

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

+ **Ex. P. No.326/2003 & Ex.A.No.199/2004 (u/O
21 R 23(2) read with Section 151 CPC)**

% **Date of Decision: April 24, 2009**

Gurvir Inder Singh & Anr. Decree Holders
! Through: Mr.Abhishek Singh with Mr.Atul T.N.,
Advocates

Versus

\$ Brig. Rajendra Singh (deceased)
Through LRs

.....Objectors

^ Through: Mr.Amit S. Chadha, Sr. Advocate with
Mr.Ajit Dayal, Mr.Aditya Madan and
Mr.Kunal Sinha, Advocates

CORAM:
HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest?**YES**

S.N.AGGARWAL, J (ORAL)

1. This order shall dispose off the execution petition filed by Shri Gurvir Inder Singh @ Bulbul Singh and Shri Jugvir Inder Singh (hereinafter to be referred to as decree holders) for execution of consent decree of partition dated 5.9.1989 in Suit No.2526/1987. This order will also dispose off the objections against the execution filed by Smt. Priti Suri and Mrs.Timki Singh @ Salini Singh (hereinafter to be referred as the objectors).

2. In order to decide the objections against the maintainability of the present execution petition it will be necessary to give a brief background of the facts of the case leading up to the filing of the present execution petition. These facts are summarised as follows:-

3. The decree holders and the objectors are related to each other as real brothers and sisters. The property which is in dispute is property bearing No.B-21, Westend, Diplomatic Enclave Extension, New Delhi built on a plot area of about 800 sq. yds. Late Brig. Rajendra Singh and Late Ms.Indrani Singh were the parents of the decree holders and the objectors.

4. Shri Gurvir Inder Singh (decree holder No.1) had earlier filed a suit being Suit No.2526/1987 in this Court against his parents and brother and that suit was decreed by a consent decree dated 5.9.1989 on the basis of terms of compromise contained in their joint compromise application being IA No.5782/1989 filed in Suit No.2526/1987. It is this consent decree which is sought to be executed by the decree holders in the present execution. The prayers made in the execution petition read as under:-

“(a) Issue warrant of attachment in respect of the amount of rent of Rs.71,80,922/- of property No.B-21, Westend, Diplomatic Enclave Extension, New Delhi deposited in this Hon'ble Court in Suit No.3084 of 1991 as per details given in paragraph 10 above and pay 1/4th share in the said amount to the decree holder.

(b) Issue warrant of possession in respect of 1/4th share of the decree holder in property bearing No.B-21, Westend, Diplomatic Enclave Extension, New Delhi and hand-over possession of the said share to the decree holder by affixing the copy of the warrant on conspicuous place of the property and proclaiming the

substance of the decree;"

5. The execution petition seeking execution of consent decree dated 5.9.1989 was filed by the decree holders after more than 13 years on 10.11.2003. The date of filing of the execution petition is mentioned because of an objection of limitation against maintainability of the execution taken on behalf of the objectors. The objection of limitation will be dealt with at appropriate stage in this order.

6. Before going further it will be relevant to refer to the terms of the consent decree as it will be necessary for deciding the objection raised on behalf of the objectors against maintainability of the present execution. The relevant clause of the consent decree dated 5.9.1989 is extracted below:-

"A. That the defendant No.1 Brig. Rajendra Singh/father of the plaintiff, and defendant No.3 Mrs.Indrani Singh/mother of the Plaintiff will have the absolute right to enjoy the properties mentioned in the plaint are owners during their life time. In the event of the demise of Brig. Rajendra Singh/Defendant No.1 or Mrs.Indrani Singh/Deft No.3, the survivor amongst the two would have the right to enjoy all the properties. After the demise of both defendant No.1 & 3, the properties shall devolve equally on the plaintiff, his brother Shri Jagvir Inder Singh/Defendant No.4 and the Plaintiff's two sisters Mrs.Preeti Suri wife of Shri Brij Suir and Miss Salini Singh alias Miss Timki Singh"

7. The parents of the decree holders and the objectors were parties in the suit in which consent decree was passed. The father of the parties expired on 6.6.1990 and the mother expired on 26.11.1991. While the mother of the parties was alive, the decree holder No.1 filed a civil suit on 3.10.1991 in this Court being CS(OS)

No.3084/1991 (later on transferred to the District Court and was re-numbered as Suit No.362/06/91) this suit was filed by him for partition of the same property in regard to which consent decree dated 5.9.1989 stood already passed. The basis of claim of the plaintiff for partition in the said suit was the consent decree dated 5.9.1989 in Suit No.2526/1987 and also a will dated 15.4.1990 of his father set up by him in the said suit and according to which the suit property was bequeathed by the father in equal share in favour of his four children.

8. Brig. Rajendra Singh during his lifetime executed a will dated 29.2.1988 by which he bequeathed his half share in the suit property in favour of his wife Ms.Indrani Singh who in her own right was the owner of the remaining half portion of the suit property. The mother of the parties during her lifetime also executed a will dated 3.11.1991 by which she bequeathed the entire suit property in favour of her both the daughters who are objectors in this execution petition.

9. The decree holders are alleged to have sold their share in the suit property which they got in the consent decree dated 5.9.1989 to one Mr.Virender Sahlot and had allegedly executed a MOU dated 13.9.2005 in his favour. A suit for specific performance being CS(OS) No.1455/2005 was filed in October, 2005 by said Mr.Virender Sahlot against decree holders on the basis of MOU dated 13.9.2005 which is pending adjudication in this Court.

10. It will further be significant to mention that a Receiver in respect of suit property was appointed on 3.9.1998 in FAO(OS)

NO.108/1998 and later on vide order dated 28.7.2006 passed in Suit No.362/06/91, the suit property was ordered to be sealed and admittedly as on date the suit property is lying sealed.

11. Mr.Amit S. Chadha, learned senior counsel appearing on behalf of the objectors has opposed the execution petition on the ground of limitation as well as on merits. He has argued that limitation for filing of execution petition is 12 years from the date of decree and according to him the execution petition filed by the decree holders on 10.11.2003 was beyond the prescribed period of 12 years from the date of consent decree of partition dated 5.9.1989. To meet this objection of Mr.Chadha, Mr.Abhishek Singh, learned counsel appearing on behalf of the decree holders has relied upon the provisions contained in Article 136 of the First Schedule of the Limitation Act, 1963 to contend that the limitation of 12 years for filing the execution will start from the date the decree of partition becomes enforceable. The learned counsel appearing on behalf of the decree holders has argued that the consent decree dated 5.9.1989 became executable only after the death of the parents of the parties and according to him the mother of the parties expired on 26.11.1991 and, therefore, he submits that the present execution filed by the decree holder on 10.11.2003 comes within limitation period of 12 years.

12. Article 136 in the First Schedule of the Limitation Act reads as under:-

136	<i>For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.</i>	<i>Twelve years</i>	<i>When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place:</i> <i>Provided that an application for the enforcement of execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.</i>
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13. A plain reading of Article 136 referred above shows that the limitation for filing of execution is 12 years from the date the decree becomes executable. I, therefore, agree with the contention advanced on behalf of the decree holders that the present execution petition is within limitation. I do not find any merit in the argument on the point of limitation urged on behalf of the objectors. In view of provisions contained in Article 136 of the Limitation Act, this execution petition is treated as within limitation.

14. It is true that the present execution petition is within limitation but, the question that arises for consideration is whether on the facts of the case as stated above, this execution petition is maintainable? On giving my anxious consideration, I am of the view that this execution petition seeking execution of the consent decree dated 5.9.1989 is not at all maintainable. It may be seen from the terms of the consent decree dated 5.9.1989 extracted

above that the parents of the parties were to be the absolute owner of the suit property during their lifetime. The ownership necessarily implies that the owner of the property is free to deal with his property in any manner he likes. It may be noted that the decree holders themselves have set up a will of their late father Brig. Rajendra Singh dated 15.04.1990 which is disputed by the objectors. The objectors are also relying on the earlier will of the father of the parties dated 29.2.1988 which is disputed by the decree holders. In fact, both the parties, i.e. the decree holders as well as the objectors have set up two separate wills of their late father in the suit for partition filed by the decree holder No.1 pending adjudication in the District Court. The mother of the parties, on the strength of will dated 29.2.1988 of her late husband Brig. Rajendra Singh executed a will dated 3.11.1991 in favour of her two daughters who are objectors in the present execution. It appears from the admitted facts on record that both parties have set up the wills of their parents in the suit for partition filed by decree holder No.1 being Suit No.362/06/91 pending adjudication in the District Court. Needless to mention here that the parents of the parties in law were entitled to execute the will during their lifetime because in terms of consent decree dated 5.9.1989 they were to be the absolute owner of the suit property. However, Mr.Abhishek Singh, learned counsel appearing on behalf of the decree holders has drawn attention of this Court to clause 'F' of the consent decree dated 5.9.1989 whereby the parents of the parties had agreed that they will not over-ride the terms of compromise by any will or

deposition and that in case any will is made by them the same shall be null and void. The effect of this clause will be seen by the Court before whom the will of the parents is set up by the parties, i.e. in Suit No.362/06/91 pending in the District Court. At this stage, expression of any opinion on this clause 'F' contained in the consent decree dated 5.9.1989 is likely to cause a prejudice to one or the other party. I am of the view that since the decree holder No.1 has himself filed a suit for partition basing his claim for partition on the will dated 15.4.1990 of his late father, this execution at this stage is not maintainable.

15. The prayer made by the decree holders for issuing the warrant of attachment in respect of amount of rent of Rs.71,80,922/- deposited by the erstwhile tenant of the suit property in the suit for partition pending before the District Court cannot be granted. This Court cannot intermingle with the proceedings that are taking place in the suit for partition pending before the District Court. The rent was deposited by the erstwhile tenants in the suit for partition pending in the District Court and, therefore, warrants of attachment in respect of the said deposit cannot be issued by this Court. The possession in respect of 1/4th share in the suit property claimed by the decree holders also cannot be granted to them in the present execution till the time the Court adjudicates upon the rival wills of their parents set up by the parties in the suit for partition pending in the District Court.

16. In view of the above and having regard to the facts of the case, the objections against the execution are allowed and the

execution is dismissed as not maintainable.

April 24, 2009
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S.N.AGGARWAL
[JUDGE]