

Ms Maneesha Tyagi & Anr vs Omesh Misra Memorial Charitable Trust & ... on 6 March, 2023

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) 357/2023

MS MANEESHA TYAGI & ANR.

..... Petition

Through: Mr. D. K. Malhotra and Mr. Rajeev
Kumar Malhotra, Advs.

versus

OMESH MISRA MEMORIAL CHARITABLE

TRUST & ORS.

..... Respond

Through: Mr. Manish Mohan and Mr. Jatin
Jeotia, Advs. for R-1&4

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% 06.03.2023 [The proceeding has been conducted through Hybrid mode] CM APPL. 10801/2023(Lengthy list of dates and synopsis)

1. This is application seeking exemption from filing lengthy list of dates and synopsis.
2. Exemption is allowed, subject to all just exceptions.
3. The application stands disposed of CM APPL. 10800/2023 (Exemption)
4. Exemption is allowed, subject to all just exceptions.
5. However, the certified copies of the exempted documents may be filed within four weeks from today.
6. The application stands disposed of.

CM(M) 357/2023 & CM APPL. 10799/2023 (Stay)

7. The petitioners challenge the order dated 24.01.2023 passed by the learned Executing Court in Ex. 96964/2016 titled "Sh. N. N. Mishra (Deceased) Through LRs. Vs. Mrs. Nisha Chauhan Nee Miss. Nisha Sahai" as also the order of review passed on 01.03.2023 titled "N. D. Mishra Vs. Nisha

Chauhan" whereby the objection filed by the petitioner/objector was dismissed and so was review petition filed thereto vide the impugned order dated 01.03.2023.

8. Mr. Malhotra, learned counsel for the petitioners submits that the petitioners/objectors had bonafidely purchased the suit property in the year 2005 and the other floor in 2007 and residing there since then till the time bailiff had approached for executing the decree passed by the learned Trial Court. The said petitioner/objector was in peaceful possession of the same as an owner based on registered sale documents.

9. Learned counsel further submits that the learned Trial Court neither considered the objections nor the registered documents of sale filed on record by the petitioners/objectors in terms of the provision of Order XXI CPC, 1908 and in a perfunctory manner and with undue haste dismissed the objections leading to the impugned order.

10. Mr. Malhotra learned counsel also submits that the primordial question which was overlooked by the executing court was that the original decree was in the name of all the respondents and overlooked the fact that in view of such decree, the vendor of the objector would also be entitled to a share of the suit property.

11. Mr. Malhotra further submits that the original decree was passed qua the basement and the ground floor of the property and, he submits on instructions that he has no qualms in case, the decree is executed against the basement and ground floor of the present property.

12. Mr. Mohan, learned counsel appearing on behalf of respondent Nos. 1 & 4 submits that the aforesaid submission is contrary to the records and seeks some time to file reply to the present petition along with relevant documents to substantiate his objections.

13. Issue notice. Mr. Manish Mohan accepts notice on behalf of respondent Nos.1 & 4. Upon petitioner taking steps within a week, notice may be served through all permissible modes to the remaining respondents. Additionally, through learned counsel appearing for the unserved respondents before the learned Executing court.

14. Reply be filed within six weeks. Rejoinder thereto, if any, be filed within six weeks thereafter.

15. List on 14.09.2023.

16. In the meanwhile, the learned Trial Court may not proceed with the orders for demolition of the property.

TUSHAR RAO GEDELA, J MARCH 6, 2023 ms