

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.278 OF 2015

IN

EXECUTION APPLICATION NO.241 OF 2011

IN

SUIT NO.2824 OF 1998

ALONG WITH

APPEAL NO.279 OF 2015

IN

EXECUTION APPLICATION NO.99 OF 2011

IN

SUIT NO.2824 OF 1998

ALONG WITH

APPEAL NO.334 OF 2015

IN

EXECUTION APPLICATION NO.99 OF 2011

AND

EXECUTION APPLICATION NO.241 OF 2011

IN

CHAMBER SUMMONS NO.299 OF 2002

IN

SUIT NO.2824 OF 1998

APPEAL NO.278 OF 2015

Abdul Rehman Mohd. Yusuf Khan & Anr.

.. Appellants
(original plaintiff Nos.3 & 4)

Vs

Rajnikant Devidas Shroff.

.. Respondent
(Org.Defendant No.16)

—

APPEAL NO.279 OF 2015

Mohammed Tahir Mohd. Yusuf Khan & Anr.

.. Appellants
(original plaintiff Nos.17 & 18)

Vs

Rajnikant Devidas Shroff.

.. Respondent

(Org.Defendant No.16)

—

APPEAL NO.334 OF 2015

Rajnikant Devidas Shroff.

.. Appellant
(original Defendant No.16)

Vs

- | | | |
|----|---------------------------------|---|
| 1. | Abdul Rehman Mohd. Yusuf Khan, | .. Respondent
(Org. Plaintiff No.3) |
| 2. | Rajesh Kumar Milapchand Jogani, | . Respondent
(Org.Plaintiff No.4) |
| 3. | Mohamed Tahir Mohd. Yusuf Khan, | .. Respondent
(Org.Defendant No.17) |
| 4. | Milapchand Hastimal Jogani. | .. Respondent
(Org. Defendant No.18) |

IN THE MATTER OF :

- | | | |
|----|--|------------------------|
| 1. | M/s. Mahendra Builders Pvt. Ltd., | |
| 2. | M/s. Seiko Properties Private Limited, | |
| 3. | Mr. Abdul Rehman Mohamed Yusuf Khan, & | |
| 4. | Mr. Rajeshkumar Milapchand Jogani. | .. Original Plaintiffs |

Versus

Smt. Padmabai w/o Ranchhoddas V. Uka
& Ors.

..Original Defendants

—

Shri F.R. Poonawala along with Shri Y.R. Shah for the Appellants in Appeal Nos.278 of 2015 and 279 of 2015 and for the Respondent Nos.1 and 2 in Appeal No.334 of 2015.

Shri Veerendra Tulzapurkar, Senior Counsel along with Shri Sandeep Parikh and Shri Durgaprasad Poojari i/b PDS Legal for the Respondents in Appeal Nos.278 of 2015 and 279 of 2015 and for the Appellant in the

Appeal No.334 of 2015.

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CORAM : A.S. OKA & A.A.SAYED, JJ

DATED : 15TH JULY 2016

ORAL JUDGMENT (PER A.S. OKA, J)

1. These Appeals can be disposed of by a common judgment as the same arise out of the same judgment and order of the learned Single Judge.

2. The challenge in these Appeals is to the judgment and order dated 27th February 2015 passed by the learned Single Judge. With a view to appreciate the rival contentions, a brief reference to the facts of the case will be necessary.

3. The impugned order has been passed in execution of the consent decree passed in Suit No.2824 of 1985. The date of the consent decree is 12th January 2004. By an order passed on that date, the learned Single Judge disposed of the suit in terms of the consent terms. It will be necessary to make a reference at this stage to the relevant portion of the consent terms which are material for consideration. The property subject matter of the suit was the land bearing City Survey No.525 and 1/525, Taj Building and Compound of

Malabar Hill Division and Cumballa Hill Division, situated at August Kranti Marg, Gowalia Tank, Mumbai – 400 036. The consent terms record that the Chamber Summons taken out in the suit was made absolute by which the Plaintiff Nos.3 and 4, the Defendant Nos.16, 17 and 18 were added as the parties. Clauses 3, 4, 5 and 6 of the consent terms read this:

“3. The parties hereto agree that the following consent terms are arrived at by and between the parties hereto and in consideration of this Defendant No.16 viz Rajanikant Devidas Shroff has agreed to allot the premises as provided in clause (4) herein below to Plaintiff No's 3 and 4, Defendant No's 17 and 18 and Kapoorchand H. Jogani (HUF) as provided in the respective Articles of Agreement between Defendant No.16 being the party of the second part and each of the above parties being the party of the first part.

4. Agreed, declared and confirmed that :

(a) By registered Articles of Agreement Dated 7th November, 2003 made between Rajanikant Devidas Shroff, the Defendant No.16 herein of the One part and Milapchand Hastimal Jogani, the Defendant No.18 of the other part, Rajanikant Devidas Shroff, the Defendant No.16 has agreed to allot premises admeasuring 1267 sq. ft. carpet area along with a car-parking space under stilt for the consideration and upon the terms and conditions mentioned in the said Articles of Agreement dated 7th November, 2003 hereto Annexed and marked Exhibit A-1.

(b) By registered Articles of Agreement dated 07th November, 2003 made between

- Rajanikant Devidas Shroff, the Respondent No.16 Herein of the One part and Mohammed Tahir Mohammed Yusuf Khan the Defendant No.17 the other part, Rajanikant Devidas Shroff, the Respondent No.16 has agreed to allot a premises admeasuring 1267 sq. ft carpet area along with a car-parking space under stilt for the consideration and upon the terms and conditions mentioned in the said Articles of Agreement dated 07th November, 2003 hereto Annexed and marked Exhibit A-2.
- (c) By registered Articles of Agreement dated 07th November, 2003 made between Rajanikanth Devidas Shroff, the Respondent No.16 herein of the One part and Kapoorchand Hastimal Jogani (HUF) of the Other part, Rajanikanth Devidas Shroff, the Respondent No.16 has agreed to allot a premises admeasuring 1267 sq. ft. carpet area along with a car-parking space under stilt for the consideration and upon the terms and conditions mentioned in the said Articles of Agreement dated 07th November, 2003 hereto Annexed and marked Exhibit A-3.
- (d) By registered Articles of Agreement dated 7th November, 2003 made between Rajanikanth Devidas Shroff, the Defendant No.16 herein of the One part and Mr. Abdul Rehman Mohammed Yusuf Khan, the Plaintiff No.3, of the Other part, Rajanikanth Devidas Shroff, the Defendant No.16 has agreed to allot a premises admeasuring 500 sq. ft. carpet area for the consideration and upon the terms and conditions mentioned in the said Articles of Agreement dated 7th November, 2003 hereto Annexed and marked Exhibit A-4.
- (e) By registered Articles of Agreement dated 7th November, 2003 made between

Rajanikanth Devidas Shroff, the Defendant No.16 herein of the One part and Rajesh Kumar Milapchand Jogani, the Plaintiff No.4 of the Other Part, Rajanikanth Devidas Shroff, the Defendant No.16 has agreed to allot a premises admeasuring 500 sq. ft. carpet for the consideration and upon the terms and conditions mentioned in the said Articles of Agreement dated 7th November, 2003 hereto Annexed and marked Exhibit A-5.

5. Subject to what is stated above, agreed, declared and confirmed now that Defendant No.16 Viz. Rajanikanth Devidas Shroff is the sole and absolute owner of the property situated, lying and being at 30, Gowalia Tank Road (now known as August Kranti Marg,) and more particularly described in the schedule hereunder written (hereinafter referred to as “the said Property”) and is hereafter in actual, physical and legal possession of the said property.
6. Agreed, declared and confirmed that neither the Plaintiffs nor the Defendant Nos.17 and 18 subject to what is stated hereinabove in clause (4) above shall have any right, title and interest in the said property and the Defendant No.16 is now entitled to all the benefits including rents, profits etc in respect of the said property.”

4. Clause 10 of the consent terms records that the Plaintiffs and the Defendant Nos.17 and 18 agree and confirm that the Defendant No.16 is the sole and absolute owner of the suit property. There are various other terms and conditions incorporated in the consent terms such as parties withdrawing allegations made against each other. Thus, as seen from the aforesaid clauses of the consent terms which are

reproduced, the consent decree provides for the allotment of the premises by the Defendant No.16 to the Plaintiff Nos.3 and 4 as well as Defendant Nos.17 and 18. As far as the premises to be allotted to the Defendant Nos.17 and 18 are concerned, the same were to be on the terms and conditions incorporated in the agreements dated 7th November 2003 (marked “A1” and “A2” to the consent terms). As far as the premises which are to be allotted to the Plaintiff Nos.3 and 4 are concerned, the premises mentioned in the consent terms were to be allotted on the basis of the terms and conditions mentioned in the Agreements dated 7th November 2003 (marked Exhibits “A4” and “A5”). Clause (5) provides that subject to what is agreed in the earlier paragraph viz. paragraphs 3 and 4 of the consent terms, it is confirmed that the Defendant No.16 is the owner of the suit property.

5. Execution Application No.99 of 2011 was filed by the Original Plaintiff Nos.3 and 4. The Application for execution proceeds on the footing that the consent decree is in respect of handing over certain properties to the Applicants. Execution Application No.241 of 2011 was filed by the Defendant Nos.16 and 17 for the execution of the same decree.

6. In both the Execution Applications, a notice under Rules 22 of Order XXI of the Code of Civil Procedure, 1908 (for short “the said

Code”) was issued by the learned Single Judge. In both the Execution Applications, an order of attachment was issued by the learned Single Judge. As there was no opposition by the Defendant Nos.16, under the order of the learned Single Judge, the notice under Rule 22 of Order XXI of the said Code in Execution Application No.241 of 2011 was made absolute as against the Defendant No.16 against whom, the execution was prayed for. In Execution Application No.99 of 2011, the notice was made absolute on 13th March 2012.

7. In the Execution Application No.241 of 2011, a Chamber Summons No.877 of 2011 was taken out by the Applicants in the Execution Application seeking various directions against the Defendant No.16 including a direction to complete redevelopment of the property within the stipulated period, for appointment of a Court Receiver, and other prayers. In the same Execution Application, a Chamber Summons being Chamber Summons No.848 of 2012 was taken out by the Defendant No.16 for raising an objection to the attachment. In the other Execution Application being Execution Application No.99 of 2011, a similar Chamber Summons being Chamber Summons No.695 of 2011 was taken out by the Applicants and Chamber Summons No.818 of 2012 was taken out by the Defendant No.16. The learned Single Judge before whom all the Chamber Summonses were placed, passed an order dated 9th October 2014 by which the attachment on the residential

premises of the Defendant No.16 levied earlier was ordered to be cancelled and raised. The attachment and the stay on the attachment as regards the suit property was ordered to be continued pending the negotiations and settlement of the Defendant No.16 with the other tenants and occupants in respect of the suit property. Clause 4 of the Paragraph 14 of the said order records that the Execution Applications were adjourned to 1st December 2014 to enable the parties to settle the dispute and to commence construction. The learned Single Judge directed that pending the Execution Applications, the Applicants shall not take further steps. The said order was subjected to a challenge by preferring an Appeal (L) No.681 of 2014 by the Defendant No.16. The Appeal was disposed of by a Division Bench of this Court by its order dated 21st November 2014 by observing that the impugned order does not finally decide the rights of any of the parties and in fact protects the right of the parties. Paragraphs 3 to 5 of the said order read thus:

- “3. Under the consent decree the respondents are to receive four flats. The respondents have confirmed the title of the property in favour of the appellant in consideration thereof. Whether the rights of each of the parties are conditional upon the other parties fulfilling their obligations under the consent decree or not are all issues which can be decided in the Execution Application itself.
4. The impugned order therefore in fact protects and safeguards the property, pending the final disposal of the Execution Application.
5. In the circumstances, the appeal is dismissed. It is

clarified that all issues including whether the decree is executable or not are kept open.

In view of the disposal of the appeal, nothing further survives in the Notice of Motion. The Notice of Motion is also accordingly disposed of.”

8. Thereafter, the order impugned in these Appeals was passed by the learned Single Judge on 27th February 2015. The learned Single Judge held that the consent decree was executable. In Paragraph 31, the learned Single Judge observed that the Defendant No.16 must be allowed to construct and redevelop the suit property and, therefore, to enable the Defendant No.16 to construct and redevelop the suit property, the attachment levied on the suit property will have to be stayed. Operative part of the impugned order reads thus:

“32. Hence the following order:

1. The attachment levied upon the suit property is stayed.
2. Defendant No.16 shall be entitled to redevelop and construct the suit property.
3. So soon as the property to the extent of two premises admeasuring 1267 sq. ft and two premises admeasuring 500 sq. ft. and totalling 3534 sq. ft carpet area are constructed, the attachment thereon shall come into force without any further order of the Court. There shall, however, be no attachment in respect of any further constructions to be put up by defendant No.16 thereafter.
4. The plaintiff Nos. 3 and 4 and defendant Nos. 17 and 18 shall be entitled to further execute the

decree if defendant No.16 fails to handover the premises agreed, declared and confirmed to be allotted under clause 4 of the consent terms, upon its construction/redevelopment.

5. Order accordingly.”

9. Before we deal with the submissions made across the bar, what is material is Paragraph 18 of the impugned order which records the statement of the Defendant No.16 who was personally present in the Court. Relevant part of the Paragraph 18 reads thus:

“Mr. Madon on behalf of defendant No.16 who is present in Court, stated and confirmed that defendant No.16 shall allot the premises specified in the consent terms, (which includes the premises to be allotted to the above HUF also) but only if the premises is constructed. Since the premises has not been able to be constructed, he stated that defendant No.16 cannot allot any specified premises and the premises not being in existence, the Court also cannot execute the allotment of any such premises.”

10. Appeal No.278 of 2015 has been preferred by the Original Plaintiff Nos.3 and 4. Appeal No.279 of 2015 has been preferred by the Original Defendant Nos.17 and 18 and the Appeal No.334 of 2015 has been preferred by the Defendant No.16.

11. The learned counsel appearing for the Plaintiff Nos.3 and 4 and the Defendant Nos.17 and 18 have taken us through the impugned order which holds that the decree under execution is executable. He

invited our attention to the order dated 21st November 2014 passed in Appeal (L) No.681 of 2014. He pointed out that the learned Single Judge while holding that the decree was executable, has not issued a direction to the Defendant No.16 to start redevelopment of the suit property and to construct upon the suit property and thereafter, to allot the premises which were agreed to be allotted to the Plaintiff Nos.3 and 4 and the Defendant Nos.17 and 18. He pointed out that the Applicants in the Execution Applications are waiting for several years for allotment of the flats. He pointed out relevant clauses in the consent terms on the basis of which a consent decree was passed and submitted that the Defendant No.16 has secured substantial advantage under the consent decree and is claiming to be the owner on the basis of the consent decree. He is claiming to be the owner on the basis of the consent decree under which he was under an obligation to allot the premises. The learned counsel appearing for the Appellants in these two Appeals would urge that the learned Single Judge ought to have issued necessary directions in terms of the assistance sought by the Applicants in the Execution Applications from the Executing Court. Reliance was placed on a decision of the learned Single Judge in the case of *Harihar Pandey v. Mangala Prasad Singh and others*¹.

12. The learned Senior Counsel appearing for the Defendant No.16 after inviting the attention of the Court to the terms and

¹ AIR 1986 Allahabad 9

conditions incorporated in the consent decree, submitted that there is no executable decree passed by the learned Single Judge on the basis of the consent terms. He urged that there is no decree for specific performance passed in the suit which can be executed and there are clauses in the consent terms merely declaring the rights of the parties. He would urge that the consent terms were merely taken on record and the seal of the Court was superadded to it. He urged that the consent decree is not an executable decree. His submission is that remedy if any, available to the Applicants in the Execution Applications is to file a suit for specific performance for enforcing the terms and conditions in the consent terms which are at highest a contract between the parties. Reliance was placed on behalf of the Defendant No.16 on the decision of the learned Single Judge of Patna High Court in the case of *Meghraj Sah v. Rajbansi Lal and others*² as well as a decision of the Division Bench of Calcutta High Court in the case of *Syama Charan Das v. Satya Prasad Chaudhuri*³. The said decisions are pressed into service in support of the contention that at highest the consent decree is a declaratory decree and it does not direct any act to be done by the Defendant No.16 and therefore, only remedy available to the Applicants in the Execution Applications is to enforce the Agreement reflected from the consent terms by filing a suit.

² AIR 1958 Patna 546

³ AIR 1923 Calcutta 252

13. We have given careful considerations to the submissions. We must note here that the order making a notice under Rule 22 of Order XXI of the said Code has been made absolute by the learned Single Judge in both the Execution Applications and the said order has become final. Nevertheless, the learned Single Judge in view of the order of the Division Bench dated 21st November 2014 in the Appeal (L) No.681 of 2014 dealt with the issue of executability of the decree. As pointed out earlier, the Clause 5 of the order clarified that all the issues including the issue whether the decree is executable or not was kept open by the Division Bench.

14. We have already reproduced relevant clauses of the consent terms and especially clauses 3 to 5 thereof. Clause 4 begins by the sentence “agreed, declared and confirmed that” What is agreed is reflected from the four registered Agreements dated 7th November 2003 which were part of the consent terms (Exhibits A1, A2, A4 and A5). So clause 4 of the consent terms is not a mere confirmation of the registered Articles of Agreements dated 7th November 2003. The Clause 4 means that the Defendant No.16 agreed to abide by the registered Agreement dated 7th November 2003.

15. As far as the nature of the consent decree is concerned, we may make a useful reference to the decision of the Apex Court in the

case of *Prithvichand Ramchand Sablok v. S.Y. Shinde*⁴. The Apex Court in Paragraph 4 held that it is well settled that a decree passed on the basis of a compromise by and between the parties is essentially a contract between the parties which derives sanctity by the Court superadding its seal to the contract. But all the same, the consent terms retain all the elements of a contract to which the Court's imprimatur is affixed to give it the sanctity of an executable Court order. Thus, the effect of the consent decree is that the Court affixes a seal on the contract between the parties which gives it a sanctity of an executable order of the Court.

16. Now coming back to the consent terms, as is clear from the language used by Clause 4 of the consent terms, the Defendant No.16 solemnly agreed to abide by the Agreements dated 7th November 2003 which were a part of the consent terms being annexed to the consent terms. Clause 5 of the consent terms specifically records that subject to what is stated in Clauses 3 and 4, it is agreed, declared and confirmed that the Defendant No.16 is the sole and absolute owner of the suit property and is in the actual, physical and legal possession of the suit property. All the clauses in the consent terms have become a part of the consent decree admittedly passed in terms of the said consent terms. If all the relevant clauses in the consent terms are read and in particular the Clause 4 thereof, there is clearly a decree for specific

⁴ (1993)3 SCC 271

performance of the said Agreements dated 7th November 2003 annexed to the consent terms, subject to the modification made by the consent terms. The effect of Clause 4 is that the Defendant No.16 agreed to abide by the Agreements dated 7th November 2003 under which the Applicants in the Execution Applications were entitled to allotment of the premises specified therein.

17. An argument was canvassed on behalf of the Defendant No.16 that the consent decree does not provide for doing any further act and at highest, it is merely a declaratory decree. It is argued that there is no provision in the consent decree for handing over possession of the premises subject matter of the Agreements. As reiterated earlier, the consent decree is a decree enjoining the Defendant No.16 to comply with the Agreements dated 7th November 2003. There may not be any specific clause which provides that the Defendant No.16 shall complete the construction and place the Applicants in the Execution Applications in possession of their respective premises. The construction of the building is implicit in the consent terms as the Agreements dated 7th December 2003 cannot be complied with without construction of the building. On this aspect, we may make a useful reference to a decision of a learned Single Judge of this Court in the case of *Lotu Bandu Sonavane v. Pundalik Nimba Koli*⁵. The issue was of the effect of the failure to incorporate in a suit for specific performance of the

5 1985 Mh.L.J. 359

Agreement for sale a prayer for a decree of possession. In Paragraphs 5 to 7, the learned Judge discussed the law on the point and the various provisions of the Transfer of Property Act, 1882. The learned Judge held that in execution of a decree for specific performance, the Judgment Debtor is bound to deliver the possession of the property subject matter of the decree after the execution of the conveyance though there is no specific prayer in the plaint for delivery of the possession and though the decree is silent about the delivery of possession. Paragraph 7 of the said decision reads thus:

“7. Admittedly the respondent in this case is in possession of the property, which is subject matter of the decree for specific performance and is bound to deliver possession of the property after execution of the sale-deed. Hence even though no specific prayer is made in the plaint and even though the decree is silent about delivery of possession, the executing Court was bound to grant the relief.”

18. We may note here that in the said case, pending the Execution Application, an Application for amendment of the Plaint was made for incorporating a specific prayer for possession. The learned Single Judge held that such a prayer is not necessary. However, the learned Single Judge proceeded to permit the amendment after holding that though there may not be any specific decree for handing over possession of the premises subject matter of the decree for specific performance, the Executing Court can always direct delivery of

possession. We respectfully concur with the said view.

19. Therefore, in the present case, when the consent decree is essentially a consent decree in the nature of specific performance of the aforesaid four Agreements, the Defendant No.16 is bound to perform the said Agreements and merely because there is no further provision in the decree for placing the Applicants in the Execution Applications in possession of their respective premises and merely because there is no consequential direction for commencing and completing construction, it cannot be said that the decree cannot be executed. As stated earlier, in the light of the Defendant No.16 agreeing to abide by the said Agreements, the Applicants in the Execution Applications agreed to accept the Defendant No.16 as a sole and absolute owner of the suit property.

20. As far as the decision of the learned Single Judge of Patna High Court in the case of *Meghraj Sah v. Rajbansi Lal and others* is concerned, firstly the said decision does not bind this Court. Secondly, it is contrary to the law laid down by the learned Single Judge of this Court in the case of *Lotu Bandu Sonavane v. Pundalik Nimba Koli*. As far as the decision of the Division Bench of Calcutta High Court in the case of *Syama Chavan Das v. Satya Prasad Chaudhuri* is concerned, in the facts of the case, the Calcutta High Court was of the

view that in essence, the decree was a declaratory decree. It was held that a decree which merely declares the rights of parties and does not direct any act to be done, is incapable of execution and in such a case, a separate suit will lie for enforcing the same. In the present case, the consent decree is a decree in the nature of specific performance of the aforesaid Agreements and, therefore, for the reasons which we have recorded, the decree does not cease to be executable. The decision of the Division Bench of Calcutta High Court is rendered on the basis of the facts of the case before it. We may also make a reference to the decision of the learned Single Judge of Allahabad High Court in the case of *Harihar Pandey v. Mangala Prasad Singh and Others*.

Paragraphs 8 and 9 of the said decision read thus:

- “8. A decree is a formal expression of an adjudication that conclusively determines the rights of the parties as respects the matter in controversy. However, this adjudication of rights may take place after contest, and also by consent i.e. under a compromise.
9. It is urged that under the compromise petition injunction was not specifically granted but is that really necessary? Where in an injunction suit the decree merely says that the suit be decreed, can it be said that it grants no injunction? In such a case the decree must be correlated to the relief claimed in the plaint Similarly where the parties agree to a future mode of conduct either by doing something or by refraining to do some act and obtain a decree in those terms this may, in appropriate cases, amount to self induced injunction against one's self. There cannot be any real difference in

an injunction granted by the court after adjudication of the rights and a self invited injunction under a compromise decree. However, what one has to look for in such a case is to search for the real intent of the parties. If the prohibitions and/or positive mandates mentioned in the compromise to regulate their future mode of conduct were intended to be enforced as injunction then, notwithstanding the fact that no injunction is specifically granted under the decree, it must be held to be one for injunction. For doing so the court must only delve deeper in order to discover the true intent of the parties and that alone must be given effect to. In such cases, too strict an interpretation of the compromise petition must not be attempted and an allowance must always be made for infirmity of expression in the compromise petition.”

21. The law laid down by the learned Single Judge certainly assists the decree holders. As far as the subject matter of compromise is concerned, after the amendment to the said Code in the year 1976, it is permissible for the Court to pass a consent decree so far as it relates to the parties to the suit whether or not the subject matter of the compromise is the same as the subject matter of the suit.

22. Therefore, we concur with the submissions made by the Applicants in the Execution Applications that the consent decree is executable. We must note that there were certain submissions made by the learned counsel appearing for the Defendant No.16 as regards some of the findings recorded by the learned Single Judge. But independently

of the said findings, we hold that the decree was executable.

23. While contending that the decree is not executable, the Defendant No.16 made a statement before the learned Single Judge which we have quoted in the earlier part of the judgment. Perusal of the operative part of the decree shows that there is no direction issued by the learned Single Judge for execution of the decree as such. As stated earlier, the Executing Court in the present case is entitled to issue directions for carrying out the construction of the building and for delivery of possession of the premises subject matter of the consent decree. A direction could have been issued for enforcing that part of the consent decree by issuing all directions which are incidental and ancillary to the main relief sought in the Execution Applications. If a decree provides for Judgment Debtor handing over possession of the premises to the decree holder, while considering the case of execution in terms of Rule 35 of Order XXI of the said Code, the Executing Court is not powerless to pass incidental and ancillary direction with a view to ensure that the decree is executed in its true letter and spirit. As stated earlier, only in view of the solemn assurance given by the Defendant No.16 which is contained in the consent decree to abide by the aforesaid Agreements that the parties agreed to declare that the Defendant No.16 to be the sole and absolute owner of the suit property.

24. If the Defendant No.16 is to develop the suit property, the order of attachment of the suit property will have to be suitably modified. However, in the operative part of the impugned order, there is no direction issued by the Executing Court to the Defendant No.16 to commence the construction and to deliver the possession. Therefore, the submissions made by the learned counsel representing the Applicants in the Execution Applications/decreed holders as regards the correctness of the operative part of the impugned order will have to be accepted.

25. We are of the view that though the findings recorded in the impugned order deserve to be confirmed. But by setting aside the operative part of the impugned order, the matter will have to be remitted to the learned Single Judge dealing with the Execution Applications for passing appropriate orders in accordance with law. To that extent, the Appeals preferred by the Applicants in the Execution Applications must succeed. However, the Appeal preferred by the Defendant No.16 has no merit and the same will have to be dismissed.

26. Accordingly, we pass the following order:

ORDER :

- (a) The Appeal No.334 of 2015 is hereby dismissed with no order as to costs;
- (b) The Appeal No.278 of 2015 and the Appeal No.279 of 2015 are partly allowed by setting aside the operative part of Paragraph 32 of the impugned order and by restoring the Chamber Summonses taken out by the Applicants in the Execution Applications;
- (c) We direct that Execution Applications therein shall be placed before the learned Single Judge dealing with the Execution Applications on expiry of period of two months from the date on which this Judgment and Order is uploaded;
- (d) We are sure that the learned Single Judge will pass appropriate order in the light of what is held in this judgment as expeditiously as possible;
- (e) Pending Notices of Motion, if any, in the Appeals do not survive and the same are disposed of.