

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RFA 168/2014 and CM APPL. 7775-7777/2014**

Decided on 05.05.2014

IN THE MATTER OF :

SH. ASHOK YADAV

..... Appellant

Through: Mr. Ravi Gupta, Senior Advocate with
Mr. Swastik Singh and Mr. Ajay Gulati, Advocates
with appellant in person.

versus

SMT. MARY KARUNA PUSHPA TERASA TOPPO & ANR Respondents

Through: Mr. S.P. Sharma, Advocate for R-1.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The appellant (objector in Execution Petition No.126/2013) has filed the present appeal against the order dated 11.04.2014, passed by the Execution Court, whereunder his objections filed under Order XXI Rules 26, 58 and 99 read with Section 151 CPC, have been dismissed.

2. By the impugned order, the Executing Court has rejected the objection petition filed by the appellant/objector, who claims that he is the owner and in occupation of the premises No.RZ-26-P/66 on land measuring 200 square yards comprising in Khasra No.690/308, Indira Park, Palam Colony situated in village Nasirpur, New Delhi, and is facing imminent threat of forcible eviction by the respondent No.1/Decree

Holder, who is seeking execution of a judgment and decree dated 27.09.2013 passed in Suit No.279/2012 instituted by her against her son, Lalit Toppo(respondent No.2/Judgment Debtor) for possession of House No.RZ-26-P/628, Gali No.41, Mangal Bazar, near Post Office, Indira Park, Palam Colony, New Delhi, measuring 200 square yards, comprised in Khasra No.628, village Nasirpur, New Delhi.

3. Mr. Ravi Gupta, Senior Advocate appearing for the appellant submits that the respondent No.1/Decree Holder is trying to create some confusion as to the identity of the suit premises to the detriment of the appellant, who is apprehensive that the bailiff may end up taking over possession of his premises on the basis of mis-representations being made by the Decree Holder before the executing court that the suit property, and the property occupied by the appellant are one and the same which is not the correct position.

4. It is worth while to note that the appellant had purchased premises No.RZ-26-p/66 from Lalit Toppo(respondent No.2) through a set of documents executed on 10.9.2012. Learned counsel for the appellant claims that his client has no concern with the suit property, and instead of addressing the aforesaid aspect, in the impugned order, the trial court has gone into the issue of title of the appellant's property and wrongly concluded that he is a pawn in the hands of the respondent

No.2/Judgment Debtor. He argues that the appellant has no problem if the warrants of possession are issued and executed in respect of the suit property in satisfaction of the judgment and decree dated 27.09.2013, but the specification and description of the suit property should be such that it can be correctly identified by the bailiff.

5. Learned counsel for the appellant has been requested to point out the site plan of the appellant's property as filed by him alongwith his objections in the execution proceedings for the Court to verify the exact location of his property. He, however, states on instructions that the site plan was never filed with the objections. Instead, he contends that the bounding of the appellant's property is entirely different from the bounding of the suit property. As per the information culled out from the sale documents filed by the appellant on record (Annexure-A), the bounding of the appellant's property is as below:-

- (a) North : Other's plot
- (b) South : 20 Feet Road
- (c) West: Gali 8 Feet
- (d) East: Other's plot

6. Counsel for the appellant states on instructions from his client that the details of the plots situated on the North and on the East of the appellant's plot are as under:-

Direction	Name of Owner	Plot No.	Plot Size
North	Mr. Rawat	RZ-26-P/66-A	50 sq. yards
East	Mr. Sharma running a General Merchant Shop	-	100 sq. Yards

7. In the course of arguments, counsel for the appellant hands over a copy of the site plan of the suit property as filed by the respondent No.1/Decree Holder in the execution proceedings, which is confirmed by the other side as being the correct document. The same is taken on record.

8. As against the bounding of the appellant's plot mentioned above, the bounding of the suit property, subject matter of the execution petition, is as below:-

- (a) North: Other's plot
- (b) South: Other's plot
- (c) West: Gali 15 Feet
- (d) East: Gali 15 Feet

9. Counsel for the respondent No.1/Decree Holder states on instructions from his client that the details of the plots situated on the North and on the South of the suit premises bearing No.RZ-26-P/628 are as under:-

Direction	Name of Owner	Plot No.	Plot Size
North	Mr. Rajinder Prasad Khendi	RZ-26-P/66A	50 sq. yards
South	Mr. Bablu Chodhary	RZ-26-P/63	220 sq. yards

10. It is the stand of the appellant that his property is situated in Khasra No.690/308, Indira Park, Palam Colony, whereas the suit property in respect whereof the respondent No.1/decree holder is seeking execution is situated in Khasra No.628, Indira Park, Palam Colony. In other words, even the Khasra numbers of the two properties are different.

11. All the aforesaid submissions are a pointer in a single direction, which is that the appellant has proceeded to file objections in the execution petition in anticipation of some adverse action that he apprehends may be taken by the respondent No.1/Decree Holder while seeking execution of the judgment and decree dated 27.09.2013, without any coercive steps having been actually taken against his property in the said proceedings.

12. Counsel for the respondent No.1/Decree Holder states that the appellant/objector has been attempting to confuse the Executing Court by wrongly mentioning the number of the suit property as property No.RZ-26-P/66, whereas the correct Number is RZ-26-P/628. He, however, does not dispute the fact that even as per the photocopies of the documents

filed by the appellant/objector alongwith his objections, the bounding of his property described as "premises No.RZ-26-P/66" are entirely different from the boundings of the suit premises and even the Khasra Nos., where the suit premises and the premises of the appellant/objector are situated, are entirely different. In such circumstances, it is not understood as to how can any confusion arise as to the exact location of the suit premises, and even if a deliberate attempt is being made to create confusion as alleged by the appellant, why can that not be satisfactorily addressed in the execution proceedings.

13. On a query posed to the learned counsel for the appellant as to whether the appellant had undertaken due diligence before filing the objections in the execution proceedings by first verifying the exact specifications of the suit premises, subject matter of the execution proceedings, the appellant, who is present in Court and happens to be an advocate by profession, states that he did not take any such steps. Nor did he verify as to what are the exact boundings of the suit premises as are necessarily required to be mentioned by the respondent No.1/Decree Holder in the schedule that is supposed to be attached to the execution petition.

14. Before dealing with the submissions about confusion of the identity of the suit premises, as urged by learned counsel for the

appellant/objector, it is necessary to examine the relevant provisions of the CPC. Order XXI CPC that deals with the provisions relating to execution of decrees and orders, right from the mode of payment of moneys under a decree, to the manner in which the execution petition in respect of an immovable property, that forms part of a decree, has to be proceeded with.

15. Order XXI Rule 10 CPC stipulates that where the holder of a decree desires to execute it, he shall apply to the Court that passes the decree. Under Rule 11, apart from the exception carved out in sub-rule (1), every application for execution of a decree has to be in writing, signed and verified by the applicant to the satisfaction of the concerned Court. The said application is required to be typed in a tabulated form and is required to contain the following material particulars:-

- “(a) the number of the suit;*
- (b) the names of the parties;*
- (c) the date of the decree;*
- (d) whether any, appeal has been preferred from the decree;*
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;*
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;*

- (g) *the amount with interest (if any) due upon the decree, or other relief granted thereby, together the particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;*
- (h) *the amount of the costs (if any awarded);*
- (i) *the name of the person against whom execution of the decree is sought; and*
- (j) *the mode in which the assistance of the Court is required whether –*
 - (i) *by the delivery of any property specifically decreed;*
 - (ii) *by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;*
 - (iii) *by the arrest and detention in prison of any person;*
 - (iv) *by the appointment of a receiver;*
 - (v) *otherwise, as the nature of the relief granted may require."*

16. Appendix E at the end of the Code contains the standard formats of various petitions, applications forms etc., including the format of an application for execution of a decree under Order XXI Rule 11 CPC. The standard form mentions that where attachment and sale of an immovable property is sought, the description and specification of the property is necessary, as for example in the following manner:-

"Description and specification of property

The undivided one-third share of the judgment-debtor in a house situated in the village of value Rs.40, and bounded as follows:-

East by G's house; West by H's house; South by public road; North by private lane and J's house.

I..... declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed..... decree-holder"

17. Order XXI Rule 35 that deals with a decree for immovable property prescribes as below:-

"35. Decree for immovable property – (1) *Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.*

(2) *Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.*

(3) *Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman nor appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession."*

18. Form No.11 in Appendix E suggests the following format for issuance of warrant to the Bailiff for giving possession of land etc. under Order XXI Rule 35 CPC:-

"Form No.11

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC.
(O. XXI, r. 35)
(Title)

To

The Bailiff of the Court,

WHEREAS the undermentioned property in the occupancy of has been decree to the plaintiff in this suit; You are hereby directed to put the said in possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 19...../20.....

Schedule

Judge"

19. Order XXI Rule 54 that mandates attachment of immovable property, states as below:-

"54. Attachment of immovable property:- (1) *Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.*

(1A) *The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.*

(2) *The order shall be proclaimed at some place or on adjacent to such property by beat of drum or other customary mode, and a*

copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate [and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over the village.]”

20. Form No.24 that is a part of Appendix E deals with attachment in execution and states as below:-

"Form No.24

**ATTACHMENT IN EXECUTION
PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF
IMMOVABLE PROPERTY
(O.XXI, r. 54)
(Title)**

To

..... Defendant

WHEREAS you have failed to satisfy a decree passed against you on the day of 19...../20..... in Suit No. of 19...../20..... in favour of for Rs.....; It is ordered that you, the said be, and you are hereby prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

[It is also ordered that you should attend the Court on the day of 19...../20....., to take notice of the date fixed for settling the terms of the proclamation of sale.]

GIVEN under my hand and the seal of the Court, this day of 19..../20.....

Schedule

Judge”

21. All the aforesaid provisions under Order XXI, along with the relevant forms set out under Appendix E of the Code have been prescribed only to ensure that when an execution petition for attachment of an immovable property, subject matter of a decree, is filed, or at the stage when an application for execution of a decree under Rule 11 CPC, is submitted or at the stage when an application for attachment of an immovable property is filed under Rule 35 CPC and yet again, at the stage when an immovable property is attached under Rule 54 CPC, accurate details of the bounding of the property, subject matter of the decree, are available on record and all necessary precautions are taken to avoid any ambiguity or confusion as to the specification of the said immoveable property.

22. In the present case also, when the respondent/Decree Holder is under a mandate to furnish a schedule of the suit property, subject matter of the execution petition and as per the said schedule, the bounding of the suit property is found to be entirely different from that of the appellant's property so much so that even the Khasra Number in which the suit property is situated is different, it is not understood as to how and why is the appellant harbouring an anxiety about some likelihood of his property being attached in execution of the judgment and decree dated 27.09.2013 passed in Suit No.279/2012, instituted by the

respondent/Decree Holder against her son, respondent No.2/Judgment Debtor, particularly, when he says he has no connection with the suit property. Even otherwise, the objection application of the appellant appears to be premature when admittedly, no steps have been taken by the Execution Court till date to issue warrants of attachment in respect of the suit premises, for the appellant to show anxiety that his property is likely to be attached.

23. In the aforesaid circumstances, this Court is of the opinion that the objections filed by the appellant/objector are not only misconceived, but also premature.

24. At this stage, learned counsel for the appellant states on instructions from his client that the present appeal may be disposed of and in the event the Bailiff appointed by the Executing Court for attachment of the suit premises, subject matter of the judgment and decree dated 27.9.2013 seeks to dispossess the appellant from his property bearing No.RZ-26-P/66 situated in Khasra No.690/308, Indira Park, Palam Colony, in village Nasirpur, then he may be given liberty to seek his remedies in accordance with law.

25. In view of the aforesaid submission, while declining to interfere in the impugned order on merits, leave, as prayed for, is granted. The appeal is disposed of by clarifying that in the event the appellant files any

objections in the Execution Petition filed by the respondent No.1/Decree Holder against the respondent No.2/Judgment Debtor wherein he disputes the specification/description of the suit premises sought to be attached, in satisfaction of the judgment and decree dated 27.9.2013, on the ground that the said specifications/description match with the specifications/description of his property, then the same shall be considered and disposed of by the executing court, in accordance with law.

MAY 5, 2014
rkb/sk

(HIMA KOHLI)
JUDGE