

CASE NO.:
Appeal (civil) 4538 of 2007

PETITIONER:
Bhola Nath

RESPONDENT:
Monika (D) through LRs. and Anr.

DATE OF JUDGMENT: 24/09/2007

BENCH:
S.B. Sinha & H.S. Bedi

JUDGMENT:
JUDGMENT

ORDER

Leave granted.

The dispute between the parties relates to plot No. 66, admeasuring 45 ft. x 80 ft. total area 3600 sq.ft situated at Jawahar Nagar Extension Colony, Mauja Bhadeni Pargana Dehat, City Varanasi. As a dispute arose between petitioner and a cooperative society, the same was referred to arbitration. In the year 1981 an award was passed in favour of the petitioner. The arbitrator directed allotment of plot No. 6 in his favour. However, treating the said plot to be 66 (instead of plot No. 6) a sale deed was executed by the cooperative society in favour petitioner for plot No. 66. Another dispute arose between the respondent and the cooperative society in relation to award of a plot in her favour. In the award made in favour of the respondent, it was directed that any of the 3 plots namely, plot Nos. 66, 91 or 15 may be allotted in her favour. As the plot Nos. 91 and 15 were not available having been allotted to other members of the cooperative society, the respondent filed an execution application for allotment of the said plot No. 66 and execution of sale deed in her favour. In relation thereto, an objection filed by the petitioner herein has been dismissed. The revision petition filed thereagainst has also been dismissed.

The sole question which arose for consideration before the executing authority was as to whether in view of the fact that a deed of sale has been executed in favour of the petitioner in respect of the said plot No. 66, the execution petition filed at the instance of the respondent was maintainable.

Petitioner sought to rely upon the doctrine of lis pendens to contend that the said execution application was not maintainable. Before us copies of the original awards have been produced for the perusal. It appears that plot No. 6 was only directed to be allotted in favour of the petitioner. If in execution of the said award a sale deed in respect of plot No. 66 has been executed, the same was evidently done by mistake and, thus, the petitioner cannot take any advantage thereof. The remedy of the petitioner would, therefore, be to initiate an appropriate proceeding for giving effect to the award passed by the Arbitrator in his favour. The appeal is devoid of any merit and is, therefore, dismissed.

No costs.