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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 23.03.2025

Judgment pronounced on: 22.04.2025

+ CM(M) 515/2025 & CM APPL. 16032-16033/2025

NIRMALA DEVI

...PETITIONER

Through: Mr. Umesh Chandra Sharma,
Advocate.

versus

MOOLA DEVI (DECEASED) THROUGH

L.R. SHAKUNTALA DEVI

...RESPONDENT

Through: None.

CORAM:

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present petition filed under Article 227 of **the Constitution of India**¹, challenges the **order dated 27.02.2025**² passed in Ex. 95533/2016 (Old No. Ex. 100/2014) titled as “*Mula Devi vs Gian Chand*” by **the Civil Judge-02, Central, Tis Hazari**³ whereby the Ld. Executing Court dismissed the objection filed by the Petitioner and directed issuance of a warrant of possession and granted permission to break open the locks and doors of property bearing No. 52/36L, Gali No. XVI, Anand Parbat, Gadodia Road, New Delhi.

¹Constitution

²Impugned Order

³Executing Court



2. This Court, after hearing the Petitioner at length, did not deem it necessary to issue notice and has proceeded to decide the present petition.

3. The predominant ground sought to be urged while assailing the impugned order is that the Ld. Executing Court has ordered the warrant of possession of a property of which the Respondent is the owner i.e., property no. 52/36L, whereas the decree is in respect of property no. 52/37A and the Petitioner's property, bearing a different number, cannot be the subject matter of the execution proceedings.

4. At first blush, the argument would seem to suggest a "No Brainer". However, a look at the facts would reveal that the present writ petition is not only totally misconceived, but is also barred by estoppel. That apart, the petition raises a pure question of fact, which, in fact, appears to have been settled long ago.

BRIEF FACTS:

5. On 17.01.1968, Smt. Moola Devi, the Respondent herein, filed a suit seeking possession and damages against Smt. Omwati, Gyan Chand Sharma, Bal Kishan, Punno Devi, Manohar Lal and Premwatifor the premises bearing No. 52/37A, Ward No. XVII, Anand Parbat, Gadodia Road, New Delhi. The suit was decreed in favour of Smt. Moola Devi on 20.07.1977 by the court of the Ld. Sub Judge, New Delhi.

6. The first appeal bearing RCA No. 105/1981 challenging this decree was dismissed by the First Appellate Court on 21.07.1982. Regular Second Appeal bearing RSA No. 214/1982 preferred against the dismissal of the First Appeal was dismissed by this Court on 01.05.2003 and thereby the decree dated 20.07.1977 attained finality.



7. The Petitioner's rights, if any, trace their origin to the Smt. Omwati, one of the Defendants in the original Suit, against whom the Suit was decreed and appeals were dismissed.

8. The Respondent herein filed the Execution Petition (renumbered as Ex. 95533/2016) titled as "*Smt. Moola Devi (through Smt. Shakunatala Devi) vs Smt. Nirmala Devi*" before the Ld. Executing Court seeking possession of the suit Property in pursuance of the decree dated 20.07.1977.

First Round of Objections:

9. In the said execution proceeding, on 30.04.2015, the Petitioner filed objections under Order XXI Rules 97 and 101 read with Section 151 **Code of Civil Procedure⁴, 1908** stating she is a bonafide purchaser and rightfully in possession of the suit property. This objection came to be dismissed by the Ld. Executing Court *vide* order dated 09.03.2018 holding that the Petitioner bought the property during the pendency of the suit and the transaction is hit by the doctrine of *lis pendens* and thereby, as successor in interest, would be bound by the decree dated 20.07.1977 under execution. Accordingly, the Ld. Executing Court issued a warrant of possession against the Petitioner.

10. The Petitioner challenged the order dated 09.03.2018 *vide* appeal bearing RCA No. DJ 50/2018, which appeal came to be dismissed *vide* order dated 06.11.2023 holding that the appeal is not maintainable as the order passed by the Ld. Executing Court was under Section 47 of the CPC which is not an appealable order.

⁴CPC



11. The Petitioner filed a second appeal on 01.05.2024, against this order being Ex.S.A. No. 3/2024, which is pending before this Court.

Second Round of Objections:

12. The Petitioner filed another set of objections in the same Execution Petition before the Ld. Executing Court, this time on the ground that, the Respondent/Decree Holder, allegedly under the garb of the execution, is trying to take possession of property no. 52/36-L in which the Decree Holder has no right since no title documents or decree exists with regard to property bearing no. 52/36-L and that the decree was passed for the property bearing no. 52/37A.

13. The Ld. Executing Court *vide* the impugned order dated 27.02.2024 dismissed this objection and further directed issuance of the warrant of possession against the Petitioner granting permission to break upon the locks.

ANALYSIS:

14. The main thrust of the Petitioner's arguments is two-fold. Firstly, that the execution proceeding is an attempt to grab the property of the Petitioner which is not the subject matter of the Suit since the number of the property is at variance. The second contention was in respect of the maintainability of the Petition, wherein the Petitioner claimed that the very same contention, though the subject matter of a pending proceeding before this Court, may likely not succeed as the order under challenge in the pending proceedings might be dismissed on the ground of delay.

15. At the outset, this Court of the firm view that, a Writ Petition, premised on the likely prejudicial or negative outcome of any other proceedings before a judicial forum is clearly misconceived.



16. The argument that the subject matter raised in the pending appeal before this Court is one where merits may not be considered and the appeal may be dismissed merely on the ground of delay would also not come to the aid of the Petitioner herein as the objection sought to be raised herein, mainly that of an alleged “mistaken identity” in respect of the property was never raised earlier.

17. The counsel for the Petitioner fairly stated that the aspect of the property number being different, ergo, the “mistaken identity” of the property has been raised by the Petitioner in the pending appeal before this Court.

18. The law in this respect is quite clear that a person cannot seek to agitate the same issue by way of two separate judicial proceedings.

19. We now come to the merits of the matter.

20. Upon a perusal of the impugned order, it is clear that prior to the dismissal of the objection filed by the Petitioner, an objection had already been dismissed by the Ld. Executing Court *vide* order dated 09.03.2018 and against the same, a second appeal bearing number Ex.S.A. No. 3/2024 is already pending before this Court. While dismissing the first objection, the Ld. Executing Court observed as follows:

“5. The objections have been strongly opposed by the DH/LR of the DH by filing replies to the same. I have carefully perused the objections filed by the Objectors. The main objection taken by all the Objectors is that they are the bonafide purchaser of the suit property/portion of the suit property for consideration, are in possession of the suit property/portion of the suit property and therefore, the execution petition be dismissed.

6. In the replies to the objections filed by the LR of the DH, it has been mentioned that the objections are liable to be dismissed as the Objectors have purchased the suit property/portion of the suit property during pendency of the suit and they are successor in interest of the defendants/JD Sh. Om Wati. LR of the DH has mentioned the details in their replies regarding how the suit



property/portion of the suit property came into the hands of the objectors.

7. Perusal of the case file shows that the suit was filed by the plaintiff/deceased DH on 17.01.1968 and the said suit was decreed vide judgment/decreed dated 20.07.1977 and the said judgment/decreed dated 20.07.1977 is under execution. The appeals against the said judgment/decreed have already been dismissed upto the Hon'ble High Court of Delhi. The Objectors have purchased the suit property/portion of the suit property during pendency of the proceedings i.e. in the year) 1998, 2010/2011 and the Objectors have purchased the suit, property/portion of the suit property either from the defendants/JD Smt. Om Wati or from the person to whom Smt. Om Wati sold the property and therefore, in brief it can be said that the Objectors are successor-in-interest of the defendant/JD Smt. Om Wati or the Objectors have stepped into the shoes of defendant/JD Smt. Om Wati and therefore, the Objectors are bound by the judgment/decreed under execution. The sale/purchase/transfer of the suit property/portion of the suit property which took place during the pendency of the suit, is hit by the doctrine of lis-pendens (Sec. 52 of Transfer of Property Act). Moreover, the objections filed by the Objectors are hit by Order 21 Rule 101 CPC as the Objectors have stepped into the shoes of defendant/JD Smt. Om Wati being their successor in interest and therefore, bound by the Judgment/decreed under execution."

(emphasis supplied)

21. From the order dated 09.03.2018, it is evident that the previous objection was dismissed by the Ld. Executing Court on the assertion that the Petitioner herein was claiming title based on a transaction that was entered into during the pendency of the proceedings.

22. The order dated 09.03.2018 of the Ld. Executing Court which is extracted above would show that the Petitioner herein had raised the objections on the ground that she was the *bonafide* purchaser of the portion of the suit property.

23. During the hearing, the learned counsel for the Petitioner stated that the objection of the identity of the suit property was not raised previously, against the order dated 09.03.2018 but contended that the same has been raised in Ex.S.A. No. 3/2024 which is pending before



this Court. The learned counsel for the Petitioner was also candid in admitting that the reason for filing the present petition was his apprehension regarding the success of the appeal pending before this Court.

24. The present assertion of the Petitioner that the suit property that is being executed is different from the one that is owned by the Petitioner is entirely contradictory. The stance that is now sought to be taken is a clear case of approbation and reprobation. The Petitioner cannot in one breath, lay claim to the property as a *bonafide* purchaser and thereafter state that the said property is an entirely different one. It is a matter of record that in the first round of objections and the first appeal against the same, the Petitioner herein never made the assertion as regards the “mistaken identity” of the property in question. The relevant extract of the impugned order is as follows:

“6. As far as the merits of the objections are concerned, it appears that the previous objections filed by the present objector Smt. Nirmala Devi on similar grounds were already dismissed by my Ld. Predecessor vide order dated 09.03.2018 and no dispute regarding the identity of the suit property was raised in the earlier objections filed by the objector Smt. Nirmala Devi. It is apparent from the order dated 09.03.2018 that the execution was filed for executing the judgment/decreed dated 20.07.1977 passed by the court of Sh. M.S. Rohilla, the then Ld. Sub Judge, 1st Class, Delhi. The assistance of the executing court was sought by issuance of Warrant of Possession qua the suit property i.e. Premises bearing No. 52/37-A, Ward No. XVII, situated at Anand Parbat, Gadoliya Road, New Delhi, now bearing Mpl. No. 52/36-L, Gali No. 16, Nai Basti, Anand Parbat, New Delhi. The first appeal filed by the defendant/JD was dismissed by the Ld. Court of ADJ vide judgment/decreed dated 21.07.1982 and thereafter regular second appeal (RSA No. 214/1982) was also dismissed by the Hon'ble High Court of Delhi vide order dated 01.05.2003 and therefore, it is clear that the judgment/decreed dated 20.07.1977 has attained finality. As observed by my Ld. Predecessor vide order dated 09.03.2018, the Objectors have stepped into the shoes of defendant/JD Smt. Omwati being their successor in interest and are therefore, bound by the judgment/decreed under execution. Objector Smt



Nirmala Devi being successor-in-interest of JD no.2 Smt. Omwati cannot be permitted to raise a fresh controversy regarding the municipal number of the suit property since the finding of the judgment/decreed dated 20.07.1977 was against JD no.2 which was confirmed upto the Hon'ble High Court of Delhi and has attained finality and the successor-in-interest of JD no.2 i.e. present objector Smt. Nirmala Devi is also bound by it. In the view the aforesaid facts and reasons, this Court does not find any merit in the objections filed by the objector and therefore, the objections under consideration are dismissed and disposed of accordingly."

(emphasis supplied)

25. It is also seen that the present contention regarding the alleged number of the suit property *vis-a-vis* the property under execution is a pure factual contention.

26. It is well settled that the jurisdiction and scope of this Court under Article 227 of the Constitution is limited and should be exercised sparingly and cautiously. This jurisdiction is not meant to correct every error but is limited to ensuring that the subordinate courts operate within their jurisdiction and do not commit gross abuse of power. The Hon'ble Supreme Court in ***Garment Craft v. Prakash Chand Goel***⁵ summarized the scope and ambit of the supervisory power under Article 227 as follows:

"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel v. Garment Craft, 2019 SCC OnLine Del 11943] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar,

⁵(2022) 4 SCC 181



(2010) 1 SCC 217: (2010) 1 SCC (Civ) 69] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd.* [*Estralla Rubber v. Dass Estate (P) Ltd.*, (2001) 8 SCC 97] has observed: (SCC pp. 101-102, para 6)

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

(emphasis supplied)

27. Further, the Hon'ble Supreme Court in *Shalini Shyam Shetty v. Rajendra Shankar Patil*⁶, held that the power of the writ or

⁶ (2010) 8 SCC 329



supervisory jurisdiction is not amenable in cases of property rights and disputes between private individuals. The relevant paragraphs are extracted below:

“59. It has repeatedly been held by this Court that a proceeding under Article 226 of the Constitution is not the appropriate forum for adjudication of property disputes or disputes relating to title. In *Mohd. Hanif v. State of Assam* [(1969) 2 SCC 782] a three-Judge Bench of this Court, explaining the general principles governing writ jurisdiction under Article 226, held that this jurisdiction is extraordinary in nature and is not meant for declaring the private rights of the parties. (See SCC p. 786, para 5 of the Report.) In coming to the aforesaid conclusion in *Hanif* [(1969) 2 SCC 782], this Court referred to the Constitution Bench decision in *T.C. Basappa v. T. Nagappa* [AIR 1954 SC 440].

60. Following the aforesaid principles in *Hanif* [(1969) 2 SCC 782], this Court in *Hindustan Steel Ltd. v. Kalyani Banerjee* [(1973) 1 SCC 273] held that serious questions about title and possession of land cannot be dealt with by writ court. In formulating these principles in *Kalyani Banerjee* [(1973) 1 SCC 273], this Court relied on the Constitution Bench decision in *Sohan Lal* [AIR 1957 SC 529] (see SCC p. 282, para 16 of the Report).

61. Again, in *State of Rajasthan v. Bhawani Singh* [1993 Supp (1) SCC 306] this Court held that a writ petition is not the appropriate forum to declare a person's title to property. (See SCC p. 309, para 7 of the Report.)

62. Subsequently, again in *Mohan Pandey v. Usha Rani Rajgaria* [(1992) 4 SCC 61], this Court held that a regular suit is the appropriate remedy for deciding property disputes between private persons and remedy under Article 226 is not available to decide such disputes unless there is violation of some statutory duty on the part of a statutory authority. (See p. 63, para 6 of the Report.)

63. Following the aforesaid ratio in *Mohan Pandey* [(1992) 4 SCC 61], this Court again in *Prasanna Kumar Roy Karmakar v. State of W.B.* [(1996) 3 SCC 403], held that in a dispute between the landlord and tenant, a tenant cannot be evicted from his possession by a writ court. Again in *P.R. Murlidharan v. Swami Dharmananda Theertha Padar* [(2006) 4 SCC 501], this Court held that it would be an abuse of process to approach a writ court in connection with dispute on questions of title for deciding which the civil court is the appropriate forum.

64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ



petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases, the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals, writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

66. We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in *Surya Dev* [(2003) 6 SCC 675] and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases, by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time-honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly."

(emphasis supplied)

28. The Petitioner has failed to showcase any perversity in the impugned order which requires interference of this Court under Article 227 of the Constitution.

29. The present Petition is misconceived and not maintainable as (a) the Petitioner is agitating a pure question of fact pertaining to the



identity of the suit property (b) the Petitioner is barred from raising the same issue which is raised by way of Ex.S.A. 3/2024 and (c) the Petitioner, having chosen to file an earlier round of objections claiming to be the owner of the suit property, cannot now, change their stand and state that the property which they had earlier claimed to be owners of, in fact, bears a different number.

30. In view of the afore-stated facts and circumstances and settled law in this regard, this Court does not find any merit in the present petition and the same is dismissed.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 22, 2025/sm/as