 2 framed in the said civil suit. The suit was decreed 13 years after its institution in 2004.

7. The defendants i.e., judgement debtors had also preferred the First Appeal, which was instituted on 07.11.2017 and decided five (5) years later on 02.04.2022, wherein, the First Appellate Court as well upheld the finding of the Trial Court with respect to the issue of devolution of title in favour of the plaintiffs by way of the registered Will and upheld the decree of possession in favour of the plaintiffs.

8. The judgement debtors have accepted the judgements of the Trial Court and the First Appellate Court and therefore, there is no dispute that the sole and exclusive ownership of the entire property now vests with the decree holders i.e., plaintiffs herein.

9. No ground was raised in the First Appellate Court as regards to the non-executability of the decree passed by the Trial Court as is sought to be contested in the present petition.



10. In this regard, a perusal of the plaint and more specifically, paragraphs 6 and 7 therein becomes relevant, wherein the original plaintiff Shri Shiv Narayan had categorically asserted that he had permitted the defendants to 'only' occupy the portion of the property marked as D, E, F, G (second room) and he had categorically asserted that the first room is in his possession.

11. The judgement debtors were therefore permitted by the plaintiff only to occupy the room D, E, F, G (second room) alone and as is evident from the site plan, the remaining area is in open courtyard as depicted in the site plan. Therefore, as per the pleadings, the Petitioners were in permissive possession only with respect to the second room marked as D, E, F, G and their use, if any, of the remaining area was unauthorised and without the consent of the original plaintiff.

12. The possession of the remaining portion of the plot is open and unconstructed area as seen in site plan. It is trite law that possession of vacant and unconstructed land will always vests with the title holder. The said possession was therefore always with late Shri Shiv Narayan and thereafter his legal representatives i.e., the decree holders.

13. The decree of possession been passed in favour of the plaintiffs, who are the title holders. Concurrent findings have been returned against the defendants that they are not entitled to continue with possession in any portion of the entire property. The defendants have no right, title or interest in the entire property. Therefore, this Court is of the view that the objections now sought to be raised before the Executing Court if permitted to be upheld would render the entire decree non-executable.

14. The judgement debtors have successfully delayed the adjudication of



the reliefs sought in the suit from 2004 to 2023 for 19 years. It would also be relevant to note that no mesne profits have been awarded by the Courts against the defendants and they continue to occupy the second room marked as D, E, F, G without any liability of payment of mesne profits.

15. The present petition is also aimed at preventing the plaintiffs from enjoying the fruits of the decree. This Court is therefore inclined to award mesne profits in favour of the plaintiffs and against the defendants for the entire period from 2004 till date at Rs. 10,000/- per month.

16. At this stage, the learned counsel for the Petitioners has taken instructions from Petitioner No. 1 and Petitioner No. 3, who are present in Court that all the Petitioners will peacefully vacate and handover the possession of the property to the decree holders before the Executing Court on or before 02.01.2024.

16.1. He states that the Petitioners undertake further undertake to this Court that if there is any default in vacating the property, they will become liable to pay mesne profits at the rate of Rs. 10,000/- per month w.e.f. 15.07.2004 until the date of handing over of the possession. This amount of Rs. 10,000/- will be increased by 10% w.e.f. 01.01.2005 and similarly, it will increase by 10% after every 12 months on the last calculated amount until the last month of occupation.

16.2. Learned counsel for the Petitioners states that he will file an undertaking of Petitioner Nos. 1 and 3 to this effect with the Registry before 04:30 PM today and the undertaking of Petitioner Nos. 2 and 4 will also be filed within a period of one (1) week.

17. The learned counsel for the Respondents state that she has no objection if time for vacation of the property is extended until 02.01.2024 on



the aforesaid undertaking.

18. The undertakings of the Petitioners are accepted and they are bound down to the same. In view of the undertakings made hereinabove, the execution of the warrants of attachment are stayed till 02.01.2024. The judgment debtors will appear before the Executing Court on 02.01.2024 for handing over the keys to the decree holder before the Executing Court and in case, there is any default in complying with the undertaking given before this Court, the order for mesne profits passed today and directions for recovery of possession will be executed by the Executing Court forthwith on 02.01.2024.

19. With the aforesaid directions, the present petition is disposed of along with pending applications.

20. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 1, 2023/rhc/ms

[Click here to check corrigendum, if any](#)