

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

% *Judgment pronounced on: January 02, 2014*

+ **C.R.P. No.9/2013 & CM No.852/2013**

PALTOO RAM SINCE DECEASED THR LRS.& ORS.

..... Petitioners

Through Mr.V. Shekhar, Sr. Adv. with
Mr.Vishal Saxena and Ms.Ashly
Cherian, Advs.

versus

UMA DEVI

..... Respondent

Through Mr.Amarjit Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioners have filed the present petition under Section 115 CPC against the order dated 17th December, 2012 whereby objection filed by the petitioners were dismissed with cost of ₹10,000.

2. Admittedly, the predecessor-in-interest of the petitioners came into the possession of the disputed property through one Late Sh. Vinay Pal Sharma whose name was reflecting in the revenue record to be the owner in the year 1974. In March, 1981 Lt. Sh. Vinay Pal Sharma filed a suit being CS (OS) No.176/1981 against MCD for permanent injunction, as owner in possession of Khasra Nos.587, 586, 584 and 588 situated in village Chandrawali, Shahdara, Delhi.

3. The erstwhile owner, Lt. Sh. Vinay Pal Sharma expired on 8th April, 1981. He was survived by his wife Smt. Krishna Devi and mother Lt. Smt. Uma Devi.
4. Smt. Uma Devi (now respondent) filed suit for possession and recovery of damages against the defendants (now petitioners) on 23rd August, 1990 which was decreed by learned Civil Judge on 7th January, 2005.
5. The petitioners filed Regular First Appeal before District Judge, Delhi against the said judgment and decree dated 7th January, 2005.
6. During the pendency of first appeal, Smt. Uma Devi expired on 10th December, 2005. Sh. K.B. Sharma is the real nephew and only LR of Smt. Uma Devi filed an application for substitution in her place in the first appeal on the basis of registered Will dated 16th December, 1998.

The petitioners made request that Smt. Krishna Devi, the daughter in law of Smt. Uma Devi who is admittedly remarried should be impleaded as legal heir in place of Smt. Uma Devi.

7. The case of the petitioners before the learned Trial Court was that on 3rd July, 1981 an application under Order XXII Rule 3 CPC was moved by Lt. Smt. Uma Devi and Smt. Krishna Devi duly supported by an affidavit signed by Uma Devi for substitution in the said Civil Suit. An amendment plaint was filed on 17th March, 1982 in CS No.176/1981 by newly substituted plaintiffs, Lt. Smt. Uma Devi and Krishna Devi, duly signed by both of them. The respondent i.e. legal representative of Lt. Smt. Uma Devi filed an affidavit in July, 1982 claiming himself to be 'Parokar' for and on behalf of Smt. Krishna Devi and Lt. Smt. Uma Devi. On 3rd August, 1982 an

application was moved by Smt. Krishna Devi wife of Lt. Vinay Pal Sharma on basis of which the mutation and the property came to be registered in the name of Smt. Krishna Devi.

8. Smt. Krishna Devi executed an agreement of Sale and Power of Attorney on 20th September, 1982 in favour of predecessor in interest of the petitioners. She issued a receipt of payment of ₹14,800/- for the disputed land and the same is registered with the concerned Sub Registrar. The receipt for payment of ₹3000/- and ₹6500/- dated 17th January, 1983 on account of disputed land was issued by Smt. Krishna Devi in favour of Sushil Kumari and Chandrawati. The same was duly registered with the Sub Registrar.

9. The prayer of the petitioner was disallowed and Sh. K.B. Sharma's application for impleading him as LR of Smt. Uma Devi was allowed vide order dated 29th January, 2007.

The said order was duly confirmed and upheld in CM(M) No.755/2007 by order dated 14th January, 2008 when the said petition of the petitioners' was dismissed by a compromise order by Pradeep Nandrajog, J.

10. In the meanwhile, the petitioners filed Regular Second Appeal before this Court against the Eviction Order dated 7th January, 2005 and the said second appeal was also dismissed by this Court by order dated 5th April, 2011.

11. The said orders were also challenged by the petitioners before Supreme Court and the SLP filed by them was dismissed as withdrawn.

12. During the execution proceedings, the petitioners filed objections which were dismissed by the court of Sh. Anil Sisodia, SCJ, Delhi with cost of ₹10,000/- vide order dated 15th March, 2010.
13. The petitioners challenged the said order by filing CRP No.69/2010 which was dismissed by this Court with cost of ₹40,000/- by order dated 15th September, 2011.
14. The petitioners thereafter filed another application under Section 340 Cr.P.C. against Sh. K.B. Sharma which was also dismissed by the court of Sh. Anil Sisodia, SCJ, vide order dated 1st June, 2012.
15. Thereafter, warrants of possession were issued by the executing court in favour of the decree holder and against the judgment debtors.
16. The judgment debtors/petitioners have not allowed to the court bailiff to execute warrant of possession and raised objections for the demarcation of the property by revenue department.
17. The said application was allowed by the executing court vide order dated 22nd July, 2011. The concerned SDM gave his report on 22nd December, 2011 in favour of decree holders/respondent herein and against the judgment debtors/petitioner. The SDM has alleged in his report that there is no dispute about the identification of the property as per the site plan filed by the decree holder.
18. The identification of the property in question was also challenged by the petitioners during the pendency of the first appeal and the said defence was also rejected by the court of ADJ, Delhi when he dismissed first appeal of the petitioners vide order dated 9th July, 2008 which was later on confirmed upto Supreme Court.

19. The LR of judgment debtor No.1 (petitioner herein) filed objections in the execution proceedings dated 20th January, 2012 under Section 47 CPC praying therein that the demarcation report of SDM dated 22nd December, 2011 but the same was rejected as threshold wherein the prayer for the stay of the execution proceedings was made till the proper identification of the suit property as per site plan Ex.PW-1/2.

20. The decree holder has already given the detailed reply against the said objections and ultimately the said objections has been dismissed by the court of Ms. Ravinder Bedi, SCJ, Delhi with cost of ₹10,000/- by order dated 17th December, 2012.

21. Against the said order, the present civil revision has been filed before this Court.

22. The legal position as it stands today has been well-settled since the Supreme Court ruling of *Shiv Shakti Co-operative Housing Society, Nagpur v. M/s. Swaraj Developers*, AIR 2003 SC 2434. The Apex Court analysed the position both prior as well as post Amendment Acts of 1976 and 1999 and very well reiterated the difference between an appeal and a revision in the following paragraphs:

“13...It is fairly well-settled position in law that the right of appeal is a substantive right. But there is no substantive right in making an application under Section 115.

15. ..Language of Sections 96 and 100 of the Code which deal with appeals compared with Section 115 of the Code. While in the former two provisions specifically provide for right to appeal, the same is not the position vis-à-vis Section 115. It does not speak of an application being made by a person aggrieved by an order of subordinate court. As noted above, it is a source of power of the High Court to have effective control

on the functioning of the subordinate courts by exercising supervisory power.”

The court summed up the present legal position in the following paragraphs :

“14.... Section 115 is essentially a source of power for the High Court to supervise the subordinate courts. It does not in any way confer a right on a litigant aggrieved by any order of the subordinate court to approach the High Court for relief. The scope for making a revision under Section 115 is not linked with a substantive right.”

“32. A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is 'yes' then the revision is maintainable. Suit on the contrary, if the answer is 'no' then the revision is not maintainable. Therefore, if the impugned order is of interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject matter of revision under Section 115. There is marked distinction in language of Section 97(3) of the Old Amendment Act and Section 32(2) (i) of the Amendment Act. While in the former, there was clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered the parties are to proceed according to the altered made, without exception, unless there is a different stipulation.”

“33...Section 6 of the General Clauses Act has no application because there is no substantive vested right available to a party seeking revision under Section 115 of the Code.”

23. Judgment debtors No.2 to 4 (petitioner Nos.2 to 4 herein) also filed their separate objections under Order 21 Rule 97 read with Section 47/151 CPC dated 17th February, 2012, praying therein that the present execution be proceeded in accordance with law and so called self styled LR of Smt. Uma Devi namely Krishan Bal Sharma and his attorney be prosecuted for playing fraud before the court in accordance with law. The reply was filed by the decree holder.

The said objections has also been dismissed by the learned execution court by order dated 17th December, 2012 passed by Ms.Ravinder Bedi, SCJ, Delhi, with cost of ₹10,000/-.

24. The petitioners have relied upon the documents in the present civil revision petition which were not filed or proved during the trial of the case i.e. between the litigation of Uma Devi or Krishna Devi against MCD in respect of another property which is not subject matter of the present dispute. Thus, the same cannot be considered in the present revision petition as all the disputed issues/questions which have already been adjudicated and decided upto Supreme Court. These cannot be re-agitated in the present petition by the judgment debtors/petitioners.

25. The petitioners/judgment debtors who lost their case in three rounds of litigation can be allowed to raise their objection with regard to registered Will dated 16th December, 1998 executed by Late Smt. Uma Devi in favour of Sh. Krishan Bal Sharma after the consent order dated 14th January, 2008 passed by Pradeep Nandrajog, J. in CM(M) No.755/2007 confirming the order dated 29th January, 2007 passed by learned ADJ, Delhi impleading Sh. Krishan Bal Sharma as legal heir of Smt. Uma Devi.

26. In view of the abovesaid reasons and settled law, the present revision petition filed by the petitioners is totally misconceived and an abuse of the process of law. There is no merit in the petition. The same is dismissed with costs of ₹20,000/- which shall be deposited by the petitioners with Prime Minister Relief Fund within four weeks from today.

(MANMOHAN SINGH)
JUDGE

JANUARY 02, 2014