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

% Judgment delivered on: 25.04.2023

+ CM(M) 719/2018 & CM APPL. 25797/2018

RISHI KUMAR

..... Petitioner

versus

SURESH KUMAR ARORA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Mukesh Kumar, Adv.
Mr. Abhishek Singhla, Adv.

For the Respondent : Mr. Vivek Pandey, Proxy counsel for
R1.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 17.04.2018 passed in CS No. 18072/2016 titled as "*Rishi Kumar Vs. Suresh Kumar Arora & Anr.*" whereby the learned Trial Court while receiving the keys of the subject suit property vacated voluntarily by the defendant and handed over to the Court, were retained by the Trial Court without releasing the same to the petitioner on the ground that there are *inter se* disputes regarding the entitlement of possession of the suit property between the petitioner/plaintiff and the respondent no.2/defendant no.2 in the suit.

2. Learned counsel for the petitioner submits that the respondent

no.2 was impleaded as proforma party only and has no say, so far as the merits of the matter are concerned.

3. Learned counsel submits that the respondent no.2 has also admitted that the petitioner/plaintiff is the purchaser of the subject suit property.

4. Learned counsel submits that once having admitted that the petitioner/plaintiff is the owner of the subject suit property, there was no impediment in the way of the learned Trial Court in handing over the keys of the subject suit property to the plaintiff in the interregnum to take possession and utilize the same in the manner which is deemed fit by the petitioner/plaintiff.

5. Learned counsel submits that indeed there are disputes and suits filed at the instance of the defendant no.2, however, learned counsel submits that those suits are yet to be adjudicated and submits that the petitioner/plaintiff would, obviously, be under an obligation to comply with any order passed by those courts.

6. Learned counsel submits that for the time being, the learned Trial Court in his suit could not have retained the keys of the subject suit property.

7. Per Contra, learned counsel for the respondent no.2 refuted the submissions made by the learned counsel for the petitioner.

8. Learned counsel appearing for the respondent no.2 submits that the petitioner herein was made a party to the suit filed by the respondent no.2 for rendition of accounts which was originally filed by the respondent no.2 against the respondent no.1 herein.

9. According to the learned counsel, respondent no.2 was the tenant

of the original owner from whom the plaintiff/petitioner had purchased the suit property.

10. Learned counsel submits that the possession of the subject suit property therefore cannot be handed over to the petitioner/plaintiff till the suit filed by the respondent no.2 is decided.

11. Learned counsel also submits that it is also an admitted case by the petitioner that the petitioner was never in possession of the subject suit property. Therefore, the learned counsel submits that till such time, the suit filed by the respondent no.2 is decided, handing over of the keys of the subject suit property along with possession, would be unfair and would defeat the object with which the suit was filed by the respondent no.2.

12. Learned counsel also submits that the respondent no.1 was in possession of the subject suit property as a mere licensee of the respondent no.2 and as such, if at all anybody is entitled to the re-possession of the subject suit property, it is the respondent no.2 alone who could get the subject suit property back from the respondent no.1

13. Learned counsel further submits that the learned Trial Court has not committed any error or procedural irregularity or judicial impropriety and this court does not need to interfere under the Article 227 of the Constitution of India.

14. This Court has considered the rival submission and has also perused the impugned order as well as other annexures placed on record.

15. At the outset, what is relevant to be noted is that none of the respondents dispute that the petitioner/plaintiff is the owner of the subject suit property by transfer of title from the predecessor-in-interest

of the petitioner and alleged landlord of respondent No.2.

16. It is an admitted case of respondent no.2 that he was a mere tenant of the erstwhile owner of the subject suit property and the respondent no.1 was in possession of the subject suit as a licensee of respondent No.2.

17. This Court has also observed that the suit which has been instituted by the respondent no.2 is not based on the title but on the alleged previous possession, virtue whereby the respondent no.2 claims to have given the possession of the subject suit property to the respondent no.1 as a licensee.

18. Be that as it may.

19. Whether the respondent no.1 is the licensee to respondent no.2 or is a tenant of the petitioner/plaintiff, the same is subject matter of the present suit as well as the suit which has been instituted by the respondent no.2. For the present, this Court is called upon to only consider as to whether, the learned Trial Court could have retained the keys of the subject suit property, without handing over to the petitioner/plaintiff.

20. That another aspect, which needs consideration is that so far as respondent no.2 is concerned, the claim as filed by the respondent no.2 in his suit would entail possession only once he is able to establish himself as erstwhile tenant of the subject suit property without notice of sale to the petitioner/plaintiff.

21. Keeping in view the fact that there has been an admission that the plaintiff/petitioner has purchased the subject suit property from the erstwhile owner of the subject suit property, the claim of respondent

no.2 could be tested only in the suit filed by the respondent no.2 and does arise for consideration in the present suit.

22. So far as the present suit is concerned it has been filed by the petitioner plaintiff for mesne profit and eviction.

23. Keeping in view that the respondent no.1 has himself vacated the subject suit property and handed over the keys to the learned Trial Court, it has taken into consideration, extraneous material such as the suits pending *inter se* parties i.e. petitioner on the one hand and the respondent no.2 on the other, to preclude the petitioner/plaintiff from taking over the subject suit property.

24. This court is of the considered opinion that the learned Trial Court could not have done that for the reason that the *lis* between petitioner/plaintiff on one hand and the respondent no.2 on the other is not the subject matter of the suit before it and is alien to the cause of action which has arisen in the present suit.

25. In view of the above, it is apparent that the learned Trial Court has committed a gross error and proceeded on materials which are not relevant to the subject suit property and therefore, the impugned order is unsustainable and is set aside.

26. As a consequence, the learned Trial Court is directed to release the keys of the subject suit property to the petitioner/plaintiff; however, the same would be subject to the outcome of the present suit property.

27. In that view of the matter the aforesaid petition is disposed off as allowed with no order as to costs.

28. The aforesaid observations made by this court are only for the purposes deciding the present *lis* and will have no reflection on the

merits of the matter.

29. The aforesaid order is without prejudice to the rights and contentions raised by the parties.

TUSHAR RAO GEDELA, J.

APRIL 25, 2023

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