

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

+ **Ex. F.A. No.27/2014 & C.M.No.16088/2014 (Stay)**

% **24th September, 2014**

KISHAN PAL SINGH Appellant

Through: Mr.Kirti Uppal, Sr.Advocate with
Mr.Amardeep Maini, Advocate.

VERSUS

G.L. DHARA & ORS. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? (Yes)

VALMIKI J. MEHTA, J (ORAL)

1. This execution first appeal is filed by the objector/appellant against the impugned judgment of the executing court dated 19.8.2014 by which the executing court has dismissed the objections filed by the appellant.

2. The appellant/objector is one Sh.Kishan Pal Singh and the decree holder is one Sh.G.L.Dhara. Sh.G.L.Dhara/decreed holder filed a suit against four defendants, Sh.Amin Chand, Sh.Jagan Singh, Sh.Prem Singh Verma and Sh. Dhiraj Singh with respect to the suit property admeasuring 4000 sq.

yds. falling in khasra no.742, village Mandawali Fazalpur, Shahdara, Delhi.

In the suit, relief of possession and mesne profits/damages were sought.

3. This suit of the decree holder was decreed by a learned Single Judge of this Court vide its judgment dated 28.8.2001. The judgment debtors in that suit filed an appeal before the Division bench of this Court, and which appeal was dismissed by the Division Bench vide judgment dated 23.9.2008. The judgment debtor also thereafter challenged the judgment of the Division Bench before the Supreme Court, but the SLP was also dismissed.

4. The present execution petition which was filed by the decree holder immediately after passing of the judgment of a learned Single Judge of this Court was stayed in view of the filing of the appeal before the Division Bench, but after dismissal of appeal of the Division Bench and dismissal of the SLP, the execution petition was revived by the executing court below vide order dated 18.9.2009.

5. It is thereafter at that stage that the appellant/objector has, sprung up so as to say, to claim rights in the suit property by filing of the objections on 21.11.2009 i.e after the dismissal of the SLP by the Supreme Court.

6. The case of the appellant/objector is that he has purchased the suit property admeasuring 3 bighas 6 biswas (one bigha = 1008 sq. yds.) falling

in khasra no.742, village Mandawali Fazalpur, Illaqa Shahdara, Delhi by means of a registered sale deed dated 06.8.1994 executed by one Sh.Sundaresan. Sh.Sundaresan himself is stated to have purchased the rights in the suit property from the decree holder Sh. Girdhari Lal Dhara by means of the notarized documents dated 15.6.1988 being the Agreement to Sell, General Power of Attorney, Will etc. The appellant/objector claims that he was in possession since the date of purchase on 06.8.1994 and that he came to know of the decree only when the bailiff visited the suit property on 29.9.2009, and therefore the objections were filed.

7. As per the provisions under Order XXI Rules 97 to 103 of Code of Civil Procedure, 1908 (CPC) as amended by the amending Act of 104 of 1976, objections of the appellant/objector have to be tried as a suit by framing issues and allowing parties to lead evidence. Framing of the issues in the objections and leading of evidence thereafter is referred to in paras 7 to 9 of the impugned judgment, and which paras read as under:-

“ 7. From the pleadings of the parties following issue was framed vide order dated 03.12.2011:-

1) Whether the objector/obstructionist Sh.Kishan Pal Singh is the bonafide owner of property measuring 3 bigha 3 biswa bearing Khasra o.742 within the estate of Village Mandawali Fazalpur, Illaka Shahdara, Delhi 92 having purchased the same vide deed dated 06.8.94?

8. The matter was fixed for objector's evidence on the above mentioned issue. In evidence OW-1 Sh.Krishan Pal Singh, objector himself has been examined vide affidavit Ex. OW1/A. The witness relied upon documents OW-1/1 to 5 viz. sale deed, GPA, Agreement to Sell, Will and payment receipt. The witness has been cross-examined at length.

9. OW-2 Sh. Jugal Kishre is a summoned witness and deposed that he signed the documents EX OW-1/2 – GPA, OW-1/3 – Agreement to Sell, OW-1/4 – Will and OW-1/5 – payment receipt etc. He signed the documents in the presence of both the parties and no other witness was present or signed in his presence. The witness has been cross-examined on behalf of the decree holder.”

8. The executing court has dismissed the objections by placing reliance upon the CFSL report dated 27.4.2011 wherein it is opined that signatures on the questioned documents, being the documents allegedly executed by the decree holder in favour of Sh.Sundaresan dated 15.6.1988, do not contain signatures of the decree holder. The relevant observations and conclusions of the trial court for dismissing the objections are contained in paras 16 to 19 of the impugned judgment, and which read as under:-

"16. Considering the claim put forth by the objector with respect to the ownership of the property, I have analyzed his testimony recorded as OW-1. The witness has failed to remain consistent and confident with respect to the averments. The documents such as GPA, Agreement to Sell, Will and receipt etc. have not been proved in accordance with the rules of the evidence as the executors of the documents have not been examined in evidence. The material witness Wh. Sundaresan has not been examined despite number of opportunities availed to summon him. The objector Sh. Krishan Pal Singh contradicted his own statement by firstly stating that he does not know judgment debtor but later revealing that he is related to Sh.

Prem Singh being the father-in-law of his brother Sunder. With respect to the testimony of OW-2, I find that witness has also failed to give sufficient evidence to prove the claim of the objector. The witness stated to have signed the documents EX OW-1/2 to 5 but denied that any other witness signed the documents in his presence. The documents show that witness namely, Sh. V.K. Vishwabraham also signed. The witness also demolished the claim of the objector by stating that he was not knowing G.L. Dhara prior to the execution of documents and he signed the documents on mere asking of Sundaresan.

17. The objector was required to prove and establish before the court that decree holder genuinely executed GPA, Agreement to Sell, Will and receipt in favour of Sunderesan but the objector he filed to prove the same by bringing sufficient evidence on record. The material witness Sundaresan has not been examined in support of these documents. With respect to the presumption u/s 85 Evidence Act, as pointed out by Ld. Counsel for objector, I am of the opinion that presumption is rebuttable and the report FSL clearly falsifies the execution of said document by the decree holder.

18. On examining the report of CFSL, I find that due care has been taken by the court to provide document with admitted signatures for comparison with the questioned signatures. I find no reason to disbelieve the report of CFSL with respect to which no objections have been filed on behalf of the objectors. The decree holder has made categorical statement in the reply denying the signatures on the documents and therefore it has not been necessary for the decree holder to have entered into the witness box. The issue with respect to the ownership of the suit property has not been proved or established by the objector on the record, the issue is decided against the objector and in favour of the decree holder.

19. There has been long drawn litigation between the parties with respect to the dispute. The objector is related to judgment debtor and there is every possibility that the objections have been filed only to delay the execution. There is no merit or substance in the objections and accordingly warrants of possession be issued with respect to plot measuring 3 bighas 6 biswas bearing Khasra No. 742, within the

revenue estate of village Mandawali fazalput, Illaqa Shahdara, Delhi-110092.”

(underlining added)

9. Learned senior counsel for the appellant/objector has argued before this Court the following aspects:-

(i) The decree holder had not stepped into the witness box, and therefore once he chooses to not step into the witness box, the case of the appellant/objector ought to have been accepted by the executing court and for which purpose, reliance is placed upon the judgment of the Supreme Court in the case of *Vidhyadhar Vs. Manikrao & Anr. (1999) 3 SCC 573*.

(ii) It is argued that the executing court has committed an illegality in relying upon the CFSL report dated 27.4.2011 because the expert report before it could have been taken into account by the executing court, it was necessary that the expert should have been called and should have been subjected to cross-examination. Reliance is placed upon the judgments of the Supreme Court in the cases of *Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. & Ors. AIR 2010 SC 806* and *State of Himachal Pradesh Vs. Jai Lal & Ors. AIR 1999 SC 3318*. Reliance is also placed upon the judgment of a learned Single Judge of this Court reported as *Mahender Singh Sachdeva Vs. Kailash Rani Wadhwan 2010 (120) DRJ 34*.

10. In my opinion, there is no merit in the appeal and the objections which are raised by the appellant/objector are wholly without substance, and consequently the same are rejected for the reasons stated hereinafter.

11. Before I turn to the points which have been canvassed on behalf of the appellant/objector, I would like to note the following salient aspects:-

(i) The decree holder in this case filed the suit which was decreed after contest way back in the year 2001. Appeals of the judgment debtor before the Division Bench of this Court as also the Supreme Court were dismissed. Therefore, the decree holder though after much contest was successful in obtaining the decree, however process of seeking possession was continued by the decree holder, as the possession of the suit property was not delivered to the decree holder only in view of the appellant/objector having filed the objections, and which have now been ultimately dismissed by the impugned judgment dated 19.8.2014. The decree holder hence has been made to run from pillar to post for around 15 years to get back his own property.

(ii) It has come on record in the cross-examination of the appellant/objector that the objector is none else but the father-in-law of Sh.Sunder, the brother of Sh.Prem Singh Verma, and which Prem Singh Verma was one of the defendants in the suit.

(iii) Though the appellant/objector claimed that he had possession of the suit premises from 1994 when the sale deed dated 06.8.1994 was executed in his favour, however, no evidence whatsoever was led with respect to the proof of possession of the appellant/objector in the suit property from 1994, and in fact no proof of possession was also led of the predecessor-in-interest of the appellant/objector Sh.Sundaresan from 1988 till 1994, and when in 1994 Sh.Sundaresan is stated to have sold the suit property to the appellant/objector.

(iv) Not only no proof has been laid with respect to possession of the appellant/objector and his predecessor-in-interest Sh.Sundaresan of possession of the suit property, it is also relevant to note that no public authority be it the house-tax authority or the income-tax authority or any other public authority was ever informed that the appellant/objector claimed ownership rights in the suit property by means of the documents in favour of Sh.Sundaresan dated 15.6.1988 and that in favour of the appellant/objector dated 06.8.1994.

(v) The sale deed dated 06.8.1994 in favour of the appellant/objector no doubt is registered, but it is registered and executed not by the decree holder but by the alleged general power of attorney holder of the decree holder

Sh.Sundaresan, and in whose favour a general power of attorney was allegedly executed by the decree holder on 15.6.1988. There is no evidence which was led before the executing court below that this general power of attorney allegedly executed by the decree holder in favour of Sh.Sundaresan was a registered power of attorney, and in fact on the contrary, the plea of the appellant/objector only is that the documents dated 15.6.1988 including the general power of attorney dated 15.6.1988 are only notarized documents. This general of power attorney, therefore was not a valid document for the purpose of registration of the sale deed dated 06.8.1994 in favour of the appellant/objector in view of the provisions of Sections 32 and 33 of the Registration Act, 1908, and I am surprised as to how the Sub-Registrar has registered this sale deed dated 06.8.1994 in favour of the appellant/objector. As per Sections 32 and 33 of the Registration Act, a sale deed can be registered by only that power of attorney holder if the power of attorney is duly registered before the Sub-Registrar. Clearly therefore, besides possession not having been proved either of Sh.Sundaresan or of the appellant/objector, even the sale deed which is relied upon by the appellant/objector shall confer no title upon the appellant/objector.

12. In my opinion, the aforesaid aspects are more than sufficient for sustaining the impugned order and dismissal of the appeal, however, let me now turn to the two aspects which have been urged before this Court.

13.(i) The first argument which is urged on behalf of the appellant/objector is that since the decree holders did not step into the witness box, the case of the appellant/objector should be believed in view of the ratio of the judgment in the case of *Vidhyadhar (supra)*.

(ii) In my opinion this argument urged on behalf of the appellant/objector is misconceived for various reasons. Firstly in the case of *Vidhyadhar (supra)* itself, the Supreme Court has observed that non-appearing in the witness box at best will entitle drawing of an adverse inference i.e it is not the law that merely on account of adverse inference, nothing else has to be seen and on the basis of adverse inference itself, a judgment must automatically follow. Therefore, non-appearing of the decree holder in the facts of the present case will have to be seen with other facts of the present case and the evidence of the appellant/objector which has come on record as to whether that evidence proves the title and possession of the appellant/objector and more importantly the evidence which has not come on record as regards the aspects which I have already mentioned above and

which in my opinion was sufficient for dismissal of the objections as also the present appeal.

(iii) In a case such as the present, the appellant/objector is like a plaintiff in the suit. The defendant in a suit, and which would be the respondent/decreed holder in this case, can have enough confidence that the plaintiff in the suit i.e the objector in the objections has not led sufficient evidence which would be accepted by the court to decide the objections in favour of the appellant/objector, and therefore in such a case, there is no legal compulsion on the defendant in a suit i.e non- objector/decreed holder in this case, to step into the witness box and disprove the case of the appellant/objector. The necessity to prove his case by the decreed holder will only arise if according to the decreed holder sufficient evidence has been led by the objector/appellant. But if that is not done, then surely it is not illegal for a decreed holder to have confidence that the objector has miserably failed to lead evidence to prove his case, and therefore the decreed holder need not step into the witness box. In my opinion, the decreed holder in the facts of the present case, and for the reasons which I have mentioned above, was justified in not leading evidence. Considering the entire evidence which has been led in this case as also that no evidence has been led by the objector of

his being in possession or his predecessor-in-interest being in possession, the fact that the sale deed itself is in favour of the appellant/objector is invalid in view of Sections 32 and 33 of the Registration Act, the objector having never asserted his title and possession before any public authority, these reasons are sufficient reasons why the only aspect of adverse inference being drawn for not stepping into the witness box by the decree holder will not go against the decree holder in the facts of the present case.

14. So far as the second argument that the trial court has erred in referring to the report of CFSL that the signatures of the decree holder are not the signatures on the documents allegedly executed in favour of Sh.Sundaresan on 15.6.1988, it needs to be stated that once there is a report of an expert, and which expert's evidence is admittedly under Section 45 of the Evidence Act, 1872 there would have to be some sort of an application or objections by the appellant/objector to the report by demanding that the person who has given the report must come into the witness box and subject him to cross-examination. The executing court specifically notes that no objections were filed by the appellant/objector to the report of the CFSL expert. I also put a pointed query to the learned senior counsel for the appellant/objector as to whether any application was moved before the executing court by which the

objector/appellant prayed that the expert who has given the CFSL report should be called into the witness box because he has to be cross-examined and that without the cross-examination the report cannot be seen. The answer to this query was that no such application has been moved before the executing court, and therefore once no such prayer has been made and there were filed no objections to challenge the report of the expert including by seeking his cross-examination, the executing court in this case has not erred in relying upon the CFSL report that the signatures on the documents dated 15.6.1988 are not the signatures of the decree holder/respondent.

15. Reliance placed upon by the appellant/objector on the judgments of the Supreme Court in the case of ***Ramesh Chandra Agrawal (supra)*** and ***Jai Lal (supra)*** are misplaced because these judgments of the Supreme Court deal with the reports of experts who were medical experts or experts in orchards/fruits and these judgments do not pertain to a report of a handwriting expert. The judgment in the case of ***Mahender Singh Sachdeva (supra)*** which is relied upon by the appellant/objector does not help the appellant/objector because in the facts of that case the handwriting expert was not looked into in the absence of any other evidence and handwriting expert's evidence consequently was not believed because onus

of proof was on the person who was relying upon the handwriting expert's report but here the onus is not on the respondent no.1/decreed holder who relies upon the expert's report, but the onus was on the appellant/objector to prove his alleged independent title. Also, a reading of that judgment does not show as to whether any objection was decided that the report should not be looked into because the expert was called in the witness box for cross-examination, but, he was not called or did not appear inspite of such a prayer being made because as noted above in the present case, the objector/appellant had filed no such application. The judgment ***Mahender Singh Sachdeva (supra)*** accordingly will also not apply in the facts of the present case.

16. In view of the above, it is clear that objections were highly misconceived, *malafide* and motivated. The appellant/objector came into the situation most conveniently after the suit of the decreed holder for possession was decided in favour of the decreed holder right till the Supreme Court. Also, it has come on record, as stated above that the appellant/objector is no one else but the father-in-law of the brother of one of the defendants in the suit.

17. In view of the above, there is no merit in this appeal, and the appeal is therefore dismissed with costs of Rs.50,000/-. Costs shall be paid within four weeks by the appellant/objector to the respondent no.1/deGREE holder before the executing court and payment of costs by the appellant/objector shall be a condition precedent for the executing court to consider any further application, if made, by the appellant/objector.

18. A copy of this judgment shall be sent to the executing court below and the executing court in the facts of the case will ensure that the decree is executed expeditiously in accordance with law in favour of the decree holder/respondent.

VALMIKI J. MEHTA, J

**SEPTEMBER 24, 2014
KA**