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

Date of decision: 30.11.2023

+ **CM(M) 1973/2023, CM APPL. 61743/2023 & CM APPL. 61744/2023**

MOHD. ZAHEER

..... Petitioner

Through: Mr. Shakeel Ahmed Saifi and Ms.
Sitara Khatoon, Advocates

versus

MOHD. SAGIR & ANR.

..... Respondents

Through: Mr. Anurag Singh, Advocate for R-1

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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):

CM APPL. 61744/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1973/2023, CM APPL. 61743/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 24.11.2023 passed by the ADJ-03, South East District, Saket Courts, Delhi ('Appellate Court') in MCA DJ No. 26/2023, titled as '**Mohd. Zaheer v. Mohd. Sagir and Anr.**' whereby the said appeal against order dated 21.10.2023 was dismissed by the Appellate Court.

2. The order dated 21.10.2023 was passed by the ACJ – cum – CCJ –



cum – ARC, South East District, Saket Courts, New Delhi ('Executing Court') in execution petition no. 9/2015, dismissing the objections filed by the Appellant herein under Order XXI Rule 26, 46(E) and 101 of Code of Civil Procedure, 1908 ('CPC') for stay of the execution proceedings.

3. The Petitioner herein is the objector. The Respondent No.1 is the decree holder and Respondent No.2 is the judgment debtor.

3.1. A suit for recovery of possession, arrears of rent, mesne profits and permanent injunction was filed by Respondent No. 1 (i.e., the plaintiff) against Respondent No. 2 (i.e., the defendant). The suit property was property bearing no. D-578 (Old No. D-57), Gali No. 3, Near Nargis Masjid, 15 Futa Road, Jaitpur Extension-part II, PO: Badarpur, New Delhi, measuring 54 sq. yards consisting of three (3) rooms at ground floor and upper constructions right, out of Khasra No.905-908/2 ('suit property').

3.2. The said suit was contested by Respondent No. 2 i.e., the defendant and was decreed on 28.11.2014. The said decree was challenged in a regular first appeal, which is stated to have been dismissed. The execution petition No. 9/2015 was filed on 22.01.2015 inter-alia for recovery of possession and in this petition, the Petitioner herein filed his objections claiming to the in occupation of a portion of the suit property (i.e., one room, kitchen, toilet, bathroom and the roof).

Arguments of the Petitioner-objector

4. Learned counsel for the Petitioner states that the Petitioner is in possession of a portion of the suit property, in pursuance to an unregistered Agreement to Sell ('ATS'), General Power of Attorney (GPA), affidavit, Will, Possession letter and Receipt all dated 27.05.2013, executed by Respondent No.1 in his favour for a consideration of Rs. 16,80,000/-. He



states that the decree of possession and permanent injunction dated 28.11.2014 has been obtained by the Respondent No. 1 in collusion with Respondent No.2.

5. In reply, learned counsel for Respondent No.1 states that the documents i.e., GPA, ATS, affidavit and Will etc. relied upon by the Petitioner are forged documents.

5.1. He states that an application under Section 340 of the Code of Criminal Procedure, 1971 ('CrPC') was filed by Respondent No.1 before the Executing Court. He states that the said application was withdrawn vide order dated 23.09.2022 with liberty to file a fresh application after disposal of the execution petition.

5.2. He states that notwithstanding the above, the documents dated 27.05.2013 are unregistered, and in view of the provisions of Section 53A of the Transfer of Property Act, 1882 ('TP Act') and Section 17(1A) of the Registration Act, 1908 (as amended on 24.09.2001) ('Registration Act'), the said documents are inadmissible and the possession of the Petitioner cannot be protected on the basis of the said unregistered documents.

5.3. He states that the case set up by the Petitioner is false in as much as the suit property comprises of three (3) rooms, one bathroom, one kitchen, one toilet and roof rights. He states that the suit no.1523 of 2013 was instituted by Respondent No.1 against Respondent No.2 for the entire suit property which, includes the portion currently in wrongful possession of the Petitioner. He states that after the evidence was led in the matter, the Trial Court passed a contested decree on merits was passed on 28.11.2014 in favour of Respondent No.1. He states that Respondent No.2 challenged the said decree in first appeal which was dismissed and upheld by the said



Appellate Court.

5.4. He states that the Petitioner herein has placed on record an electricity bill dated 10.12.2020, however, the said bill clearly records the energisation date as 01.10.2020. He states that therefore, the said electricity connection which has been obtained during the pendency of the objections before the Executing Court cannot be relied upon.

5.5. He states that the Petitioner is the nephew of Respondent No.2 and had due knowledge of the suit proceedings initiated for recovery of suit property. He states that the Petitioner also represented and appeared on behalf of Respondent No.2 in the trial. He states that this fact was recorded by the Trial Court in its order dated 23.03.2013.

5.6. He states that therefore, in view of the concurrent findings of the Executing Court and the Appellate Court, the present petition is not maintainable.

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

7. There is no dispute that the GPA, ATS, affidavit and Will all dated 27.05.2013, relied upon by the Petitioner are unregistered documents. Therefore, in view of this admitted position, there can be no doubt that the ATS is inadmissible and cannot be relied upon by the objector for protecting his possession, in view of Section 53A of TP Act read with Section 17(1A) of the Registration Act.

8. The decree of possession passed on 28.11.2014 was a contested judgement and has been upheld by the Appellate Court. There is, therefore, no merits in the submission of the Petitioner that it is a collusive judgement.

9. The record of the Trial Court dated 23.03.2013, which records the



presence of the Petitioner on behalf of the Judgement Debtor i.e., the defendant cannot be ignored as sought to be contended by the Petitioner. The said order shows that the Petitioner was aware of the pendency of the suit at all times. The record of the Court is binding on the parties and the same records the presence of the Petitioner on behalf of the Judgement Debtor.

10. This Court has also perused the electricity bill dated 10.12.2020 placed on record as Annexure P-5. The said bill clearly records the energisation date as 01.10.2020. Therefore, no reliance can be placed on the said document and in fact, it also shows that that the possession of the Petitioner is subsequent to the passing of the decree and it does not substantiate his plea that he was in possession of the portion of suit property in furtherance of the alleged unregistered documents dated 27.05.2013.

11. There is no document on record which evidences that the Petitioner herein was put in possession by Respondent No.1 on 27.05.2013 or any time thereafter.

12. The contention of the Petitioner that he has become the owner of the suit property by virtue of the execution of the unregistered documents relied upon in these proceedings has not basis in law.

13. In these facts, the findings returned by the Executing Court after perusing the evidence are relevant and the same reads as under:

“12- Now that we know that the common ground between the parties, let us see what is the real dispute between them. The Objector claims that he is the owner of the suit property by virtue of GPA, etc dated 27.05.2013 through which the DH herein has transferred the suit property alongwith the possession to the Objector. The DH has denied any such transfer and has claimed that the said GPA, etc are forged and fabricated. Thus, the whole case of the objector hinges on the GPA, etc. dated 27.05.2013.



13- As stated earlier, the documents relied upon by the Objector are all unregistered. Section 53 A of the Transfer of Property Act, 1882, inter alia protects a person who, in part performance of an agreement to sell/agreement to transfer an immovable property, takes the possession of the said property. However, Section 17 (1A) of the Registration Act, 1908 provides as follows:

“17(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.”

14- Section 17 (1A) clearly stipulates that any agreement in part performance within the meaning of Section 53 A of the Transfer of Property Act is mandatorily registrable and if the document is not registered, the same shall not protect the rights of the transferee. The documents i.e. GPA, etc. filed by the Objector squarely fall within the ambit of Section 53A, Transfer of Property Act as the possession of the suit property was also allegedly transferred at the time of execution of the said documents. The said documents should have been registered as per Section 17(1A) Registration Act, 1908, which is not the case. As the documents are not registered, the same cannot be used to protect the possession of the Objector. And thus, it cannot be said that the Objector has a right to remain in possession by virtue of GPA, agreement to sell, etc. dated 27.05.2013.

15- Moreover, the Objector has himself filed the suit for specific performance of the agreement to sell dated 27.05.2013 which shows that the title of the Objector in the suit property is not yet perfect and the same requires a decree of specific performance in his favour. Further, there is no stay by the Ld. Court trying the said case filed by the Objector wherein the decree dated 28.11.2014 has also been challenged. Another important fact that appears mentioning is that despite given an opportunity, the Objector has not examined the witnesses and the Notary Public mentioned in the GPA etc. dated 27.05.2013 which also goes against the Objector.

16- The appeal filed by the JD has already been dismissed. There is no stay on the present execution petition by any Court including the Court trying the suit filed by the Objector. The document filed by the Objector cannot come to protect the possession of the Objector as discussed earlier. In view of all these facts, this Court is of the opinion that, at this stage and for the purpose of the present execution petition, there is no merit in the objections filed by the Objector and he has failed to show that he has a right to protect remain in possession despite a decree in favour of the DH.”

(Emphasis Supplied)

14. This Court finds no infirmity in the findings returned by the Appellate



Court and the Executing Court with reference to Section 53A of the Transfer of Property Act and Section 17(1A) of the Registration Act.

15. Accordingly, the present petition is dismissed. Pending applications, if any, stand disposed of.

16. It is however made clear that rights, if any, of the Petitioner in pursuance to the said unregistered documents, which are pending adjudication in the suit for specific performance shall be decided on its own merits and in accordance with law. The order passed in the present proceedings is only for limited purpose of examining whether the Petitioner herein can resist the warrants of possession issued by the Executing court in pursuance to the decree dated 28.11.2014.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 30, 2023/msh/aa

Click here to check corrigendum, if any