

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

+ **C.R.P. 32/2015 & CM 4382/2015 (stay)**

% Reserved on: 17th April, 2015
Decided on: 19th May, 2015

DALEL SINGH THR LR BALWAN SINGH Petitioner
Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Vinay Gupta and Mr.
R.Ravi, Advocates.
versus

LACHMAN (DECEASED) THR LRS & ORS Respondents
Through: Mr. Ravi Gupta, Sr. Advocate with
Mr. Vipin K. Singh, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the impugned order dated 11th February, 2015 the objections filed by the Petitioner/Judgment Debtor Balwan Singh, legal heir of Dalel Singh, the Defendant in the suit and the objections of Mrs. Jeet Kaur, wife of Dalel Singh have been dismissed.
2. A brief exposition of facts is that a suit was filed in the year 1969 by Lachman Singh son of Chhattar, Rati Ram, Zile Singh sons of Magni for possession against Dalel Singh alleging that he had illegally and without their consent assumed possession of the suit property/land comprising Khasra No.736, Village Munirka, Delhi admeasuring 5 bighas in the year 1962. The suit was dismissed by the learned Trial Court vide order dated 4th June, 1973 being barred by limitation and it was held that Dalel Singh had become the owner of the property by adverse possession. On an appeal preferred being RSA No. 247/1973 this Court set aside the judgment of the learned Trial Court and remanded the matter for fresh decision. The suit was

then registered as Suit No. 113/1974. Vide the judgment dated 1st May, 1976 the suit was decreed in favour of Lachman Singh, Rati Ram and Zile Singh and against Dalel Singh. An appeal was preferred by Dalel Singh being Civil Appeal No. 61/1976 before the learned Additional District Judge which was dismissed on 17th February, 1979. Dalel Singh thus filed RSA No.36/1979 before this Court however, during the pendency of RSA the Respondent Lachman died and his legal heirs were impleaded as parties. On 14th November, 2011 Dalel Singh died and thus his son Balwan Singh was substituted besides his wife and three married daughters. RSA No.36/1979 was dismissed on 19th February, 2013 holding that no substantial question of law was involved. Special Leave Petition No.23680/2013 filed by Balwan Singh, LR of Dalel Singh is still pending. Thus the Decree Holder filed an execution petition.

3. In the objections filed by the petitioner which were dismissed by the impugned order it was contended that the execution has not been sought on behalf of all the decree holders.

4. When the Petitioner took the said objection before the learned Trial Court an affidavit was filed by Surender Singh, one of the Decree Holders, grandson of Lachman from the deceased son Surat Singh paragraphs 2 and 3 whereof read as under:

“2. The decree in question is being sought to be executed by the decree holders (deponent) for the benefit of all the decree holders and on behalf of all the legal heirs of the deceased decree holder in the case.

3. That as per the memo of parties of the appeal filed by the appellants in the High Court of Delhi in RSA no.36/79 there were only five respondents namely Lachman, Rati

Ram, Bharat Singh, Zile Singh and Smt. Dan Kaur. No appeal was filed against Smt. Sharbati and Smt. Dhanni as both of them had died prior to the filing of second appeal.”

5. Learned counsel for the Petitioner states that a reading of affidavit itself shows that the Surrender Singh claimed that there were only five respondents in RSA, that is, Lachman, Rati Ram, Bharat Singh, Zile Singh and Dan Kaur and no appeal was filed against Smt. Sharbati and Smt. Dhanni thus no execution is required to be passed on their behalf. It is further contended that even if accepting that the requirement of Order XXI Rule 15 CPC was complied with by filing of an affidavit the fact remains that on 16th July, 2014 learned counsel for the Decree Holder specifically stated that he was appearing for all the LR's of Decree Holders except Moorti Devi. In the absence of his appearance on behalf of all the LR's the execution of the decree could not have been directed and thus the impugned order is liable to be set aside.

6. Learned counsel for the Respondents on the other hand contends that the Order XXI Rule 15 does not provide that all the Decree Holders should seek execution. Even one Decree Holder, if he seeks the execution for the benefit of other decree holders, execution can be directed and there is no requirement that the person seeking execution on behalf of the Decree Holders should file power of attorney on behalf of all decree holders. The Judgment Debtor is not concerned with the shares of the Decree Holders inter se and thus having satisfied even one Decree Holder, it would be between the parties to distribute the fruits of execution inter se.

7. Heard learned counsels for the parties. Order XXI Rule 15 CPC provides as under:

“15. Application for execution by joint decree-holders.-(1)

Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.”

8. Thus, it is not the requirement of Order XXI Rule 15 CPC that an attornment by each and every Decree Holder should be made in favour of the person seeking execution. Suffice it is if the execution of the decree is sought for the benefit of all the Decree Holders which affidavit has been placed on record by Surender Singh. Sub-Rule 2 of Order XXI CPC itself provides that the Court is competent to pass necessary directions to protect the interest of the persons who would join in the process of application. Since affidavit has been filed by Surender Singh that he is filing the execution for the benefit of all the decree holders and vakalatnama and reply to objections have been signed by almost all decree holders, requirement of Order XXI Rule 15 CPC stands satisfied.

9. Regarding the next contention of learned counsel for the petitioner that admittedly learned counsel for the decree holders appeared for all decree holders except Smt. Moorti Devi and hence there is no execution on her behalf, sub-Rule 2 of Order XXI Rule 15 CPC takes care of this situation and it is left to the judicial discretion of the Court to prevent a fraud being

effected by anyone of the decree holders on others, however the judgment debtor is not affected by the infringement of the rule and he has no right to question the maintainability of the execution petition on this ground. (See Rampalli Ramachandrudu Vs. Bakraj Gulab Chand Firm by Gulabchand and others, AIR 1958 AP 709 and Anupi Devi & Ors. Vs. Badri Prasad Sah & Ors. ILR 1981 VOL.60 Patna 192).

10. I find no illegality in the impugned order. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY19, 2015
‘vn’