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

+ **RSA 137/2024 and CM APPL. 43777/2024**

ASS MOHD

.....Appellant

Through: Mr.D.K. Sharma and Mr.Bhawal
Gaur, Advocates.

versus

ABDA SALEH & ANR.

.....Respondents

Through: Mr. Mukesh Kumar, Adv along with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER
22.11.2024

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1. Heard learned counsel appearing on behalf of the parties.
2. The instant appeal has arisen out of the judgment and decree dated 10.05.2024, passed by the Court of Additional District Judge-03, East District, Karkardooma Courts, Delhi in RCA DJ No.141/2017, affirming the order passed by the Executing Court on 25.09.2017 in Ex. No.4613/2016, whereby, the objections filed by the appellant/objector were rejected.
3. The facts manifest that respondent No.1/original-plaintiff had filed a suit for possession, permanent injunction, and recovery of *mesne* profits against respondent No.2/original-defendant. The degree for possession and permanent injunction was sought on the ground that respondent No.1/original plaintiff was the owner of the property bearing No.5/198,

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Lalita Park, Laxmi Nagar, Delhi (*hereinafter referred to as the suit property*). The ownership was claimed on the pretext of a registered GPA and Will dated 12.08.1997. It was contended by respondent No.1/original-plaintiff that in the month of November/December 2010, respondent No.2/original-defendant started to operate his business on the road in front of the property of the plaintiff, and on being requested to stop the business, respondent No.2/defendant, herein, did not pay any heed. Accordingly, the plaintiff was constrained to approach the concerned police station and thereafter, had to file the aforementioned suit.

4. *Vide* order dated 13.10.2016, the Trial Court decreed the civil suit of the respondent No.1/original-plaintiff and has also held her to be entitled to possession, damages, *mesne* profit @ Rs.10,000/- per month from 17.05.2011 till vacation of the suit premises alongwith interest *pendent lite* and future interest @ 6% per annum on due amount. The Trial Court also restrained respondent No.2/ original-defendant from creating any third-party interest in the suit property.

5. Thereafter, on 23.12.2016, the execution was filed by respondent No.1/original-plaintiff, and a warrant of possession was issued against respondent No.2/ original-defendant on 12.05.2017. In the execution petition, an application under Order XXI Rule 26 read with Section 151 of the CPC was moved on behalf of the previous objector, one Mr. K.K. Tyagi, and the said objection was rejected by the Executing Court on 14.07.2017. It is, thereafter, on 07.09.2017 that the present appellant/objector filed objections, which came to be rejected, *vide* order dated 25.09.2017 by the Executing Court. The appellant/objector preferred an appeal against the order passed by the Executing Court and the first Appellate Court dismissed

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the appeal by the impugned order upholding the order of the Executing Court. Thereafter, the appellant/objector has preferred the instant appeal.

6. Learned counsel appearing on behalf of the appellant/objector submits that the impugned orders passed by the Courts below suffer from material illegality; in as much as the Courts below have failed to appreciate that respondent No.1/original-plaintiff also claimed the ownership on the basis of the same documents presented by the present appellant/objector. He also submits that the appellant/objector is in part-possession of the suit property as per the site plan presented along with the objection; therefore, his right ought not to have been disturbed by way of judgment and decree which was passed without impleading the present appellant/objector and giving him an opportunity of hearing.

7. Learned counsel appearing on behalf of the respondents vehemently oppose the aforesaid averments made by learned counsel for the appellant and submit that the impugned orders passed by the Courts below are strictly in accordance with law and the appellant/objector does not have any right, whatsoever, on the basis of various documents placed on record.

8. I have considered the submissions made by learned counsel appearing on behalf of the parties and have also perused the record.

9. A perusal of the order dated 25.09.2017 passed by the Executing Court would indicate that the documents of possession relied upon by the appellant/objector were a GPA, agreement to sell, and receipt with respect to part of Khasra No.266/16 which is 28.6 sq. yards. After considering the abovementioned documents, the Executing Court held that they were unregistered and did not confer any title on the appellant/objector.

Regarding the payment of taxes and the issuance of the MTNL receipt, it

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was held that these documents were issued on 30.08.2017 and 29.08.2017, respectively; however, the judgment sought to be executed was pronounced on 13.10.2016. The Executing Court, therefore, found that on the basis of any document which was obtained subsequent to the judgment and decree, the appellant/objector cannot claim any vested right over the property in question.

10. In Paragraph no.5, the following pertinent observations have been made by the Executing Court, which reads as under:-

“5. The documents of possession shown by the objector Sh.Aas Mohd, are not in the nature of possession but GPA, agreement to sell and receipt only limited to portion in Khasra no.266/16 which is 28.6 sq. yards. The said documents are also unregistered documents. Prima facie the above documents do not confer title on the objector. As far as possession of one room and one shop is concerned, the objector has filed receipt of payment of tax dated 30.08.2017 and the MTNL receipt payment particulars which is dated 29.08.2017. In such view of the matter, the documents of possession are of recent origin only while the judgement in the suit was pronounced on 13.10.2016. In such a view of the matter, it is seen that the objector has failed to show any document of possession from his claimed date of purchase of the said one room and one shop. In absence of any document of possession prior to the date of pronouncement of judgment, the respondent cannot claim his possession from the date of alleged purchase by him in the year 1986 on the face of denial of any such sale by the LR of Late Sh.Ram Chander Tyagi. Even the Khara Girdawri filed by the objector does not record him as the cultivator. Thereby the objector does not have any prima facie case of possession of the property claimed by him, in absence of which the present objections does not lie. The objections dismissed further in view of the fact that the nature of relationship claimed by the DH herein with the JD is of better right and title versus right of trespasser. The nature of claim over property of DH is of better title over JD. Hence the objections filed by Sh Aas Mohd are dismissed who has failed to show his ownership or possession over the property measuring 28.5 square yards.”

11. On an appeal preferred by the appellant/objector, the Appellate Court

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has also considered the submissions made by the appellant/objector and has found that he was not in possession of the suit property till the disposal of the original civil suit. The Court found that though the appellant/objector was claiming long-term possession of the suit property since 1996, he was unable to adduce a single document to substantiate such a claim. Paragraph no.17 of the impugned order passed by the Appellate Court reads as under:-

“17. It is further relevant to note that the above-said documents are notary attested documents and also not able to show possession of objector at any point of time during the pendency of suit before the Ld. Trial Court. It is further pertinent to note that the original suit was instituted by the respondent on 21.02.2012 and the original defendant duly contested the present suit during the whole trial. Ultimately the case was decided in favour of plaintiff/respondent on 13.10.2016. The main dispute in the suit was of possession and not related to ownership. The objector has filed two documents i.e. receipt of payment of tax dt. 30.08.2017 and MTNL receipt payment dt. 29.08.2017 which clearly shows that he has not been able to produce any document to show his possession during the pendency of the case. It is hard to accept that a person having long possession in the immovable property as claimed by the objector in the present suit since 1996, does not have a single document to prove his possession. Ld. Counsel for respondent also drew attention of this Court to the application filed by previous objector Sh. Krishan Kr. Tyagi who was claiming himself to be the son of Late Sh. Ramchander Tyagi and stated in his application that his father has not sold out the said property to anyone. The objections filed by Sh. Krishan Kr. Tyagi was dismissed vide order dt. 14.07.2017. Thereafter, the appellant filed his objection in respect to the portion of suit property and that too without any documentary proof suggesting his possession during the pendency of the suit. It appears to the Court that the objector was not in possession of the suit property till the disposal of the original suit.”

12. Both the Courts below were *ad idem* that the appellant/objector was not able to substantiate his claim of possession and the documents sought to be relied upon by him were not admissible as proof of possession on the ground of being unregistered.

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13. Learned counsel appearing on behalf of the appellant also reiterated similar submissions, which have already been rightly considered by the Courts below and in the absence of there being any cogent material to establish otherwise, the Court is not inclined to interfere with the concurrent findings rendered by the Courts below.

14. Therefore, no substantial question of law has arisen in the instant appeal.

15. Accordingly, the instant appeal fails and stands dismissed along with the pending application.

PURUSHAINDR KUMAR KAURAV, J

NOVEMBER 22, 2024

Nc/mjo

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