

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

Date of Reserve: 15th January, 2010
Date of Order: 23rd February, 2010

CM (M) No. 1400/2007

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23.02.2010

S.S.Gupta

... Petitioner

Through: Mr. Vinod Tyagi &
Ms. Madhu Tyagi, Advocates

Versus

Himmat Singh (now deceased) & Ors.

... Respondents

Through: Mr. Manjit Singh Ahluwalia, Advocate
for R-1 & 2
Mr. Ashok Rajagopalan, Advocate for R-11

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

The petitioner has approached this Court against order dated 17.2.2007 of learned Civil Judge whereby he dismissed the objections of the Judgment Debtor against execution.

2. The Execution Petition pending before the Civil Judge was in respect of a suit filed prior to 1983. The Civil Judge gave history of the suit in paras 01 & 02 of the order which read as under:

"1. The suit for possession filed by the plaintiff (DH) was decreed by the court of Shri Gurdeep Kumar, the then learned Civil Judge vide his order dated 22.10.83. Aggrieved thereupon, the defendant preferred a RCA, the said RCA was also dismissed by the court of Shri H.R.Malhotra, the then learned ADJ Delhi vide his order dated 24.8.87. Thereupon the matter was carried to the Hon'ble High Court by way of a Regular Second Appeal (RSA) No. 82/1987. The said RSA was also dismissed by the Hon'ble High Court of Delhi vide order dated 1.8.02. Aggrieved thereof, the matter was taken up to the Hon'ble Apex Court whereby Hon'ble Apex Court had granted liberty to the defendants to re-agitate limited issue of waiver of tenancy again by way of filing a review petition before Hon'ble High Court. The defendants again preferred a review petition before Hon'ble High

Court. The said review petition, in pursuance of the order passed by Hon'ble Apex Court was also dismissed by Hon'ble High Court vide order dated 27.5.03. The said order again was taken up before Hon'ble Apex Court which was finally dismissed by the Hon'ble Apex Court vide order dated 29.3.206. Thus, suit attained finality.

2. Such a long litigation naturally takes its human toll. The plaintiff no.2, DH no. 2 Sh. Himat Singh is stated to have expired on 9.3.06, necessitating an application u/O 22 rule 3 CPC filed by the AR of the DH No. 1, praying therein impleadment of LR's of deceased DH No.2."

3. The petitioner, who is Judgment Debtor filed an application that Mr. R.S.Rosha authorized representative had no locus standi to file an application on behalf of Decree Holder. The grievance of petitioner was that Decree Holder No.1 due to medical problems was not in a capacity to act thus, the power of attorney/authority given in favour of Mr. R.S.Rosha ceased to be a valid power of attorney. The Executing Court appointed a Local Commissioner to visit the Decree Holder No.1. The Local Commissioner gave his report, to which objections were filed by the petitioner. The Local Commissioner after examining and meeting Decree Holder No.1 had categorically reported that Decree Holder No.1 was very much well in senses and able to identify his Counsel, his authorized representative and other family members and he was active in conversation however, his hands were shaking at the time of signing because of his old age. The trial Court on the basis of Local Commissioner's report dismissed the objection of the petitioner that authority of Mr. R.S.Rosha had become redundant.

4. By aforesaid order another application under Order 22 Rule 3 CPC made on behalf of Decree Holder No.1 for bringing LR's of Decree Holder No.2 Shri Himmat Singh on record was disposed of. In the application Decree Holder had submitted that there was no need to bring any formal application in view of Order 22 Rule 12 CPC since the provisions of Order 22 Rule 12 CPC and the provisions of Order 22 Rule 3, 4 & 9 do not apply to the execution proceedings however, the application was still being made to bring on record LR's of Decree Holder No.2. Judgment Debtor raised objections against this application on the ground that Decree Holder Nos. 1 & 2 were granted Letters of Administration by the Court of Shri Mahesh Chandra, the then Sr. Sub Judge and the office of Administrator was personal in nature and on death of Shri Himmat Singh his LR's could not be brought on record. The learned trial Court dealt with this issue specifically and observed that Decree Holder Nos. 1 & 2 were sons of late Sardar Sharanjeet Singh, who was owner of the property in question and after his death Decree Holders No. 1 & 2

became beneficiaries and co-owners of the property. Decree Holder 2 had since expired and his share would devolved upon his LRs as they would be beneficiaries of his part of the property. He dismissed the objections against bringing LRs of Decree Holder No.2 on record.

5. The petitioner's contention before this Court is that in view of Sections 218, 220, 236 & 273 of Indian Succession Act, the person to whom the Letter of Administration is granted does not become entitled to the property and estates of the deceased. The estates still succeeds according to the law of succession applicable to the deceased. He states that letter of administration did not confer any right on the Decree Holder on the estate of his deceased father and it was an office in person and after his death no LR can be brought on record.

6. I consider that this argument is self-contradictory and misconceived. Where the property is bequeathed in favour of some persons and an Executor is appointed in the Will, a probate is granted in respect of the Will so that the Executor executes the wishes of the deceased and the property goes to the legatees in accordance with desire of the deceased. However, in those cases where no Executor is appointed by the Testator, a Letter of Administration is granted by the Court after determining the genuineness of the Will and the persons in whose favour the Will has been executed being beneficiaries, are given authority to administer the estate of the deceased. Where the beneficiaries under the Will are the legal heirs of the deceased/Testator, by virtue of the Letter of Administration, granted in their favour they become the owners of the property with a right to administer the property in accordance with the Will. I, therefore consider that the plea taken by the petitioner that the appointment of the Administrator was an office is a baseless plea. However, in a case where the Administrator is not the beneficiary himself but he has to administer the property/estate and to discharge the debts and liabilities of the deceased and to distribute the remaining amount among the beneficiaries, in those cases the appointment of the Administrator is in the form of an office and on his death his LRs cannot become the Administrator. But once the Administrators are the beneficiaries under the Will and he is also the legal heirs, the property devolves upon the Administrators by virtue of the bequeath-ment made by the Testator and on his death his LRs would be entitled to be brought on record.

7. The present petition is an effort to drag on the execution which is pending for years. This case reflects how a person can successfully deprive the rightful owner of the fruits of his labour and property by the dent of the fact that he

has enough money to keep on challenging every order of the trial Court, High Court or Executing Court right up to the Supreme Court. The petitioner by this manner had succeeded in dragging the suit for more than two decades and now he is out to drag the execution. The case is a sad commentary in the manner in which this judicial system entertains the frivolous petitions and proceedings are stayed by one Court after another and the rightful person is deprived of his rights in the property and often the rights of his hard earned money.

8. I consider this petition deserves to be dismissed with exemplary costs. The petition is hereby dismissed with costs of Rs.1 lac being a frivolous petition. The costs, if not paid by the petitioner, shall be recovered by the Executing Court and paid to the respondent.

February 23, 2010
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SHIV NARAYAN DHINGRA, J.