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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 6th December, 2024+ C.R.P. 75/2019 & CM APPL. 13714/2019 (stay)

1. Mr. ROSHAN LAL
S/o Mrs. Nirmala DeviPetitioner No. 1
2. Ms. MANJU
D/o Mrs. Nirmala DeviPetitioner No.2
Through: Ms. Renu Gupta & Ms. Pratiksha
Jalan, Advocates through VC.

versus

1. Mr. NARESH CHAND
Grandson of Late Sh. Ram Dass & Son of Sh. Prem Chand
.....Respondent No.1
2. Mrs. NIRMALA DEVI
W/o Late Mr. Mewa LalRespondent No.2
3. Mr. SANJAY
S/o Mrs. Nirmala DeviRespondent No.3
Through: Ms. Aakanksha Kaul & Ms. Rhea
Borkotoky, Advocates for R-1
through VC.
Mr. Arush Khanna & Mr. Vaibhav
Mehra, Advocates for R-2 & 3
through VC.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed on



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behalf of the Petitioners/Judgment Debtors against the Order dated 07.12.2018 whereby the Objections under Section 47 read with Section 151 of CPC, 1908 filed by the Petitioners, in Execution Petition No. 26/2009, have been rejected.

2. ***Briefly stated***, Suit No. 38/05/01 for Possession, was filed before the learned Civil Court, by the Respondent No. 1/Plaintiff, namely, Mr. Naresh Chand against the *Petitioners/Defendant Nos. 2 and 3, namely, Mr. Roshan Lal, Ms. Manju and also the Defendant No. 1, Smt. Nirmala Devi*, who was the mother of the present Petitioners. The Defendants had put in their appearance but thereafter, failed to appear thereafter and were proceeded *ex-parte*.

3. An *ex-parte* decree of Possession was passed on 02.05.2009, in favour of the Plaintiff in respect of the First floor of the Suit premises No. D-5/138, First Floor, JJ Colony, Sultanpuri, Delhi (*hereinafter referred to as "Suit Property"*) and the Decree Holder was held entitled to damages @ Rs.500/- per month, during the pendency of the Suit.

4. The Decree Holder being the Respondent No. 1, filed the *Execution Petition No. 26/2009* in which Objections under Section 47 read with Section 151 of CPC, 1908, were filed by the Petitioners/Judgement Debtors. However, they were dismissed *vide* impugned Order dated 07.12.2018.

5. The Petitioners have asserted that the Respondent No. 1/Decree Holder, Mr. Naresh Chand, is the real cousin brother of the Petitioners. It is explained that Late Sh. Ram Dass was allotted the Suit property under the Rehabilitation Scheme of Government of India, in the year 1976 in lieu of his Jhuggi at Nehru Nagar, which was demolished by the DDA; he was thus, the original owner and in possession of the Suit Property.



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6. In 2001, Late Sh. Ram Dass had filed the Suit against the present Petitioners and also their mother, Smt. Nirmala Devi seeking Possession of the Suit Premises, which was allowed *vide ex-parte* decree dated 02.05.2009.

7. It has been challenged on the grounds that since the property had been allotted under the Rehabilitation Scheme, to Late Sh. Ram Dass (*from whom the Decree Holder is deriving the title*), he was only a licensee and never became the owner of the property in respect of the Suit Premises. Therefore, he could not have bequeathed the Suit Property to his successors/ Decree Holder, Mr. Naresh Chand/his grandson (*being the son of his son, Mr. Prem Chand*). Late Sh. Ram Dass, is the father-in-law of Smt. Nirmala Devi/Defendant No.1, who is the wife of his other son Sh. Mewa Lal. Therefore, the Decree Holder had no right, title interest in the Suit Property and could not have been granted the decree of possession.

8. The *second Objection* taken is that the Judgment Debtor No.1, Smt. Nirmala Devi along with her husband and children, was residing in the Jhuggi, which got demolished by DDA under the Rehabilitation Scheme. The persons living in the Jhuggies were allotted alternate plots admeasuring 25 sq. yards against one Ration Card per Jhuggi. The husband of Smt. Nirmala Devi had constructed the Jhuggi and was entitled to the allotment of plot in his name, but he permitted the allotment to be made in the name of his father, Late Sh. Ram Dass shown as *Mukhiya* in the Ration Card. However, the allotment of plot was meant for rehabilitation of each and every member staying in the Jhuggi.

9. Reliance has been placed on the Judgment of the Division Bench of this Court in the Case of Wazirpur Bartan Nirmata Sangh vs. Union of India



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(UOD and Ors.), 2003 (103) DLT 654 OB, wherein it was observed that under the Rehabilitation Scheme of DDA, the original sites would be allowed to be continued to be occupied but strictly on license basis and appropriate License Deeds should be issued clearly stating that the rights are not transferrable in any manner whatsoever. No allotment shall be converted into ownership as the same vests in the Government of NCT of Delhi as per the Policy guidelines for implementation of the scheme for allocation. Furthermore, the revised Policy of DDA i.e. the Delhi Slum and Rehabilitation, 2015 Rule 4 Sub Section (iii) states that the allotment be made in the joint name of husband and wife occupying the Jhuggi. Furthermore, sub section (4) states that the allottee shall not sublet or part with the possession of the dwelling unit by way of General Power of Attorney or any other document.

10. It is claimed that the learned Trial Court erred in not appreciating the Objections taken by the Petitioners in the Execution Petition No. 26/2009, filed by the Respondent No. 1/Decree Holder. It is further asserted that the Objections of the Petitioners, have been wrongly dismissed. Hence, the present Petition has been filed.

11. The ***Respondent No. 1 in its Written Submissions***, had explained that the Suit for Possession was instituted by Late Sh. Ram Dass on 17.10.2001 against the Petitioners and their mother, Smt. Nirmala Devi/Defendant No.1. The Decree Holder, Mr. Naresh Chand had been subsequently impleaded as the legal heir of the original Plaintiff, Late Sh. Ram Dass on his demise on 13.06.2002 and since he was a minor, he was being represented through his natural guardian father, Mr. Prem Chand.

12. Petitioner No. 1, Mr. Roshan Lal (Defendant No.2) made an



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Application under Order IX Rule 7 and 13 read with Section 151 CPC, 1908 for setting-aside the *ex-parte* Order dated 29.04.2008 and also a Decree dated 02.05.2009, but the Application was dismissed on 19.05.2012.

13. Similar Application under Order IX Rule 13 read with Section 151 CPC, 1908 filed by the Petitioners and the Respondent No. 3, Mr. Sanjay, was also dismissed *vide* Order dated 21.04.2018.

14. The Petitioners and Respondent No. 3 (*Judgment Debtor Nos. 2 to 4*) filed Objections under Section 47 read with Section 151 CPC, dated 01.02.2013 in Execution Petition, which were rejected by the learned Executing Court on 07.12.2018. The Civil Revision Petition filed against this Order, was also dismissed *vide* the impugned Order dated 07.12.2018.

15. It is submitted that the Judgment Debtors were not proceeded *ex-parte* as they were minors at the time when the main Suit was filed and were being represented by their mother, Smt. Nirmala Devi. All the Judgment Debtors were in the knowledge of the filing of the Main Suit and had even filed a Counter-Claim on 07.03.2002.

16. Additionally, the Judgment Debtors peacefully handed over the Suit Property, to the Respondent No.1/Decree Holder on 07.10.2009. The Judgment Debtor Nos. 1, 2 and 3 were present at that time and had signed the documents, statements and warrants of attachment. The Judgment Debtor No. 4, Ms. Manju no longer resides in the Suit Property, after she got married.

17. It is asserted that the Judgment Debtors were aware of the main Suit as early as October, 2009. They have wrongly contended that they became aware of the present Suit only on 06.10.2012. Moreover, the decree dated 02.05.2009 has attained finality since no Appeal was preferred against the



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said Judgment, by the Judgment Debtors/Appellants. There is inordinate delay in the Objections filed by the Appellants.

18. It is further submitted that the Executing Court in the execution proceedings, cannot go behind the decree or examine its validity especially when the Decree itself never got challenged by the Judgment Debtors. The decree of the Court being sacrosanct in nature. The execution there of, cannot be thwarted by the Petitioners on untenable and purported grounds. It is, therefore, submitted that there is no merit in the present Petition, which is liable to be dismissed.

19. Submissions heard and the record perused.

20. The record reveals that a Suit for Possession and Damages of the Suit Premises, was filed by Late Sh. Ram Dass in the year 2001 against Smt. Nirmala Devi and her children Mr. Roshan Lal and Ms. Manju, (who are the Petitioner Nos.1 and 2) and Respondent No.3, Mr. Sanjay. The Judgment Debtors had filed their Counter-Claim as early as 07.03.2002. The Petitioners failed to appear in the main Suit and were proceeded *ex-parte* and thereafter, an *ex-parte* Judgment dated 02.05.2009 for Possession and Damages, had been passed against them.

21. *Pertinently, the Possession has already been handed over to the Decree Holder way back on 07.10.2009.*

22. *The main ground raised by the Petitioners, to challenge the execution proceedings, was that the property had been allotted to Late Sh. Ram Dass under the Rehabilitation Scheme of DDA, which only conferred a license for occupation and did not confer any ownership rights. It is pertinent to observe that the decree herein is only in respect of the possessory rights on the basis of Allotment by the Government under the Rehabilitation Scheme of the*



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Govt. of Delhi, 1976. The Decree of possession has been passed on the assessment of the right of the Decree Holder, to retrieve the possession from the Judgment Debtors.

23. The Judgment Debtors are the wife and children of Late Sh. Mewa Lal, who was the son of Late Sh. Ram Dass and Smt. Kalawati. It is submitted by the Petitioners themselves that on the demolition of a Jhuggi wherein Sh. Ram Dass was residing with his family, the present Suit premises were allotted to him, for himself and his family members, being the *Mukhiya* of the family. While the Jhuggi may have been constructed by Late Sh. Mewa Lal, but undeniably the Jhuggi was allotted to Late Sh. Ram Dass, grandfather of the present Petitioners. What has been transferred/bequeathed to the Decree Holder, was the rights which were enjoyed by Late Sh. Ram Dass which even if in the nature of license, could have been very well bequeathed to the Decree Holder.

24. Pertinently, there is no challenge to the Decree and the Application under Order IX Rule 7 and 13 read with Section 151 CPC, 1908 which was filed by Judgment Debtor No.1/Smt, Nirmala Devi (*mother of the Petitioners*), which has been dismissed separately *vide* Order dated 19.05.2012. The Petitioners *herein* by way of Objections, have sought to challenge the Judgment/decreed on merits, which is beyond the scope of Section 47 CPC, 1908. There is no patent illegality in the decree, which could be considered in the Execution Proceedings.

25. Therefore, the learned Civil Judge has rightly dismissed the Objections under Section 47 read with Section 151 of CPC, 1908 of the Petitioners. There is no merit in the present Petition, which is hereby dismissed.



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26. The Revision Petition is disposed of accordingly along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 6, 2024/RS