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

% *Decided on: 17<sup>th</sup> May, 2023*

+ RFA 383/2014 & CM APPL. 2754/2020, 42922/2021, 42924/2021 & 9744/2022

SMT. SANTRA DEVI & ORS.

..... Appellants

Through: Mr. Jatan Singh, Mr. Tushar Lamba and Mr. Siddharth Singh, Advs.

(M:9810041079)

Email:

jatansinghassociates@gmail.com

versus

SMT. PARAMJIT KAUR & ANR.

..... Respondents

Through: Mr. Deepak Khadaria and Mr. Vinit Tyagi, Advs.

(M:9811057358)

Ms. Latika C., Adv. for R-2.

(M:9899194099)

Email:

Latikachan

Mr. Sanjay Katyal, Standing Counsel for DDA with Mr. Nihal Singh, Adv.

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**[Physical Hearing/ Hybrid Hearing]**

**MINI PUSHKARNA, J. (ORAL):**

1. The present Regular First Appeal has been filed challenging the judgment and decree dated 15.07.2014 passed by learned ADJ-17, Tis Hazari Court, Delhi passed in *Suit No.174/14 (old Suit No. 212/2008)*. By way of the impugned judgment and decree, the suit filed on behalf



of respondent herein was decreed in favour of the respondent.

2. The present case pertains to property bearing No. H-39, Gali No.3, Shashtri Park, Delhi-110053. The appellant herein claims to be in adverse possession of the property in question. The respondent herein on the other hand claims to be the rightful owner of the land by virtue of agreement to sell in his favour. Fact remains that the appellant had been in possession of the suit property till April, 2022 when the possession was taken out of the hands of the appellant herein by virtue of order passed by the Executing Court.

3. In previous litigation between the parties, the respondent herein had made a categorical statement before the Court that the appellant herein shall not be dispossessed, without taking recourse to due process of law. Thus, the respondent herein had filed a suit for possession, declaration and permanent injunction, which came to be decreed by way of judgment and decree dated 15.07.2014.

4. Subsequently, by order dated 05.12.2017, this Court had directed that the appellant herein to deposit use and occupational charges @ Rs.40,000/- per month during the pendency of the appeal from the date of the decree. It was further directed that subject to the appellant depositing the said dues and occupational charges, the execution proceedings of the impugned judgment and decree shall remain stayed.

5. Subsequently, by order dated 09.03.2018, the application being *CM APPL.4446/2018* filed on behalf of appellant herein for modification of order dated 05.12.2017 was dismissed.

6. Thereafter, by way of order dated 12.09.2018, a second



application for modification on behalf of the appellant i.e. *CM APPL. 37225/2018* also came to be dismissed.

7. Later, by order of 20.02.2020, this Court had clarified that in case the appellant does not continue to deposit the monthly user charges before this Court, the stay granted by this Court shall automatically stand vacated and that the respondent herein shall have the right to execute the decree. Thus, in these circumstances, the execution proceedings filed on behalf of the respondent before the Executing Court continued for executing the judgment and decree dated 15.07.2014.

8. In the proceedings before the learned Executing Court, the appellant filed objections. The objection taken on behalf of the appellant herein was that since DDA was the owner of the land in question, having been acquired for the benefit of DDA, the DDA was a necessary party and therefore, the decree in favour of the respondent herein could not be executed. The said objection raised on behalf of the appellant herein was dismissed by the Executing Court.

9. Against order of the Executing Court dated 25.01.2020, an appeal bearing *EX.F.A.2/2020, Santra Devi Vs. Paramjit Kaur and Anr.*, was filed on behalf of the appellant herein before this Court. The said appeal was filed in view of the fact that the Executing Court had issued warrants of possession in respect of the suit property.

10. By judgment dated 25.10.2021, the said Execution Appeal filed on behalf of the appellant herein came to be disposed of. By way of the said judgment, the DDA was granted time of eight weeks to file its objections before the Executing Court. It was further directed that if



the DDA files any objections, the Executing Court would adjudicate the same in accordance with law. It was further directed that the objections as raised on behalf of the appellant that the decree in respect of an acquired land was liable to be ignored, shall be considered by the Executing Court. The relevant paras of the judgment dated 25.10.2021 passed in *Ex. F.A.2/2020* are reproduced herein below:-

*“21.The DDA is hereby granted 8 weeks’ time to file its objections before the Executing Court. If the DDA files any objections, the Executing Court would adjudicate the same in accordance with law. After adjudication of the objections filed by the DDA, the Executing Court would proceed further in this matter, in respect of possession of the suit property as also the manner in which the moveable assets of the Judgment Debtors are to be dealt with.*

*22. The ld. Counsel for the Appellant has relied upon the judgment of the Supreme Court in Jaipur Development Authority and Others v. Vijay Kumar Data and another [Civil Appeal No. 7374/2003 decided on 12th July, 2011] to argue that a decree in respect of an acquired land is liable to be ignored. The said judgment and the legal position in respect of Jaipur Development Authority and Others (supra) shall be considered by the Executing Court while deciding the objections of the DDA.*

*23. The intent, at this stage is to safeguard the property itself. The question as to whether the decree holder is entitled to the same would be 2021:DHC:3349 EX.F.A. 2/2020 Page 15 of 15 considered by the Executing Court. Since the DDA was not a party to the suit, it deserves to be heard by the Executing Court. However, the Appellant has no right to remain in the suit property and the Respondents are permitted to move an appropriate application before the Appellate Court in RFA 383/2014 in respect of*



*Appellant's failure to pay the use and occupation charges."*

11. Pursuant to the aforesaid liberty as granted by this Court, the DDA filed his objections before the Executing Court. Before the Executing Court, the DDA took the stand that the land in question belongs to DDA, since the land in question had already been acquired for the benefit of the DDA.

12. On the other hand on behalf of the respondent herein, objections were taken before the Executing Court that the acquisition in favour of the DDA had already lapsed, in view thereof Section 24(2) of the Right to Fair Compensation and Transparency in Land, Rehabilitation and Re-settlement Act, 2013.

13. Appellant herein took objection before the Executing Court that the decree in favour of the respondent herein cannot be executed since the decree pertains in respect of land which is already acquired. The appellant relied upon the judgment in the case of ***Jaipur Development Authority and Others Vs. Vijay Kumar Data and Others***, Civil Appeal No.7374/20/2003, decided on 12.07.2011 in order to make good his submissions.

14. By order dated 15.04.2023, the Executing Court passed an order, whereby it came to the conclusion that the objections of the DDA cannot be adjudicated in a summary manner and that the same needs to be decided by leading evidence. The relevant portion of the order dated 15.04.2023 passed by the learned Executing Court in ***Execution No.786/2018, Paramjit Kaur and Anothers Vs. Santra Devi and Others***, is reproduced as below:-



*“After perusing the factual matrix of this case and legal propositions, this Court has come to the conclusion that the objection of DDA cannot be adjudicated in a summary manner but it needs to be decided only through trial as the issues raised by all concerned are triable in nature. The questions as to whether DHs are entitled for the possession of the suit property and the decree dated 15.07.2014 is executable in lieu of the contentions raised by DDA, are the questions which can be adjudicated only after leading evidence by the parties. However, it is made clear that the contentions of JDs which have already been declined by Ld. Trial Court by passing judgment and decree dated 15.07.2014, cannot be reagitated by JD No.1 in trial before this Court in the present Execution Petition. The parties shall be at liberty to lead their respective evidences pertaining to the question whether DH is entitled for the possession of the suit property under the contentions raised by DDA and to the question whether decree dated 15.07.2014 is still executable or not and who is entitled to hold the possession of the suit property in case it is found that DHs are not entitled for possession of the suit property.”*

15. Perusal of the aforesaid clearly shows that on the one hand the appellant herein is claiming right and title over the land in question on the basis of adverse possession. On the other hand, respondent herein is claiming right and title on the basis of agreement to sale in his favour. Thirdly, DDA is claiming that it is the owner of the land in question, as the same has been acquired for the benefit of DDA.

16. Ld. Standing Counsel for the DDA is present before this Court, on the basis that an application has been filed on behalf of DDA for its impleadment which is yet to be listed, and also on the basis that an application for its impleadment, being *CM APPL.2754/2020* was filed on behalf of the appellant. Mr. Sanjay Katyal, Learned Standing



Counsel appearing for the DDA vehemently submits that the DDA is the owner of the land in question, as there is valid acquisition in favour of DDA.

17. Thus, it is seen that there are three conflicting and contradicting claims by three separate parties vis. two private parties and one Government authority i.e. the DDA claiming the ownership over the land in question.

18. There is no dispute that the land in question i.e. land bearing Khasra No.1/41(0-4) Biswa and 1/42/2(36 Bigha and 13 Biswas) of village Ghonda, Chauhan, was acquired vide Award No.4/1996. It also remains undisputed that the award in favour of the DDA, is still valid. This Court also takes note of the fact that the DDA has already filed its objections before the Executing Court, in terms of liberty granted by this Court by order dated 25.10.2021 in *EX.F.A.2/2020*. Considering the aforesaid factual matrix, this Court deems it expedient to allow *CM APPL. 2754/2020*, thereby impleading DDA as a party in the present appeal.

19. As far as the plea on behalf of the respondent is concerned that the acquisition in favour of DDA has already lapsed, this Court notes that there is no adjudication by any Court on this issue.

20. In view thereof, it cannot be said that the acquisition in favour of DDA has lapsed. The issue with respect to the claims and rights as raised on behalf of the DDA is already being agitated before the learned Executing Court.

21. As noted above, by order dated 15.04.2023, the learned Executing Court has already directed that a trial needs to be held with



respect to the rights as claimed by the DDA.

22. In view of the aforesaid, it is clear that no orders can be passed in this appeal. This is for the reason that the rights as claimed by the DDA, are yet to be adjudicated. The learned Executing Court is already seized of the matter and the issue is already pending before the learned Executing Court with respect to adjudication of the rights qua the DDA.

23. In view of all these conflicting claims, this Court cannot as such pass order with respect to the conflicting claims of either the appellant herein or the respondent herein, in the absence of adjudication of rights of the DDA. Therefore, it is directed that all the parties viz. the appellant herein, the respondent herein and the DDA will take part in the trial before the learned Executing Court. The parties would be at liberty to lead their respective evidence in terms of the order passed by the learned Executing Court.

24. This Court is informed by Mr. Jatan Singh, learned Advocate appearing on behalf of the appellant that ***CS No. 141/2018 titled as Hem Prakash Vs. Paramjit Kaur and Others*** has been filed by the appellant against the DDA, claiming its right on the basis of adverse possession and declaration of title in his favour. It is further informed that the DDA has already filed its written statement and is taking part in the said proceedings. Since all the three parties which are present before the Executing Court, are also parties before the said suit i.e. ***CS No.141/2018***, filed on behalf of the appellant herein, with the consent of the parties, it is directed that the trial of the execution proceedings in ***Ex No.786/2018 and CS No. 141/2018*** shall be held in a



consolidated manner together.

25. As far as the use and occupational charges with respect to the land in question is considered, that question cannot be decided at this stage, in view of the fact that the claim and rights of the DDA are yet to be adjudicated.

26. It is further clarified that this Court has not made any observation on the merits of the claims of any of the parties, which is subject matter of trial in *Ex No.786/2018 and CS No.141/2018*.

27. With the aforesaid directions, the present appeal is disposed of, along with all the pending applications.

**MINI PUSHKARNA, J**

**MAY 17, 2023**

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