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

+ **EX.S.A. 2/2019 & CM APPL 11122/2019**

SUBHASH GROVER

.....Appellant

Through: Ms. Sonali Malhotra and Ms. Sakshi
Singh, Advs.

versus

ASHOK KUMAR & ORS

.....Respondents

Through: Mr. Bhushan Kapur and Mr. Y.K.
Kapur, Advs. for R-1 to 3.
Ms. Kajal Sharma, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

18.11.2024

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1. This appeal impugns the order dated 22.01.2019, passed by the Additional District Judge-02 (North) Rohini Court, Delhi in MCA 19/16, whereby, an appeal against the order passed by the Executing Court dated 07.04.2015, rejecting the application filed by the objectors under Order XXI Rule 97 of Civil Procedure Code, 1908 (CPC), came to be allowed by the first Appellate Court and the matter was remitted back to the Executing Court for fresh disposal.

2. Learned counsel appearing on behalf of the appellant raises various objections to assail the impugned order. She submits that the respondents are making all possible endeavours to delay the execution of the judgment and decree which came to be passed on 27.09.1995. She has taken the Court through the list of dates placed on record and indicates that the present respondents/objectors, who filed the application, has entered into the shoes



of one Harinderjit Singh, and the earlier objections, at his instance, came to be rejected. She, then, contends that the decision passed by the first Appellate Court does not appreciate the entire controversy in right perspective and merely on the basis of the fact that the order dated 07.04.2015 was not appropriately worded, the same was set aside.

3. The aforesaid submissions are vehemently opposed by learned counsel appearing on behalf of the respondents and he contends that the order of the first Appellate Court is strictly in accordance with law and the same does not require any interference. He further submits that once an objection under Order XXI Rule 97 of CPC is filed, the same requires to be decided, in accordance with law and if necessary, the evidence may be recorded in an execution case. Furthermore, learned counsel contends that the order dated 07.04.2015 was passed in a casual and cryptic manner. He also contends that the first Appellate Court, on the basis of the settled legal position as established by judicial precedents, has directed for reconsideration of the objection raised by the respondent. He, then, contends that the order passed by first Appellate Court does not in any manner, whatsoever, causes any prejudice to the appellant.

4. I have heard learned counsel appearing on behalf of the parties and have perused the record.

5. The order dated 07.04.2015 passed by the Executing Court reads as under:-

"I heard arguments on the objections DH.

It is stated in the objections that the property bearing no. 277/278, Dhaka Johad, Vili. Dhaka Kingsway Camp, Delhi -09 was purchased by the deceased mother of objectors vide documents such as GPA, Agreement to Sell, Affidavit, Will, Receipts on 07-01- 1999 from its previous owners and



objectors inherited ownership rights in respect of the said property and became joint owners having equal share i.e. 1/3rd each in the said property and the JDs as well as DH have nothing to do with the said property and hence the possession of the said property cannot be taken over from the JDs in the present execution petition.

Ld. counsel for the DH submits that objectors are not in possession of the property for which DH is having decree for possession against JDs who are in possession of the same and therefore, objectors have no right to say that the possession of the property cannot be taken by the DH from the JDs.

I, considered the submissions of Id. counsel for the DH as submitted above and the objections filed on behalf of Sh. Vijay Kumar, Sh. Ashok Kumar and Sh. Gulshan Kumar and I agree with the submissions of Id. counsel for the DH that the objectors have no right to raise the objections regarding execution of the decree passed in favour of the DH as they are not in possession of the, property in question and the objections are not maintainable and the same are dismissed with costs of Rs.5,000/- to be paid to the DH.

Now, case is adjourned for payment of costs of Rs.5,000/- and recording statement of Sh. Mahesh Narayan, Bailiff for consideration of the application for 28-04-2015.

Issue notice to Sh. Mahesh Narayan, Bailiff for recording of his statement for next date of hearing.”

6. A perusal of the order indicates that the Executing Court has only expressed its agreement with the submissions made by learned counsel for the decree holder and has held that the objectors did not have any right to raise the objection regarding execution of the decree passed in favour of the decree holder as they were not in possession of the property in question.

7. On appeal being preferred by the respondents herein, the first Appellate Court after discussing the legal position applicable under the facts of the present case had found that the order of the Executing Court is a non-speaking order, without any cogent reasons as to why the objections by the respondents herein were dismissed.



8. The objections advanced by the respondents, regarding ownership of the suit property alongwith the denial by the appellant asserting that the respondents were not in possession; and the appellant's claim of holding the decree of possession pursuant to his successful suit, warranted meticulous consideration by the Executing Court. A specific finding should have been recorded as to why the objection filed by the objector deserved to be dismissed instead of merely agreeing with the claims of the appellant.

9. Though the principle of *res judicata* is applicable to the proceedings before the Executing Court, it should refrain from passing unreasoned and cryptic orders while dismissing objections raised before it to hinder the execution of decrees and depriving the decree holder to enjoy the fruits of the decree.

10. Therefore, this Court is of the considered opinion that the first Appellate Court correctly interfered, holding that the order passed by the Executing Court was a non-speaking order.

11. As for the apprehension expressed by the learned counsel appearing for the appellant that when an objection under Order XXI Rule 97 of CPC is made, the Courts may not be required to record the evidence, the same seems to be in accordance with law. On perusal of the findings given by the first Appellate Court, this Court finds that there are no mandatory directions for directing the parties to adduce the evidence. The first Appellate Court has rightly left the aforesaid discretion to the Executing Court.

12. The aforesaid position can also be seen from the paragraph Nos. 11 to 14 of the impugned order which reads as under:-

"After having gone through the above stated judgments, it can be said that objections under Order XXI Rule 97 CPC are not to be dealt causally as after the amendment of (1976) the decisions on objections amount to



decree and no separate suit can be filed in this regard. The relevant part whereby the objections were decided by the impugned order dated 07.04.2015 is reproduced hereby, "I considered the submissions of Ld. Counsel for DH as submitted above and the objections filed on behalf of Sh. Vijay Kumar, Sh. Ashok Kumar and Sh. Gulshan Kumar and I agree with the submissions of Ld. Counsel for DH that the objectors have no right to raise the objections regarding execution of the decree passed in favour of DH as they are not in possession of the property in question and the objections are not maintainable and the same are dismissed with cost of Rs.5000/- to be paid to the DH."

12. The relevant excerpt of the Impugned judgment does not give any reason for not allowing the objections. The Ld. Judge was required to give proper weightage to the alleged facts and then would have decided whether evidence is required for ascertaining the objections or not. The order itself reflects that the Ld. Judge did not go beyond the submissions of the parties. Moreover, no reason is given for accepting the submissions on behalf of DH.

13. The appellant had raised objections against the execution on the ground of bona fide purchase. It was also his case that he had purchased 346 Sq Yards, and 62 Sq. Yards relating to the execution was covered in that 346 sq yards. The impugned Judgment does not specify which area the objector is in possession. The order also does not reflect, whether the objectors can be said to be the bona fide purchaser or not with regard to the suit property. All these material questions have not been answered in the impugned order.

14. The contention of the Ld. counsel for the respondent that appeal is not maintainable if the Ld. Judge of Executing Court did not exercise his jurisdiction by not dealing with the objections in right context. It was argued on behalf of Ld. counsel for the respondent that only revision could be filed if the impugned order is a case of non exercise of jurisdiction. This contention is not acceptable as the court is of the view that it is a case of improper exercise of jurisdiction rather than non exercise of jurisdiction.

For the aforesaid reasons, the order dt. 07.04.2018 is vacated hereby and the executing court is directed to redecide the objections of the appellant by reasoned order. If the executing court considers the necessity of evidence, the parties be granted opportunity in this regard. The Ld. Executing court is also advised to decide the objection petition at the earliest."

13. It is thus seen that the Executing Court needs to re-adjudicate on the objections presented by the objectors, dated 10.02.2015, in accordance with law and on the basis of the material available on record. If the Executing



Court is of the opinion that the objection requires the parties to lead evidence then only the further recourse for recording of the evidence shall take place.

14. With the aforesaid observations, the Court finds that no interference is called for in the first Appellate Court.

15. The Court clarifies that the objections shall be decided by the Executing Court without being influenced by any of the observations made by the first Appellate Court. The Court also takes note of the prolonged and overextended proceedings, and therefore, directs the Executing Court to decide the objections within a period of three months from the date of receipt of the copy of the order passed today.

16. The parties shall render full cooperation to the Executing Court.

17. With aforesaid observations, the appeal stands disposed of along with the pending application.

PURUSHAINDR KUMAR KAURAV, J

NOVEMBER 18, 2024

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