

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

+ **C.M.(M) No.624/2013**

% **10th October, 2014**

MANOJ KOMAL & ORS. Petitioners
Through: Mr. Sundeep Srivastava, Advocate.

VERSUS

SARDAR GURPREET SINGH Respondent
Through: Mr. Ashutosh Lohaya, Advocate with
Ms. Kalpana, Advocate and Ms.
Jaspreet, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 227 of the Constitution of India impugns the two orders of the executing court; dated 8.3.2013 and 17.5.2013; by which the executing court has directed warrants of possession to be issued against the suit/decreed property being 20 sq yds numbered 188F, Old Gupta Colony, Delhi-110009.

2. The facts of the case are that the respondent herein (plaintiff in the suit) filed a suit for recovery of possession and mesne profits against two defendants, namely Smt. Biant Kaur and Sardar Asa Singh. Sardar Asa

Singh is the step son of Smt. Biant Kaur. Both Smt. Biant Kaur and Sardar Asa Singh died during the pendency of the suit and accordingly their legal heirs were substituted in their places. Smt. Biant Kaur was substituted by her two legal heirs, namely Mrs. Bindra and Sh. Gurcharan Singh whereas defendant no.2 Sardar Asa Singh was substituted by Sh. Surinder Singh, Sh. S. Inderpal Singh and Smt. Ranjit Kaur Chhabra. The legal heirs of the defendant nos.1 and 2 as stated above are those as per the memo of parties given in the judgment and decree dated 31.5.2004. The operative portion of the judgment dated 31.5.2004 decreeing the suit reads as under:-

“Relief

In view of the above findings, the suit of the plaintiff is decreed in favour of the plaintiff and against the defendant in respect of the portion measuring 20 sq yards situated in suit property No.188F, Old Gupta Colony, Delhi 9 as shown in red colour in the site plan annexed with the plaint. Further the suit of the plaintiff is also decreed to the tune of aforesaid amount as mentioned in issue No.3 be @ Rs.150/-pm w.e.f 1.7.92 to 30.6.95 and @ Rs.180/- pm w.e.f. 1.7.95 to 30.6.98 and @ Rs.216/- pm w.e.f. 1.7.98 to 30.6.2001 and also @ Rs.260/- pm w.e.f 1.7.2000 till its actual realization in favour of the plaintiff and against the defendants towards pendente lite and future mesne profits/damages together with costs and pendente lite and future interest @ 8% pa from the date of respective accrual of amount till its actual realization. Deficient court fee if any be paid by the plaintiff. Decree sheet be drawn thereunder. File be consigned to record room.

Announced in the open court
(1+1 spare copy attached)

(Lokesh Kumar Sharma)
CJ. Delhi/31/5/04”

3. The petitioners, and who are the objectors before the executing court, are the legal heirs of Sh. Surinder Komal and who was one of the persons who was substituted as a legal heir of Sardar Asa Singh. For the sake of convenience, I am reproducing below the memo of parties as found in the judgment and decree dated 31.5.2004 decreeing the suit for possession and mesne profits:-

“IN THE COURT OF SH. LOKESH KUMAR SHARMA,CIVIL
JUDGE:DELHI

Suit No.337/2002

In the matter of

Sardar Gurpreet Singh,
S/o S. Pritpal Singh,
R/o 188-F, Old Gupta Colony,
Delhi-110 009.

.....Plaintiff

Versus

Smt. Biant Kaur (Deceased through LRs)

a. Mrs. S. Bindra
D/o Late Shri Harnam Singh
R/o 20, Crescent Hill
Dr. Brampton, ONT. L 6S ICT
CANADA

b. Sh. Gurcharan Singh
S/o Late Sh. Harnam Singh
5 Old English Lane
THORNHILL ONT.
L 3T 2 TB CANADA.

Sardar Asa Singh (Since deceased through LRs)

a. A. Shri Surinder Singh

S/o Late Sh. Asa Singh
b. S. Inderpal Singh
S/o Late Shri Asa Singh
Both R/o 188-D, Old Gupta Colony,
Delhi-110 009.

c. Smt. Ranjit Kaur Chhabra,
D/o Late Shri Asa Singh.
2627, Hudson Lane,
G.F., Delhi.

.....Defendants”

4. As per Section 11 of the Code of Civil Procedure, 1908 (CPC), a judgment and decree in the suit is binding not only against the parties to the suit but the same is binding also against the persons/legal heirs who claim through the parties in the suit. Order XXI Rule 102 CPC states that the persons who are pendente lite transferees of a suit property will not have right to file objections to the judgment and decree pertaining to an immovable property. Therefore, if transferees pendente lite cannot file objections, then, surely original parties to the suit or their legal representatives or persons claiming through the parties to the suit cannot file objections because that would take away the binding effect of *res judicata* provided under Section 11 CPC.

5. What is argued before this Court on behalf of the objectors/petitioners is that though the judgment and decree dated 31.5.2004

can be executed, however since the decree is for 20 sq. yds. in property no.188F, Old Gupta Colony, Delhi-9, but the respondent/decreed holder is in fact having 20 sq. yds. out of property no.188E, the decree cannot be executed against property no.188E. To counter this argument, learned counsel for the respondent has stated that in terms of the registered sale deed dated 10.12.1991 the respondent/plaintiff purchased from Smt. Biant Kaur a total of 60 sq. yds., and as so stated found in para 3 of the judgment and decree dated 31.5.2004, and since the respondent/plaintiff only has 40 sq. yds. out of 60 sq. yds., therefore the 20 sq. yds. portion which is decreed (and which is a portion of land open to the sky) has to be taken possession of by the respondent/decreed holder pursuant to the judgment and decree dated 31.5.2004 because any issue of merits being raised on behalf of the petitioners/objectors that the decreed portion of 20 sq. yds. is not property no.188F but allegedly is a separate portion forming part of 116 sq. yds. owned by the objectors cannot be considered by an executing court because that would amount to going behind the decree that the decreed property is allegedly not 188F and in fact will amount to allowing a defence on merits to succeed and which defence on merits could only have been taken as a defence to the suit. Only if the defence had succeeded, and which it has not,

possession hence has to be given to the respondent/plaintiff of 20 sq. yds. as decreed and as shown in the site plan attached with the plaint and petitioners cannot create confusion merely by calling the decreed portion as a separate number.

6(i) It is trite that an executing court cannot go behind the decree. The executing court has to execute the decree as it stands. I have reproduced above the operative portion of the decree and which is a decree with respect to 20 sq. yds. as shown in red colour in the site plan and therefore the objectors/petitioners and as long as the decree is being executed as per the site plan, petitioner cannot be allowed to create confusion pleading the alleged disentitlement of the respondent/plaintiff on the ground that 20 sq. yds. decreed does not form part of property no.188F but the decreed property forms part of another property no.188E. The case of the petitioners cannot be allowed to succeed including because the respondent/plaintiff since the year 1992 is pursuing the suit for possession and today even after about 22 years the respondent/plaintiff in spite of being successful in obtaining the judgment and decree the decree holder has not been able to take possession of decreed 20 sq. yds. It bears note that counsel for the respondent/plaintiff has repeatedly and rightly argued before this Court that

respondent/plaintiff only has with him 40 sq. yds. out of 60 sq. yds. purchased by means of the registered sale deed dated 10.12.1991 and therefore the respondent/plaintiff is entitled to the 20 sq. yds. portion which is immediately adjacent to 40 sq. yds. already with the respondent/plaintiff pursuant to the registered sale deed dated 10.12.1991 and since the area decreed of 20 sq. yds. is adjacent to the area of 40 sq. yds. with the decree holder there can be no confusion regarding location of the decreed property, including by giving it a different number 188E. In my opinion to allow such objections of the petitioners to succeed would amount to going behind the decree for contending that the decreed portion shown in red in the site plan is not property no.188F but allegedly is part of property no.188E. The suit property can be held to be part of property no.188E only if the defence of the objectors in the suit had succeeded and which has not.

(ii) It is relevant to note that some of the legal heirs of the deceased defendant no.2, excluding present objectors, had filed an application under Order IX Rule 13 CPC for setting aside the judgment and decree dated 31.5.2004, but that endeavour was not successful and the application under Order IX Rule 13 CPC has been dismissed though I am informed that an appeal is said to be pending against dismissal of the application under Order

IX Rule 13 CPC. However, so far as the present objectors are concerned, they have not chosen to file an application under Order IX Rule 13 CPC for setting aside the judgment dated 31.5.2004 and therefore in my opinion, the judgment and decree dated 31.5.2004 becomes final and binding against the petitioners/objectors.

(iii) Another important aspect worthy of note is that there is no RFA filed under Section 96 of CPC against the judgment and decree dated 31.5.2004 on behalf of the present objectors and consequently this is one another reason for ensuring finality and executability of the judgment and decree dated 31.5.2004 in favour of the respondent/plaintiff with respect to the suit property of 20 sq. yds.

7. In view of the above, there is no merit in the petition and the executing court has rightly issued warrants of possession with respect to 20 sq. yds. of the suit property which is the subject matter of the judgment and decree dated 31.5.2004 in favour of the respondent/plaintiff and operative portion of which has already been reproduced above in the present judgment. Petition is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

OCTOBER 10, 2014/Ne