

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

+ **C.M.(M) No.649/2009 & C.M. Nos. 9411/2009 & 9986/2009**

1. WELDON SALES CORPORATION Petitioner
Through: MS. Anusuya Salwan, Advocate.

versus

SMT. SAROJ Respondent
Through:

and

+ **C.M.(M) NO.651/2009 & CM Appl. No. 9465/2009**

2. CHAMELI DEVI & ORS. Petitioners
Through: Mr. Sunil Malhotra, Advocate.

versus

SMT. SAROJ Respondent
Through:

and

+ **C.M.(M) NO.652/2009 & CM Appl. No. 9471/2009**

3. BHUPENDER KAUR & ANR. Petitioners
Through: Mr. Sunil Malhotra, Advocate.

versus

SMT. SAROJ Respondent
Through:

Date of Decision : JULY 29, 2009

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

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JUDGMENT (Oral)

VIPIN SANGHI, J.

1. By this common order, I propose to dispose of the aforesaid three petitions filed under Article 227 of the Constitution of India whereby the petitioners have impugned the common order dated 17.4.2009 passed by Shri D.K.Garg, Civil Judge/District Central, Delhi in execution Nos. 110/2006, 111/2006 & 112/2006.

2. These petitions demonstrate how difficult it is for a decree holder, who has obtained a decree in his favour after contest, to actualize the fruits of that decree. On account of, inter alia, the stubbornness, resilience and ingenuity of the petitioners, a decree for possession passed in favour of the predecessors-in-interest of the respondents as early as on 31.1.1967, still remains to be executed. By launching one action after another in different names and before different forums, the petitioners and the other occupants of the suit properties have postponed the delivery of actual physical possession of the suit property to the decree holders/their successors-in-interest.

3. This case has a chequered history. The predecessors-in-interest of the petitioners, admittedly, were let into the suit property as tenants by the predecessors-in-interest of the respondents. For the sake of convenience, the predecessors-in-interest of the parties are also being referred to as “petitioners” or “judgment debtors” and “respondents” or “decree holders”, as the case may be. The respondents had acquired rights in the suit property under two agreements for sale of plot nos. 13, 14, 15 vide first agreement and

plot nos. 16 & 17 vide the other agreement in Estate Qadam Sharif, Qutab Road, Delhi in favour of Shri Om Prakash and Shri Prem Narain. The entire sale consideration was paid by them and they were put into possession of the land to be sold. The sale deeds were to be executed after construction was raised on the land. In 1947, one Sardar Mool Singh, a refugee from Pakistan came into unauthorized occupation of a part of plot no.17, which was later on allotted municipal no.7197, Ward no.XV, Qadam Sharif, Qutab Road, Delhi. Other portions of the land were similarly unauthorisedly occupied by other refugees. The Custodian of Evacuee property declared the entire land, subject-matter of the agreement for sale, as evacuee property. Subsequently it was released in favour of the respondents on the condition that the occupants would be accepted as tenants of the plots. That is how the petitioners acquired tenancy rights of plots in their respective occupation.

4. The respondents filed suits for possession against the tenants which were decreed on 31.1.1967. The first appeal against the judgment was dismissed on 1.8.1970. The tenant Sardar Mool Singh died in the meantime and his legal representatives preferred a regular second appeal in this Court. On 7.11.1978, in the second appeal, issue no.1 was remanded to the first appellate Court for deciding it afresh after recording evidence. This issue was "*whether the plaintiff was not the owner and property in question is vested in the DDA?*" The first appellate Court recorded evidence and decided the issue against the

judgment debtors. The second appeal of the judgment debtors was dismissed by this Court on 9.11.1985. This Court held that the plaintiffs, though not the owners of the suit property (as the sale deed of the land had not been executed in their favour) nevertheless were in legal possession of the suit property and had the possessory title over the said property. It was held that mere cancellation of the sale agreement was not sufficient to extinguish the rights of the plaintiffs in the suit land. The tenants were required to prove that the paramount owner (DDA herein) had re-entered the land. The Court held that the possession had not been taken by the paramount owner i.e. the DDA and that there was no reliable evidence for the taking of actual or symbolic possession by the DDA. The Court further held that symbolic possession, generally speaking, can be taken by the authority by accepting the tenants as its own tenants and that there was no evidence that the tenants had ever attorned to the DDA or paid rent or damages to it. The proceedings for ejectment had been initiated but even the symbolic possession had not been taken over and the right of the plaintiff to claim eviction had not been extinguished.

5. The decree holders filed an application for execution of the decree in 1989. Objections were filed by the legal representatives of the judgment debtors under Section 47 C.P.C, inter alia, praying that the decree had become inexecutable, inter alia, on the ground that the paramount owner i.e. the DDA, after cancellation of the agreement to sell in April 1964, has resumed possession of the property in January

1965 and had even initiated proceedings under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act against the judgment debtors for recovery of damages/rent and in compliance with the notices issued to them, they have deposited the damages with the DDA thereby attorning to the DDA and, as such, the decree holders are left with no right, title or interest in the suit property.

6. These objections were contested by the decree holders. The learned Sub Judge called one Mr. B.S. Asiwal, an Estate Officer of the DDA and recorded his statement. Pertinently he was not cross examined despite opportunity being granted to the judgment debtors. In his statement, Shri B.S.Asiwal had stated that the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act were pending against the occupants of the suit property and several notices for payment of damages w.e.f. 11.1.1965 had been issued to the occupants and proceedings for recovery of damages were in progress.

7. The learned Sub Judge upheld the objections of the LRs of the judgment debtors that in compliance with the notice issued under Section 7 of the Public Premises (Eviction of Unauthorised Occupants), Act by the Estate officer of the DDA, the said LRs had deposited the damages and therefore they had attorned the DDA, as the paramount owner of the property, thereby extinguishing whatever right the petitioner/decreed holder had in the land after passing of the decree. This order of the learned Sub Judge was assailed by the LRs of the decree holder before this Court in C.R.No.552/1994 which was decided

vide order dated 19.4.2002. This Court by a very detailed and considered judgment dismissed the objections of the LRs of the deceased judgment debtor, Mool Singh. The issue considered in the said revision petition by the Court was stated in the following terms:-

“The short question that arises for adjudication in this revision petition whether by paying the damages claimed by DDA in the proceedings under Section 7 of the Public premises (Eviction of Unauthorised Occupants) Act, rights of the DHs in the property stood extinguished and the decree for possession passed against the objectors had become inexecutable.”

8. Consequently, this Court squarely addressed itself the issue whether by paying damages as claimed by the DDA in the proceedings under Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, the rights of the decree holders in the property stood extinguished and the decree for possession passed against the objectors had become inexecutable. This objection had been raised by the judgment debtors subsequent to the dismissal of the second appeal on 19.11.1985, in response to the notice issued under sub-section (3) of Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act demanding damages from the business concerns of the objectors. Some damages had been deposited by them and on the basis of such deposits, it was claimed by them that they had now attorned to the DDA and that the DDA had taken over symbolic possession. Consequently, it was claimed that the rights of the decree holders stood extinguished and the decree had thereby become inexecutable.

9. This Court comprehensively dealt with the aforesaid objection and held as follows:

“The Decree holders were put in possession of the land including the suit land on execution of two agreements of sale in writing by the Delhi Improvement Trust on payment of the full sale consideration. Protection under Section 53 A of the T.P. Act, as such, was available to the decree holders so long as they were not physically dispossessed by the transferor, the paramount owners in accordance with law.”

10. The Court thereafter examined the applicability of the doctrine of “tenant estoppel” provided in Section 116 of Transfer of Property Act and proceeded to held as follows:

“On the examination of the above cited judgments of the Supreme Court the proposition of law that emerges may be summed up as follows:-

1. The tenant is estopped for denying the title of the landlord who has put him into possession of the property leased; 2) the tenant is estopped from controverting the title of landlord to whom he has attorned by payment of rent or otherwise on account of assignment or transfer of the legal right by the landlord or otherwise; 3) the tenant is estopped from denying the title of the landlord not only during the continuation of the tenancy but also till he has restored the possession of the premises to the landlord or the person to whom he has attorned or till he has restored the possession of the premises to the landlord or the person to whom he has attorned or till he is evicted; 4) the tenant is not estopped from denying the title of the landlord if on account of some intervening event, the title of the landlord has been extinguished or it is determined by the paramount owner of the property and symbolic possession has been taken over by the latter; 5) the landlord is not estopped from denying the title of the landlord in case under a threat of eviction he was forced

to pay the rent and attorn to the paramount owner.

Before applying the above proposition of law to the case, a few admitted facts may be noted. The agreements of sale has been cancelled by the DDA, successor of Delhi Improvement Trust the original proposed transferor, by an order made in its file. It has not taken over the physical possession of the property which is subject matter of the agreements of sale, from the decree holder, the proposed transferee. No suit was filed for cancellation of the agreement of sale. Proceedings under the provision of Public Premises (Eviction of Unauthorized Occupants) Act has been initiated and are pending before the Estate Officer. Whether resort to such a remedy is proper for resuming the possession of the property of which the possessory title was with the plaintiff is doubtful. The decree holders, the proposed transferee under the agreements have not surrendered or relinquished their possessory title to the DDA. The objectors were tenants under the decree holders. Their tenancy has come to an end on its termination by a notice and subsequent passing of a decree of possession against them. The decree has been confirmed in the second appeal by this Court in 1985. Thereafter, the objectors have ceased to be the tenants in the property. They are in unauthorized occupation of the property. The petitioner, decree holder has already filed an execution application for their dispossession. This Court has affirmed in the second appeal that the petitioner had a right to claim possession from the respondents. The decree has become final and is binding between the parties.

The respondents have alleged that subsequent to the passing of the decree they have paid damages claimed by the DDA in the proceedings under Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act and they have deposited the damages on receipt of the notice from the Estate Officer, therefore, they have become tenant under the

DDA. They have filed copies of the notices issued by the Estate Officer of the DDA under sub Section (3) of Section 7 of the Public Premises (Eviction of Unauthorized Occupant) Act by which the objectors, as unauthorized occupants, were directed to deposit the damages assessed by the Estate Officer. Several such notices have been annexed by the respondents with their objections filed under Section.

The DHs have not received any notice from the Estate Officer under Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act. Even if such a notice was issued to the decree holders it was not germane to the question under consideration. None of the documents filed and relied upon by the objectors show that the DDA had even accepted them as fresh tenant in the suit property. By mere payment of some amount of damages to the DDA under Section 7 of the P.P. (Eviction of Unauthorized Occupants) Act an unauthorized occupant, by no stretch of reasoning, could become tenant in the property under DDA. The creation of tenancy rights is a bilateral conscious act of the parties and can be done only in accordance with law. The respondents have not been granted lease nor has rent of the premises accepted from them by the DDA. The objectors were neither tenant after the passing of the possession decree in favour of the decree holders nor was a new tenancy created in their favour by the DDA nor could by payment of damages for unauthorized use and occupation the objectors could be deemed to have attained as tenant to the DD, nor could it be held that mere payment of damages for unauthorized use and occupation by the objectors symbolic possession of the premises has been resumed by the DDA. Therefore, from whatever angle the case of the objector is examined the only conclusion that is reached is that the decree holders still held the possessory title in the property and their right and interest in the suit property has not come to an end. The objectors are still estopped by application of doctrine of tenants estoppel to deny the title of

the decree holders under Section 116 of Evidence Act.”

11. While dealing with the scope of objections that the objectors could raise under Section 47 CPC, the Court held:

“Under section 47 of the CPC the Judgement debtor can file objections to the execution, discharge or satisfaction of the decree. If the decree is a nullity indeed the objections may be raised in the execution proceedings or in any other proceedings including the collateral proceedings. In the instant case the decree of possession granted in favour of the petitioner is not a nullity. The case of respondents is that it had become inexecutable because the right, title and interest of the decree holders in the property stand extinguished on cancellation of agreement to sale and their payment of damages demanded by the paramount owner DDA in a proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act.

As noticed above the decree of possession has become final and the JDs are bound by it. The physical possession of the property has still not been taken over by the paramount owner neither from the decree holders nor from the objectors (JD). Can the DDA be deemed to have resumed symbolic possession of the property in case an unauthorized occupant/JD pays damages to it for unauthorized use and occupation? The answer is clearly in negative. The JDs are not tenants and they cannot be said to be under threat of eviction by paramount owner. They were in unauthorized occupation. Even no proceedings for eviction were pending against them. Only proceedings which were pending were for recovery of damages under Section 7 of Public Premises (Unauthorised Occupants) Act. A JD after the passing of the decree cannot defeat the decree of possession by making payment of the damages to the paramount owner. The rights of the parties had already been determined by the civil Courts which has been affirmed by this Court in the second appeal as noticed above. After the passing of the decree the JDs are no more

tenants. Payment of damages for use and occupation of the premises to the DDA does not create fresh tenancy in their favour. Tenants estoppel under Section 116 of Evidence Act is applicable till the tenant has surrendered the possession to the landlord who had put them into possession or to whom he had attorned as tenant."

12. Consequently, the Court proceeded to dismiss the objections preferred by the objectors under Section 47 CPC.

13. The aforesaid decision in C.R. No. 552/94 has attained finality. The petitioners herein who are identically situated as the objectors in the aforesaid Civil Revision petition (C.R. No. 552/94) have again endeavored to rake up the same issues all over again and for that purpose moved applications under Order 16 Rule 1 and under Order 8 Rule 1 to bring on record copy of 'Jamabandi' sought to be relied upon and to summon an official from the DDA to prove on record the 'Jamabandi' to show that the property vests with the DDA and the DDA is the owner of the property in question.

14. From the discussion in the aforesaid second appeal and the Civil Revision it is clear that it was never the case of the respondent decree holders that they were the recorded owners of the property in question. The Courts have held that the recorded owner was the DDA. However, it has also been held that under the agreements to sell, in respect whereof the entire sale consideration had been paid by the purchasers/decreed holders, the decree holders had acquired a beneficial interest in the suit property. The mere production of the 'Jamabandi' for the aforesaid reason is of no avail as the 'Jamabandi'

would obviously reflect the ownership on record as that of the DDA and not of the decree holders.

15. It was contended by the petitioners before the Court below that the decision in C.R. No. 552/94 dated 19.04.2002 would not bind them as they were not parties to the said decision. This argument has been rejected by the Executing Court, and, in my view, rightly so. Merely because the original judgment debtors had passed away and various legal representatives had come on record with the passage of over four decades, it does not mean that each of such legal representatives would be entitled to raise the same objection all over again. The objections sought to be raised by the petitioners being identical to those raised by the objectors in C.R. No. 552/94, the petitioners are bound by the law of precedents, even if it is assumed, for the sake of argument that the said decision is not *res judicata* qua the petitioners. The learned Executing Court has observed that the decision in C.R. No. 552/94 dated 19.04.2002 was in respect of the same property i.e. plot nos. 13-17 in Estate Qadam Sharif, Qutab Road, Delhi which is also the property in respect of which the aforesaid execution petition is pending, and to which the objections of the petitioners also relate to.

16. Learned counsels for the petitioners also sought to urge that the Executing Court did not hear the arguments on the objections preferred by them, and arguments had only been addressed on the applications moved under Order 16 Rule 1 and Order 8 Rule 1 and the

application under Section 151 CPC for taking additional objections on record.

17. I cannot agree with this submission of the petitioners for the simple reason that a perusal of para 15 of the impugned order shows that submissions were advanced on the objections raised by the petitioners as well, apart from the submissions made on the aforesaid applications. Moreover, if the petitioners were aggrieved by the passing of the impugned order dismissing their objections without being given a hearing, the right course of action for them to adopt would have been to seek review of the order on that ground, rather than approaching this Court. However, as noted above, I do not accept the submission that arguments were not addressed by the petitioners on their objections before the passing of the impugned order dated 17.04.2009.

18. For all the aforesaid reasons, I find no merit in these petitions and the same being a gross abuse of the process of the Court I dismiss each one of them with costs quantified at Rs. 25,000/-.

VIPIN SANGHI, J.

JULY 29, 2009
as/dp