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

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Date of Decision: 23.12.2025

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CM(M) 961/2022 & CM APPL. 40343/2022

M/S BANWARI LAL CHARITABLE TRUST & ORS.

.....Petitioners

Through: Mr. Satya Prakash Sharan, Advocate.

versus

ATUL JAIN & ORS.

.....Respondents

Through: Mr. Sanjeet Singh, Advocate.

CORAM: JUSTICE GIRISH KATHPALIA

ORDER (ORAL)

1. Petitioners/judgment debtors have assailed order dated 22.04.2022 of the learned execution court, whereby application under Section 151 CPC filed on behalf of petitioners/judgment debtors for appointment of Local Commissioner for the purposes of demarcation of the subject property was dismissed because there was no need for the exercise, going by the site plan filed by the petitioners/judgment debtors themselves before the execution court.

2. I have heard learned counsel for both sides and examined the record.

3. Broadly speaking, it appears that the present petitioners sold property



bearing no.1/16 and 1/17, Rani Jhansi Road, New Delhi but subsequently filed a suit for declaration and cancellation of the sale documents pertaining to premises bearing no.1/17, Rani Jhansi Road, New Delhi, apart from other reliefs. In the course of that suit, parties arrived at a settlement dated 17.09.2007, on the basis of which a compromise decree was passed. In the course of execution of that compromise decree, the petitioners/judgment debtors filed an application seeking appointment of Local Commissioner in order to carry out demarcation of the subject property, which application was dismissed by the learned execution court going by the site plan filed by the petitioners/judgment debtors themselves. Hence, the present petition.

4. Learned counsel for petitioners/judgment debtors contends that the impugned order is not sustainable in the eyes of law because identity of the subject property is of crucial issue. Learned counsel for petitioners/judgment debtors has taken me through paragraph no. 8 of the settlement dated 17.09.2007, submitting that a portion of premises bearing no.1/16, Rani Jhansi Road, New Delhi is occupied by the tenant who had been inducted in premises bearing no.1/15 and both premises being adjacent to each other, there is a need for clear demarcation. It is argued that in case the respondents/decreed holders are given possession of the entire premises bearing no.1/16, they would get possession of a portion of premises no.1/15 as well and consequently, the premises bearing no.1/15 shall not be converted into freehold. Learned counsel for petitioners/judgment debtors also contends that the sale deed in favour of the respondents/decreed holders specifically excludes the portion of premises bearing no.1/15, which was in



occupation of the tenant.

5. On the other hand, learned counsel for respondents/decreed holders strongly supports the impugned order, taking me through the same documents. It is contended by learned counsel for respondents/decreed holders that since the tenant in the subject portion of premises bearing no.1/16 has admittedly vacated the said portion, now the petitioners/judgment debtors cannot resist the execution.

6. In rebuttal, learned counsel for petitioners/judgment debtors submits that the settlement dated 17.09.2007 was got executed under coercion.

7. To begin with the rebuttal argument, admittedly till date, the petitioners/judgment debtors have nowhere challenged the settlement dated 17.09.2007 in any manner. Rather, as pointed out by learned counsel for respondents/decreed holders, the said settlement was even partly acted upon by the petitioners/judgment debtors.

8. As mentioned above, the suit pertained only to the premises bearing no.1/17, Rani Jhansi Road, New Delhi. The adjoining premises bearing no.1/16 became part of the settlement between the parties that took place during pendency of the suit and that settlement was accepted by the learned trial court by way of passing the compromise decree.

9. Coming to the aforesaid settlement (*Annexure P-14 to the petition*),

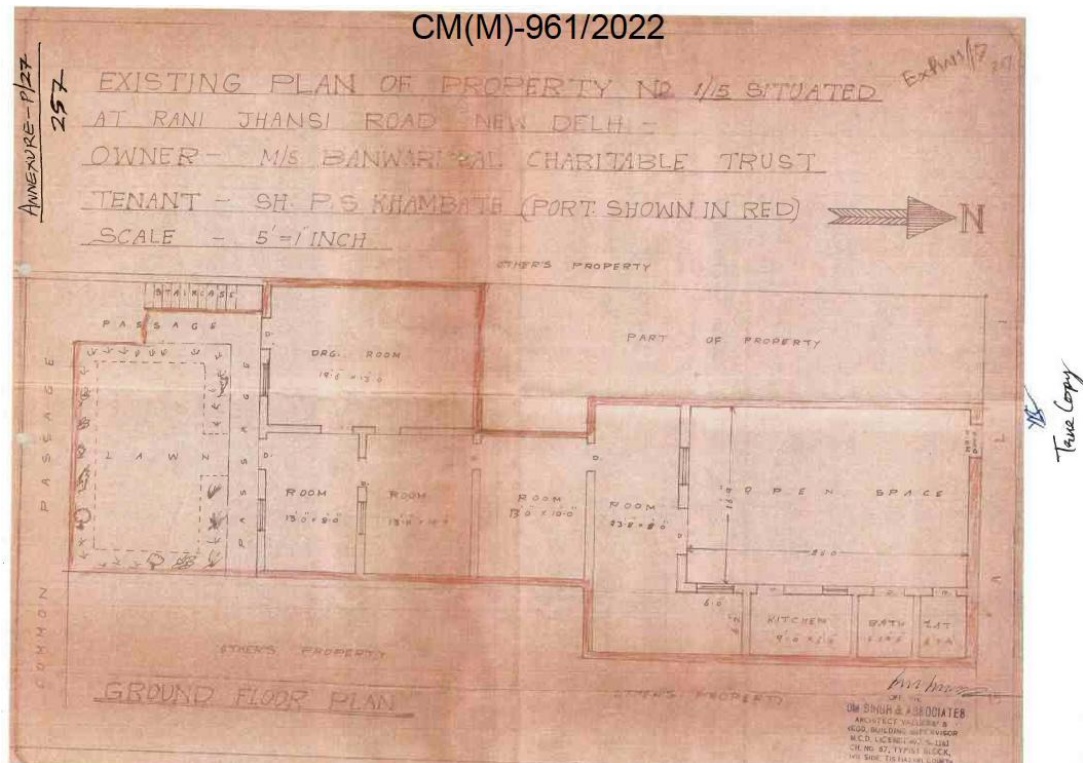


clause 8 whereof has been relied upon by both sides. The same is extracted below:

*“8. Some portion of property bearing no. 1/16 comprising WC, bath, kitchen, store and veranda is in the possession of tenant of plaintiff no. 1 in respect of property bearing no. 1/15. It is stated by the plaintiff no. 2 that the litigation for eviction of said tenant is at present pending before the Supreme Court of India. It is agreed upon between the parties that as and when the said tenants vacates the premises bearing no. 1/15 then **the portion of the property bearing no. 1/16 in possession of the said tenant will be handed over to the defendants no. 1 and 2** forthwith by the plaintiff no. 1.”*

(emphasis supplied)

10. The site plan filed by the petitioners/judgment debtors before the execution court is extracted below:





11. The said site plan filed by petitioners/judgment debtors themselves is absolutely clear and there is no ambiguity which would be required to be resolved through the exercise of demarcation. The correctness of the said site plan is obviously not in dispute.

12. It appears that having signed the settlement dated 17.09.2007, to the effect that the portion of property bearing no. 1/16 which is in occupation of the tenant also shall be handed over to the respondents/decreed holders, now the petitioners/judgment debtors are trying to wriggle out.

13. I am in absolute agreement with the learned execution court that there is no need to appoint any Local Commissioner and/or carry out any demarcation proceedings which would protract the execution. There is no infirmity in the impugned order, so the same is upheld.

14. The petition is totally devoid of merits, so dismissed with costs of Rs.10,000/- to be paid by the petitioners/judgment debtors to the respondents/decreed holders within two weeks.

15. The pending application also stands disposed of.

**GIRISH KATHPALIA
(JUDGE)**

DECEMBER 23, 2025/ry