

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

Reserved on: 19.02.2016
Pronounced on: 31.03.2016

+ **EFA (OS) 5/2014 AND C.M. NO.3319/2014**

SMT. VEENA MAHAJANAppellant
Through: Ms. Shivani Luthra Lohiya with Ms. Shreya
Singh, Advocates.

Versus

SH. V.N. VERMA AND ORS.Respondents
Through: Sh. A.K. Singh, Sr. Advocate with Sh. H.D.
Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. The appellant Decree Holder is aggrieved by the order of a learned Single Judge staying execution proceedings, till decision in a suit, i.e. CS(OS) 779/2001 is rendered.
2. The Decree Holder had entered into an agreement with the original owner of the property, first respondent in these proceedings (hereafter called "Verma"), on 14.02.1986. He filed a suit on 11.03.1988, claiming specific performance of that agreement to sell. Before the filing of the suit, another agreement to sell was entered between Verma and one Kamlesh Gupta. The suit filed by the Decree Holder for Specific Performance was allowed and decreed in full on 29.04.1998. In the meanwhile, it is alleged that on 27.11.1990 yet another agreement to sell the same property was entered into

between Kamlesh Gupta and the second and third respondents (i.e. Meena Rani and Nalini Gupta), alleged vendee during pendency of the Decree Holder's suit. It was alleged that the property was handed over to them; and that they constructed a boundary sometime in 1998. The agreement to sell-dated 27.11.1990 entered into between Kamlesh Gupta and the said two respondents also contained an endorsement by the first respondent Verma.

3. The Division Bench rejected Verma's appeal. The second and third respondents had sought for impleadment as respondents in the appeal preferred by the first respondent Verma. The Division Bench dismissed Verma's appeal RFA (OS) 26/1998. The Division Bench held, among others, in regard to the application filed by Meena Rani and Nalini Gupta that the agreement to sell in their favor entered into on 27.11.1990 did not create any right or title or interest in property. After the decision of the Division Bench, execution proceedings were initiated by the Decree Holder. Notice was issued on 27.08.2012. In the meanwhile, Meena Rani and Nalini Gupta filed a suit CS(OS) 779/2001 against Verma who was the vendor (first respondent in this case) and Judgment Debtor as well as against Kamlesh Gupta for specific performance of the agreement to sell dated 27.11.1990 and of agreement dated 21.01.1988; in relation to the same suit property. These two plaintiffs alleged that on 21.01.1988 Verma executed Special Power of Attorney as well as an undertaking through affidavit and an agreement to sell in favor of Kamlesh Gupta in respect of the suit property and handed over possession to her. Kamlesh Gupta in turn executed an agreement to sell on 27.11.1990 in favor of the said two individuals Meena Rani and Nalini Gupta. Meena Rani and Nalini Gupta added the appellant/Decree Holder

Veena Mahajan as first defendant in the suit CS(OS) 779/2001 filed by them for specific relief and a declaration that Kamlesh Gupta their vendor had conveyed title and property rights, in respect of the suit property, and the plaintiffs were thus entitled to protection as well as possession of the property, both against the present appellant/Decree Holder as well as the original owner, Verma.

4. The issues framed in CS(OS) 779/2001 include the effect of decree of specific performance already passed in favor of defendant No. 1 (in the suit, i.e. the present appellant). This issue, therefore, directly relates to the judgment and decree of 19.04.1998 made in favor of the Decree Holder in Suit No.553/1988. The learned Single Judge rejected the reliance placed by the Decree Holder/appellant on order XXI Rules 97, 98 and 99 of the Code of Civil Procedure (CPC) stating that the second and third respondents - Meena Rani and Nalini Gupta had not been given possession by the Judgment Debtor. It was held that Order XXI Rule 97 applies when the Decree Holder is faced with an objection or obstruction caused by a person in possession of the suit property. The Decree Holder had not filed such an application. It was held, further and more fundamentally that the decree in execution sought delivery of possession. However, there was no decree for possession. The respondents Meena Rani and Nalini Gupta had argued that in terms of Explanation 5 to Section 11 CPC, possession was deemed to be refused by the Court. Taking note of all these contentions it was held that since the true effect of the judgment relied upon by the Decree Holder was in issue in the subsequently instituted suit, there was no reason to allow multiplicity of proceedings by deciding the applications (for impleadment) at

that stage. The learned Single Judge, therefore, decided to stay further proceedings in execution suit and levied the decision in the suit filed later, i.e. CS(OS) 779/ 2001.

5. Learned counsel for the Decree Holder submitted that the learned Single Judge fell into error in holding that the decision in CS(OS) 779/2001 was necessary before taking up the question of execution proceedings. He pointed out that the first appeal preferred by the Judgment Debtor, Verma, was rejected; in the judgment, the Division Bench noted that the present respondents' contentions (i.e. Meena Rani and Nalini Gupta) about lack of knowledge was difficult to believe. The Division Bench had observed as follows:

“30. Besides, the applicant admits that as of 07.12.1998, the applicant was in the process of erecting a boundary wall and constructing a chowkidar room on the plot. It assumes importance that the applicant claims to have purchased the plot under an Agreement to Sell on 26.11.1990. The applicant pleads having acquired knowledge of the decree on 07.12.1998, a fact which is difficult to believe inasmuch as it does not stand to logic and reason that having purchased a plot, the applicant would not construct thereon for eight years. It is apparent that the applicant knew of the pending suit and when the decree was passed, attempted to alter the status at site.

31. CM No.2058/1998 is accordingly dismissed.

6. Mr. Ravi Gupta, learned senior counsel, also argued that the impugned judgment is erroneous because the learned Single Judge overlooked that Order XXI Rules 97-100 which oblige the executing Court to decide whether a claim for lawful occupation by the obstructionist to a decree is well-founded. It is argued that an agreement to sell by itself does not create any

right to property; thus the plaintiffs in the later suit, i.e. Meena Rani and Nalini Gupta cannot claim any overriding right over the suit property, based on the agreement to sell executed allegedly in their favour by the intervening purchaser, Kamlesh Gupta. Counsel relied on *Kashinat Bhaskar Datar v Bhaskar Vishweshwar*¹; and *Raheja Universal Ltd. v NRC Ltd*² in support of this proposition. It was submitted that since Kamlesh Gupta's title and right to the property was dubious and suspect, there could have been no question of her executing a valid and legally enforceable agreement to sell with the second and third respondents. Reliance is placed on the judgment reported as *Sanjeev Lal v Commissioner of Income Tax*³.

7. The Decree Holder argues that the suit of the second and third respondents (Meena Rani and Nalini Gupta) lacks *bona fides*, because the agreement to sell on which it is premised, violates the *ad-interim* injunction dated 14.03.1988, issued by the Court, during pendency of the suit (filed by the Decree Holder) for specific performance. It is argued that the said agreement to sell is *per se* unenforceable. Learned counsel relies on the decision in *Surjit Singh v Harbans Singh*⁴. It is lastly contended that a decree for specific performance impliedly contains directions incidental to do all those things, necessary to secure full compliance with the contract for sale, including a decree for handing over possession. Reliance is placed on *Babulal v Hazari Lal Kishore Lal*⁵ and other decisions of various High Court.

¹ AIR 1952 SC 153

² 2012 (4) SCC 148

³ AIR 2014 SC 5589

⁴ 1995 (6) SCC 50

⁵ 1982 (1) SCC 525

8. The factual setting described above shows that when the Decree Holder had instituted the suit, which led to the decree, in March, 1988, the second agreement to sell had been entered into between his Vendor (the Judgment Debtor, Verma) and Kamlesh Gupta. The civil suit filed by the Decree Holder, however, did not cover that transaction; it was premised on the earlier agreement to sell. Kamlesh Gupta thereafter entered into another agreement to sell with the second and third respondents (Meena Rani and Nalini Gupta) during the pendency of the suit instituted by the Decree Holder. The said two transferees claimed that they were in possession of the suit property after *the agreement to sell relied on by them (27.11.1990)* was entered into.

9. Section 19 of the Specific Relief Act, to the extent it is relevant is extracted below:

“19. Relief against parties and persons claiming under them by subsequent title. – Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;..”

10. It is clear that by virtue of Section 19 (c) *“a suit for specific performance cannot be enforced against a person who is a transferee from the vendor for valuable consideration and without notice of the original*

*contract which is sought to be enforced in the suit.”*⁶. The Supreme Court had ruled earlier that

*“The purpose of Section 52 of the Transfer of Property Act is not to defeat any just and equitable claim but only to subject them to the authority of the Court which is dealing with the property to which claims are put forward.”*⁷

11. In this case, as noticed earlier, the agreement to sell in favour of Meena Rani and Nalini Gupta’s predecessor-in-interest, i.e. Kamlesh Gupta, was entered into, before the Decree Holder instituted the suit. The suit was decreed in 1998; the said two women filed a later suit, i.e. CS(OS) 779/2001. That suit impleaded the owner as well as the present appellant/Decree Holder. It is not in dispute that the appellant Decree Holder has contested the suit. That the Judgment Debtor (Verma) preferred an appeal, which was eventually dismissed in 2012, during the course of which the Division Bench also rejected another application for impleadment by Meena Rani and Nalini Gupta, would not itself alter the circumstances in such manner that the Decree Holder can proceed with execution proceedings. Taking note of antecedent events as well as the fact that the question on whether predecessors-in-interest of Meena Rani and Nalini Gupta passed any enforceable title or not is pending trial, the learned Single Judge, in our opinion, chose a prudent path to merely stay the execution proceedings during pendency of the suit [CS(OS) 779/2001]. There is no infirmity with the order, or approach of the learned Single Judge,

⁶ *Thomson Press (India) Ltd vs Nanak Builders & Investrs (P) Ltd & Ors* 2013 (5) SCC 397.

⁷ *Jayaram Mudaliar vs Ayyaswami & Ors* 1972 (2) SCC 200.

12. For the above reasons, it is held that no grounds exist, for upsetting the impugned judgment; the appeal fails and is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

MARCH 31, 2016

