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

Date of decision: 28th July, 2023

+ **TR.P.(C.) 97/2022**

MOHD JAVED

..... Petitioner

Through: Mr.Ranbir Singh, Adv.

versus

SHARDA DEVI AND ORS

..... Respondents

Through: Mr.Vireshwar Tyagi, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This transfer petition has been registered on the reference dated 11.10.2022 received from the learned Principal District & Sessions Judge, Shahdara, Karkardooma Courts, Delhi, enclosing therewith a copy of the order dated 15.09.2022 passed by the learned Additional District Judge-02, Shahdara, Karkardooma Courts, Delhi in RCA/DJ No.87/2016. *Mohd. Javed v. Sharda Devi & Ors.*, which reads as under:

"This court has examined the parties and perused the record as well as the order dated 08.05.2017 passed by the Hon'ble Delhi High Court in Execution Second Appeal No. 6/2014 filed by Objectors/R-2 to R-6 against respondent No. 1. In the said appeal, challenge was to the order dated 19.01.2013 and 21.05.2014 whereby objections filed by Objectors/R-2 to R-6 against the R-1 were dismissed. The Execution Second Appeal No. 6/14 was allowed and both orders were set



aside with further directions to the Objectors/R-2 to R-6 to appear before the Executing Court and to decide the objections afresh after framing issues and conducting trial thereupon through evidence.

This court is apprised of the fact that after the judgment was passed on 05.07.2012 by the court of Ld. SCJ-RC, North-East, KKD, the Execution Petition was filed by the plaintiff (respondent No. 1 herein) against the defendant (appellant therein) through LRs. The objections were filed before the Court of Ld. ARC-1, East, KKD, Delhi. In pursuance of the Order of Hon'ble High Court, the matter is to be scheduled for framing issues on consideration of objections of Objectors/R-2 to R-6 and for conducting trial through evidence before the Executing Court. The appeal in such a situation cannot be taken up unless the said objections are decided first.

In such circumstances, it would be appropriate if the appeal file along with trial court record be sent to the Executing Court/Successor Court of Ld. ARC-1, East, KKD, Delhi for deciding the objections after trial.

Accordingly, the present matter be put up before the Court of Ld. Principal District & Sessions Judge, Shahdara, Delhi for passing appropriate orders/directions. Both the parties and their respective counsels are directed to appear before the Court of Ld. Principal District & Sessions Judge, Shahdara, Delhi on 26.09.2022 at 2.00 pm. Ahlmad to send the file complete in all respects."

2. The learned Principal District & Sessions Judge, Shahdara, Karkardooma, Delhi, thereafter passed the order dated 26.09.2022, directing as under:

"Order dated 15.09.2022, passed by Ms. Ravinder Bedi, Ld. ADJ-02, Shahdara District, KKD Courts, Delhi perused, whereby transfer



of the present appeal has been sought to the Executing Court/Successor Court of Ld. ARC-1, East, KKD Courts, Delhi.

As the matter requires inter-district transfer, the Ld. ADJ-02, Shahdara District, KKD Courts, Delhi is required to seek transfer of the present appeal by sending the case file to the Ld. Registrar General, Hon'ble High Court of Delhi through proper channel.

Accordingly, the file be sent back to the court of Ld. ADJ-02, Shahdara District, KKD Courts, Delhi for 27.09.2022 at 2.00 pm for appropriate orders."

3. On the reference back, the learned Additional District Judge-02 passed the following order dated 01.10.2022:

"As per directions dated 26.09.2022 of Ld. Principal District & Sessions Judge, Shahdara, Delhi, let a letter of request be prepared to Ld. Registrar General, Hon'ble Delhi High Court through Ld. Principal District & Sessions Judge, Shahdara, Delhi with a request for transfer of the matter as per order dated 15.09.2022 passed by this court.

The main file RCA DJ 87/2016 be also sent along with the request letter to Ld. Registrar General, Hon'ble Delhi High Court within two weeks.

Parties are directed to appear before Ld. Registrar General on 18.10.202 at 2.00 pm. Ahlmad is directed to send the file complete in all respects.

The TCR be sent back till further directions along with copy of this order."

4. In compliance with the said order, the present reference was sent to this Court, on which the present petition has been registered.

5. As is evident from the reading of the order dated 15.09.2022, the appeal, that is, RCA/DJ 87/2016, challenges the judgement and order dated 05.07.2012 passed by the learned Civil Judge, North East,



Smt. Sharda Devi and *inter-alia* directing Mohd. Javed to handover vacant and peaceful possession of the Suit Shop no. 4 forming part of house no. 417, Gali No. 7/8, West Kanti Nagar, Delhi-51 to Smt. Sharda Devi.

6. It appears that the said judgment and decree was sought to be executed by Smt. Sharda Devi by way of Execution Petition No. 70/2012. During the course of execution proceedings, objections were filed by one Ms. Salma, which came to be dismissed by the learned Senior Civil Judge, North East, vide order dated 19.01.2013. Ms. Salma filed an appeal, being MCA No. 7/2013, challenging the said order, however, the same was also dismissed vide order dated 21.05.2014 passed by the learned Additional District Judge, North East. The said order was challenged by Ms. Salma by way of a Second Appeal, being EX.S.A. No.6/2014, titled ***Salma & Ors. v. Sharda Devi & Anr.*** This Court, vide its judgment and order dated 08.05.2017 allowed the same, observing as under:

“6. A reading of the judgments of the courts below show that the objections filed by the appellants have been dismissed in limine without giving an opportunity to the appellants to lead evidence in support of their case that they are the widow and minor son of the deceased Md. Shahid. The courts below have observed that they cannot look into the documents and that there is no need of trial with respect to the objections filed by the appellants. I cannot agree with such conclusions of the courts below, inasmuch as, no doubt there is no fixed procedure with respect to deciding of objections filed against the execution of a decree, but once there are bonafidely disputed questions of fact which require trial, and for which purpose Order XXI of CPC was amended by Act 104 of 1976 by including therein provisions of Order XXI



Rules 96 to 103, and which were to benefit persons in possession of the property against which a decree has been passed, and since admittedly Md. Shahid was a tenant, there is a valid disputed question of fact requiring trial/evidence with respect to whether or not the appellants are or are not the legal heirs of Md. Shahid. I may note that the defendant in the suit Md. Javed at the very first instance i.e. while filing the written statement in the suit had taken up the objection that the suit was not maintainable against him because the deceased Md. Shahid had left behind the appellants as the legal heirs being his widow and children. Therefore, in the present case it is seen that a bonafide disputed question of fact exists requiring trial of the objections and the objections of the appellant therefore could not have been dismissed in limine as has been done by the courts below.

7. In view of the above discussion, this execution second appeal is allowed. The impugned judgments of the courts below dated 19.1.2013 and 21.5.2014 are set aside to the extent that the objections of the appellants are directed to be decided after issues are framed and trial is thereafter conducted meaning thereby evidence is led by the parties.

8. This second appeal is accordingly allowed and disposed of, leaving the parties to bear their own costs.

9. Parties to appear before the District and Sessions Judge (North-East District), Karkardooma Courts, Delhi on 30th May, 2017 and the District and Sessions Judge will mark the objections for disposal to the competent court in accordance with law and the observations made in the present judgment.”

7. A reading of the above sequence of orders would show that it is the objections of Ms. Salma and others against the execution of the decree dated 05.07.2012, that were remanded by this Court in the Second Execution Appeal, to be decided afresh. The same gives no



reason to transfer the present appeal, that is, RCA DJ No. 87/2016, which is sought to be transferred by the present reference.

8. Accordingly, no reason for transfer of the appeal in question is made out.

9. The learned counsels for the appellant and the respondent nos.2 to 6 agree to this position.

10. The reference is answered in the above terms and the petition is disposed of.

11. Intimation of this order be sent to the reference Court.

NAVIN CHAWLA, J

JULY 28, 2023/Arya/ss

Click here to check corrigendum, if any