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

Judgment reserved on: 03.11.2015

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Judgment delivered on: 12.07.2016

+ **EX.F.A. 25/2014**

SADHNA GUPTA & ORS

..... Appellants

Through: Mr. S.C. Singal and Mr. S.K. Rout,
Advocates

versus

SHISH PAL & ANR

..... Respondents

Through: Mr. Bhagwat Prasad, Advocate
Mr. Jaswant Singh for Mr. Yeeshu
Jain for R-2

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present is an execution first appeal under Order 21 Rule 58 CPC directed against the order dated 31.07.2014 passed by the learned ADJ, Saket Courts, New Delhi. By the impugned order, the learned ADJ disposed

of four applications before him. The particulars of these application shall be taken note of a little later. At the core of all these applications, the controversy was the same.

2. The dispute between the parties relates to their competing claims towards enhanced compensation in respect of land falling in field No.1771/1639 admeasuring 0-17 (17 biswas only) situated in the revenue estate village Tughlakabad, Tehsil Kalkaji, New Delhi. The said land was notified for acquisition under the Land Acquisition Act (the Act) on 08.06.1992. Declaration under section 6 of the Act was made on 29.07.1992 and Award no.4/94-95 as passed on 11.05.1994. Possession of the same was taken over on 04.07.1998, which vested in the government free from all encumbrances. In the said land, the following persons had specified shares:

- i) Sh. Madan Lal Mittal
- ii) Sh D.K. Mittal (son of Sh. Madan Lal Mittal)
- iii) Sh. Sanesh Kumar Mittal (son of Sh. Madan Lal Mittal)
- iv) Smt. Sadhna Gupta (daughter of Sh. Madan Lal Mittal and wife of Sh. Arun Kumar Gupta)-appellant No.1, and
- v) Sh. Shishpal– the respondent no.1.

3. Compensation was received by the aforesaid parties in their respective shares as assessed by the Land Acquisition Collector (LAC). They preferred

a joint reference under section 18 of the Act before the LAC. The same was forwarded to the Court by the LAC for adjudication of the market value. The petitioners in the reference petition, including respondent no.1 Shishpal, pursued the reference under section 18 of the Act. The reference Court assessed the market value of the acquired land @ Rs.3,000/- per sq yd vide judgment dated 19.01.2004. While doing so, the reference Court placed reliance on the earlier judgment of this court in RFA No.461/1995 titled ***Harichand v. Union of India*** dated 30.03.2001, wherein the market value had been assessed @ Rs.3,000/- per sq yd and the SLP filed by the Union of India being SLP (C) No.7428/2002, against the said judgment had also been dismissed.

4. Madan Lal Mittal, D.K. Mittal, Sanesh Kumar Mittal and Sadhna Gupta filed their execution to execute the decree passed by the reference Court to the extent of their respective shares, and received the enhanced compensation in 2005. Thereafter, Madan Lal Mittal expired on 08.05.2007.

5. On 17.12.2007, Arun Kumar Gupta - the son-in-law of Madan Lal Mittal and the husband of Sadhna Gupta-appellant No.1 filed Execution Petition No.490/2007 to execute the decree dated 19.01.2004 passed in favour of respondent no.1 Shishpal, who was decree holder no.6.

6. This action of Arun Kumar Gupta was premised on a registered Assignment cum Sale deed dated 22.11.2003 allegedly executed by Shishpal- respondent no.1 in his favour, through his attorney Madan Lal

Mittal. Madan Lal Mittal acted for and on behalf of Shishpal – respondent no.1 on the basis of a General Power of Attorney dated 06.11.2001 executed by Shishpal and his wife Krishna Devi. Neither the General Power of Attorney dated 06.11.2001, nor the Assignment cum Sale deed dated 22.11.2003 were produced before the reference Court, even though the reference was subsequently decided on 19.01.2004. No application under Order 22 Rule 10 CPC was filed by Arun Kumar Gupta before the reference court to seek substitution of Shish Pal by Arun Kumar Gupta before the decision of the Reference.

7. Arun Kumar Gupta also filed an application under section 151 CPC seeking permission to file execution, and another application under Order 22 Rule 10 CPC seeking to substitute himself in the decree dated 09.01.2004 in place of Shish Pal, the respondent herein. Of the four, these are two of the applications dismissed by the learned Additional District Judge.

8. In January 2008, respondent no.1 Shishpal filed an Execution Petition to claim his share of the enhanced compensation under the decree dated 19.01.2004.

9. I may observe that the case of respondent no.1, in response to the applications initiated by Arun Kumar Gupta was that the said General Power of Attorney dated 06.11.2001 was executed by him and his wife to authorize Madan Lal Mittal to contest a case under sections 30-31 of the Act pending in the Court of Smt. Asha Menon, ADJ, Delhi. In the said dispute under

section 30-31 of the Act, Smt. Kanta Devi, wife of Madan Lal Mittal, respondent no.1 Shishpal and Smt. Krishna Devi, wife of Shishpal stood on one side to stake their claim in respect of compensation, while one Sh. Hukum Chand and others stood on the other side to stake their claim for compensation.

10. Arun Kumar Gupta died on 07.04.2008. Consequently, the appellants-being the legal representatives of late Sh Arun Kumar Gupta, moved an application under section 151 CPC before the executing court to seek dismissal of the execution petition filed by Shishpal/respondent No.1. In October 2009, the appellants moved an application under Order 22 Rule 10 CPC for substitution of their names as decree holders in place of Shishpal/ respondent no.1 along with an application under Section 152 CPC for amendment and correction of the judgment and decree dated 19.01.2004. The executing court allowed the application of the appellants for substitution of their names in place of Arun Kumar Gupta. However, the application filed by the appellants under Order 22 Rule 10 CPC and under Section 152 CPC for correction of the decree were dismissed. The executing court held that it could not go beyond the decree and, consequently, allowed the execution preferred by respondent no.1.

11. Mr. Singhal submits that while holding against the appellants and in favour of respondent no.1, the learned ADJ concluded that the right to claim enhanced compensation is a mere right to sue, and no sale or assignment could be made in respect thereof by virtue of Section 6(e) of the Transfer of

Property Act. He further submits that the learned ADJ was also impressed by the fact that the sale consideration disclosed in the Assignment cum Sale deed was Rs.2 lacs only, and the instrument did not disclose the mode of payment i.e. whether it was by cheque or in cash. This was held to be relevant, since the respondent no.1 had denied the receipt of the said consideration. The learned ADJ was also influenced by the fact that compensation had already been awarded @ Rs.3,000 per sq yd in respect of similar lands (as already taken note of herein above, vide RFA No.461/1995 decided on 30.03.2001). Consequently, the share of respondent no.1/ decree holder no.6 in the enhanced compensation came to Rs.1.50 crores, and there would have been no reason for him to transfer his right to receive enhanced compensation for a paltry amount of Rs.2 lacs. The learned ADJ was also of the view that after the issuance of notification under section 6 of the Act, no assignment or transfer could be made in view of the restriction contained in the Delhi Land (Restrictions on Transfer) Act, 1972. Consequently, the assignment deed was held to be fraudulent. The learned ADJ held that the respondent could not be non-suited on the basis of the Assignment cum Sale deed, and that the executing court could not go beyond the decree.

12. Mr. Singhal submits that so far as the findings returned by the learned ADJ with regard to assignability of the respondents right to receive enhanced compensation is concerned, the said issue is no longer *res integra*. In this regard, he had placed reliance on the decision of this Court in ***Mahavir Goel v. Union of India & Ors.*** in C.M. (M) No.98/2015 decided

on 03.08.2015. He has also placed reliance on *Sh. Chandan & Ors. v. Union of India*, C.M. No. 2096/1995 in RFA No.237/1992 decided on 07.11.1997, and *Laxmi Narain v. Union of India & Anr.* RFA No.140/1972 decided on 24.11.1977. In *Mahavir Goel* (supra), this Court while placing reliance on *K.D. Sawhney & Ors. v. Union of India & Ors.* in FAO No.294/2014 decided on 15.10.2014, and the decision in *Om Prakash & Ors. v. Union of India & Ors.* in C.M. (M) No.616/2008 decided on 18.12.2014, allowed the petition directed against the order passed by the learned ADJ in LAC No.117/2011. The learned ADJ had invoked section 6(e) of the Transfer of Property Act to hold that such a transfer to receive enhanced compensation was bad in law.

13. He also places reliance on the decision of this Court in *Hari Ram v. K.L. Gandhi*, Cr. P No.866/1999. In this case, premised on an assignment deed, assigning his right to receive compensation by K.L. Gandhi and another, the assignee Hari Ram filed an application under Order 22 Rule 10 CPC for substitution of the assignee in the decree. However, that application under Order 22 Rule 10 was disposed of with the observation that the proceedings had already come to a conclusion by passing of a decree. Consequently, the assignee initiated execution proceedings, in which notice was issued to the assignors, namely, K.L. Gandhi and Pehlad Gandhi under Order 21 Rule 16 CPC. In response to the notice, K.L. Gandhi filed his objections. His objection was that the consideration for execution of the assignment deed was wholly insufficient, and much below the market price

of the land. The executing Court directed the parties to lead evidence in support of their respective claims. Against that order, the assignee preferred the aforesaid revision petition before this Court. This Court considered the issue whether, in view of the admission of K.L. Gandhi with regard to execution of the assignment deed – though it was claimed that the consideration was insufficient, any further adjudication by recording of evidence was called for before the executing Court. This Court answered the said issue in favour of the petitioner by holding that no plea of coercion, or the like, had been raised by K.L. Gandhi. Mere insufficiency of consideration was held to be no ground to disregard the assignment deed. The assignors had not challenged the assignment deed by bringing an action for cancellation of the said deed under the Specific Relief Act or any other provision of law within the period of limitation i.e. within three years from the date of the execution of the assignment deed. Mr. Singhal submits that the decision in ***Hari Ram*** (supra) was affirmed by the Supreme Court with the dismissal of SLP (C) No.15575/2004 on 10.12.2004. Even the review petition was dismissed on 02.02.2005, and the curative petition was also dismissed on 06.10.2005.

14. Mr. Singhal submits that in the present case as well, respondent no.1, despite being put to notice of Assignment cum Sale deed dated 22.11.2003, has till date not taken any steps to challenge the same and the period of limitation has long expired. Even in the present case, the primary plea of the respondent is that the consideration for assignment was very low i.e. only

Rs.2 lacs, when the compensation in respect of the land in question was to the tune of Rs.1.50 crores.

15. Mr. Singhal submits that the respondent does not deny the execution of the General Power of Attorney in favour of Madan Lal Mittal. He also does not deny the execution of the Assignment cum Sale deed in favour of Arun Kumar Gupta by Madan Lal Mittal, on the strength of the said General Power of Attorney given by the respondent to Madan Lal Mittal. The plea that the amount of Rs.2 lacs was not received by the respondent, which was the sale consideration disclosed in the said Assignment cum Sale deed, is barred under section 91 and 92 of the Indian Evidence Act.

16. Mr Singhal submits that the issue with regard to genuineness and validity of the Assignment cum Sale deed in favour of Arun Kumar Gupta squarely fell for determination by the executing Court by force of section 47 read with Order 21 Rule 101 CPC. He submits that the said objections could not have been determined by a separate suit. The learned ADJ should have held a full and complete trial, and not decided the issues merely on the basis of *prima facie* evaluation.

17. Mr. Singhal submits that section 3 of the Delhi Land (Restrictions on Transfer) Act had no application to the facts of the case since what was transferred was not land under the acquisition but the right to claim enhanced compensation. In this regard, he places reliance on the judgment of the Supreme Court in *N.S.S. Narayana Sarma & Ors. v. M/s Goldstone*

Exports P. Ltd., (2002) 1 SCC 662, and the judgment of the Division Bench of this Court in *Mohd. Farjan v. Sarfaraz Ahmed & Ors.* 191 (2012) DLT 247 (DB) and *Shakuntala v. Manmohan Gupta*, 2015 (iv) AD (Del) 498.

18. Mr. Singhal submits that respondent no.1 had initially purchased the land falling to his share, from Madan Lal Mittal, for a paltry sum of Rs.12,000/-. On its acquisition, he received Rs.1.35 lacs towards compensation from the LAC. Over and above that amount, he also received Rs.2 lacs from Arun Kumar Gupta. Thus, as opposed to an initial investment of Rs.12,000/-, he had received an amount of Rs.3.35 lacs. Thus, there is nothing unusual about the respondent no.1 assigning his right to claim enhanced compensation for Rs.2 lacs. He further submits that the timing of respondent no.1 filing his execution petition is also of importance. He did not file the execution during the lifetime of Madan Lal Mittal. Only after he passed away on 08.05.2007, respondent no.1 filed the execution petition on 11.01.2008, that too, after Arun Kumar Gupta had filed his execution petition on 17.12.2007.

19. On the other hand, learned counsel for the respondent no.1, Mr. Bhagat Prasad fully supports the impugned judgment. He submits that the present appeal has been preferred under Order 21 Rule 58 CPC against the orders dated 31.07.2014 and 02.09.2014. However, the present appeal is not maintainable by reference under Order 21 Rule 58 CPC against dismissal of the application under Order 22 Rule 10 CPC, or against the order dated 02.09.2014 releasing payment under the decree to respondent no.1/ decree

holder no.6. He submits that certified copy of the order dated 02.09.2014 has not even been placed on record and thus, such no appeal could lie against the said order.

20. Learned counsel submits that Madan Lal Mital being a co-owner with respondent no.1 and his wife, though with defined shares in the land in question, had been given a General Power of Attorney on 06.11.2001 to enable him to contest the case under section 30-31 of the Act, wherein Smt. Kanta Mittal - wife of Madan Lal Mittal, the respondent no.1 and his wife stood on one side, and Hukum Chand and others stood on the other side. Evidently, Madan Lal Mittal misused the General Power of Attorney behind the back of respondent no.1, and executed the Assignment cum Sale deed in respect of the respondents specific share in the aforesaid land in favour of his own son-in-law Arun Kumar Gupta, showing consideration of paltry amount of Rs.2 lacs – which too was not received by the respondent. It was a foregone conclusion on the date of the execution of the said Assignment cum Sale deed that the compensation would be enhanced by the learned ADJ in the reference case under section 18 of the Act to Rs.3,000/- per sq yd, as the same already stood enhanced to Rs.3,000/- per sq yd by this Court in RFA No.461/1995 decided on 30.03.2001, against which the SLP had also been dismissed. He submits that the Assignment cum Sale deed, on the face of it, was fraudulent and the same was suppressed from the Reference Court, even though the so-called Assignment cum Sale deed is dated 22.11.2003, and the reference was decided on 19.01.2004. He submits that Madan Lal

Mittal, both his sons and the daughter preferred the Execution Petition in respect of the enhanced compensation in 2005 itself. Pertinently, at that stage, no execution was filed by Arun Kumar Gupta on the basis of the so-called Assignment cum Sale deed dated 22.11.2003. The same was filed only after the expiry of Madan Lal Mittal on 08.05.2007 i.e. on 17.12.2007. He further submits that an application under Order 22 Rule 10 CPC, or under section 152 CPC could not lie in the reference case inasmuch, as, the same had already been disposed of. There was no typographical or clerical error in the said decree passed by the reference Court dated 19.01.2004 on the basis of the record of the reference court.

21. Learned counsel submits that the appeal is not maintainable by resort to Order 21 Rule 58 CPC, because neither Sh. Arun Kumar Gupta, nor the present appellants were parties before the Reference Court. They were also not the decree holders or the judgment debtors before the executing Court. It is also not their case that any property had been attached by the Executing Court at the behest of decree holder no.6/ respondent no.1. They were strangers to the entire proceedings before the Reference Court, as also to the decree dated 19.01.2004.

22. Learned counsel places reliance on the decisions referred to by the learned ADJ in the impugned order. He also places reliance on the decision of the Allahabad High Court in *Agra Development Authority v. State of U.P.*, 2004 All LJ 1853, wherein the Division Bench of the Allahabad High Court held that the right to pursue litigation to recover compensation could

not be transferred as it is prohibited by section 6(e) of the Transfer of Property Act. He submits that the SLP (C) No.14042/2004 preferred against the said decision was also dismissed by the Supreme Court on 27.01.2005. Learned counsel for the respondent submits that reliance placed on ***Chandan*** (supra) is misplaced, since that judgment relies on an earlier judgment in ***Laxmi Narain*** (supra). He submits that the Division Bench later reviewed the said decision on 01.09.1978. He has placed on record a copy of the said order in review. He submits that the land had already been acquired, and vested in the government free from encumbrances under section 16 of the Act. The only right to sue or to litigate, which was available to respondent no.1, could not be transferred under section 6(e) of the Transfer of Property Act, since transfer could be of specific property which is in existence. Nothing was in existence which was capable of being transferred, or assigned, except the right to litigate for further enhanced compensation and, therefore, the alleged assignment deed is, in any event, void. It is also void on account of the express prohibition contained in section 3 of the Delhi Land (Restrictions on Transfer) Act. He submits that the said assignment deed is also void under section 23 of the Contract Act as it is opposed to public policy. In this regard, he places reliance on decision of Privy Council in ***Ditcham v. Miller***, AIR 1931 PC 403. He submits that the said Assignment cum Sale deed did not vest any title in Arun Kumar Gupta or his heirs.

23. Learned counsel for the respondent has placed reliance on an order passed in ***Indraj and another Vs. Kallu and others*** decided on 05.12.1975-a copy whereof was tendered in Court. By this order, learned Single Judge of this Court decided an application to seek substitution in place of one of the deceased appellants. While deciding these applications i.e. C.M. Nos. 232 & 277 of 1974, this Court considered the claim made by the applicants in C.M.No.277/1972 on the basis of a sale deed executed in their favour on 08.12.1971 in respect of the right to claim compensation. On the basis of the said sale deed, the applicants sought substitution in place of the deceased appellant. This Court took the view that, *‘if Lakshmi Narain and his co-applicants are to get any precise amount out of the compensation which is left with the Land Acquisition Collector they will have to seek some other remedy after the disposal of R.F.A. 14-D of 1965.’*

24. Learned counsel for the respondent has placed reliance on the judgment of Supreme Court in ***Ramji Gupta & Anr. Vs. Gopi Krishan Agrawal (Dead) & Ors.*** 2013(2) CCC 673 to submit that in the decree which has been passed in favour of respondent No.1-Shish Pal, no substitution could be sought before the execution court, either by Arun Kumar Gupta or by the appellants. The submission is that the appellants should file a separate suit to assert their rights on the basis of the sale deed-cum-assignment deed.

25. Learned counsel places reliance on the order passed in ***Anguri Devi v. Union of India***, RFA No.117/1994, dated 30.07.1982. The Division Bench while deciding an application under Order 22 Rule 10 CPC, on account of a

contest being raised by the assignor, held that the question as to who has to get compensation should be decided, if any issues remains, in other proceedings. The Division Bench held that it is desirable that the applicants under Order 22 Rule 10 CPC should also be heard in support of the appeal. The applicants under Order 22 Rule 10 CPC were made respondents in the appeal. However, the Division Bench did not substitute them in place of the original owners/ assignors. Even subsequently, when the appeal itself was decided, the Division Bench directed that the compensation in the appeal be not paid to the original owner/ the appellant Anguri Devi for a period of three months, to enable the applicants under Order 22 Rule 10 to institute such proceedings as they are advised, and obtain appropriate orders from the competent Court. It was directed that if there are no orders staying payment of compensation from any Court, the payment shall be made to the appellant Anguri Devi after three months. Thus, it is submitted that it is for the appellants to prefer an independent remedy, rather than seek adjudication of their claim-premised on the alleged sale deed-cum-assignment deed by the executing court.

26. Learned counsel for the respondent places reliance on the judgment of the Supreme Court in ***Ram Prakash Agarwal v. Gopi Kishan Agarwal***, (v) 2013 SLT 689, wherein the Supreme Court, inter alia, held that inherent powers of the Court cannot be used to restrain execution of a decree at the instance of one who was not a party to the suit. This was a case where an ex-parte judgment had been passed by the Court, and the application under

Order 9 Rule 13 and Order 1 Rule 10 CPC - to seek setting aside of the ex-parte judgment and impleadment as a party defendant had been moved. The Court held that such an application would not be maintainable, and it was open to the applicant to seek a declaration that the decree is null and void on grounds available to him. The Supreme Court also held that a person aggrieved may maintain an application under section 18 or 30 of the Act, but cannot make an application for impleadment or apportionment before the reference Court.

27. Thus, the submission of the respondent is that the remedy of the appellants lies in preferring a civil suit, if they wish to stake a claim on the enhanced compensation to which the respondent No. 1 is entitled on account of his being a decree holder in the reference decided by the Reference Court under Section 18 of the Act. Respondent further submits that it is for the appellants to stake claim to enhanced compensation by first initiating action on the basis of the assignment-cum-sale deed, and not for the respondent to approach the Court.

28. Learned counsel for the respondent has also placed reliance on *Delhi Development Authority Vs. S.S. Aggarwal and others* 2011 VIII AD (SC) 133. He submits that in this case, the assignees did not seek substitution before the Land Acquisition Collector. They neither sought impleadment in the award proceedings, nor produced the assignment deeds to show that the land owners had transferred the right to receive compensation. The Supreme Court held that by withholding the assignment deeds, the assignees

succeeded in avoiding proper scrutiny of their claim for compensation at the hands of the Land Acquisition Collector; the Reference Court, and; the High Court. The Supreme Court set aside the judgment and remitted the case to the Reference Court for fresh determination of the amount of compensation payable to the land owner and of the assignee. He also placed reliance on ***Indu Kakkar Vs. Haryana State Industrial Development Corporation Ltd. & Anr.*** JT 1998(8) SC 294 to submit that Arun Kumar Gupta did not have the *locus standi* to prefer the execution petition, since he was not a decree holder.

29. Reliance is also placed on ***Parvata and another Vs. Digambar*** Indian Decisions New Series 15 Bombay 307 to submit that an assignee of a decree under an oral assignment has no *locus standi* at all to apply for execution of a decree, but that as regards one who claims to be an assignee in writing or by operation of law, the Court has a discretion whether to recognize such assignment or not. At this stage itself, I may observe that this decision does not appear to be of any assistance since in the present case, the assignment claimed by Arun Kumar Gupta and the appellants is registered assignment deed which is claimed to be fraudulent by the respondents.

30. Having heard learned counsels, in the ultimate analysis, I am inclined to dismiss this appeal. So far as the aspect of assignability of the right to claim enhanced compensation is concerned, no doubt, the Division Bench of the Allahabad High Court in ***Agra Development Authority*** (supra) has held that such a right to recover enhanced compensation constitutes a right to sue

and is, therefore, not assignable under section 6(e) of the Transfer of Property Act, but this Court has repeatedly taken a contrary view in the decisions relied upon by the appellant. This Court in ***Laxmi Narain*** (supra), inter alia, held as follows:

*“The claim for enhancement of compensation was pending before the Additional District Judge, Delhi when the document dated December 8, 1971 was executed. Ram Devi was competent to transfer her interest, whatever it may have been, to the appellants. She did so. On the Additional District Judge pronouncing his award/ judgment, the appellants, having already purchased the right to claim compensation, filed and were competent to file the appeal. **The case does not fall under clause (e) of Section 6 of the Transfer of Property Act which says that mere right to sue cannot be transferred. What was transferred was not a right to sue but to obtain compensation or enhancement thereof in accordance with the provisions of the Land Acquisition Act**”.*

[emphasis supplied]

31. The submission that the judgment in ***Laxmi Narain*** (supra) was reviewed subsequently is of no avail, for the reason that the review did not pertain to the finding returned by the Division Bench on the applicability of section 6(e) of Transfer of Property Act to an assignment of a right to claim enhanced compensation. Moreover, the same view was reaffirmed by the Division Bench of this court in ***Sh. Chandan*** (supra). The Court, inter alia, observed as follows:

*“... .. Thus in case of an assignment, creation or devolution of any interest during the pendency of litigation the person upon whom such an interest has come or devolved can seek leave of the Court for substitution. Right to receive compensation accrued to the appellants when their lands were acquired under the provisions of the Land Acquisition Act. On award being made, the compensation was received by them under protest and they sought reference for enhancement. Enhancement was allowed. For further enhancement the instant appeal has been preferred. **During the pendency of appeal, the appellants admittedly have, for valuable consideration transferred their rights in favour of the applicants to receive and recover the enhanced amount of compensation. Such a right, which is claimed is not at all covered by clauses (a) and (e) of Section 6 of Transfer of Property Act.***

*Clause (a) of Section 6 of the Transfer of Property Act prohibits transfer of the chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on death of kinsman, or any other mere possibility of a like nature. The possibilities referred to in this clause are bare or naked possibilities and not possibilities coupled with an interest. Section 5 of the Act defines ‘transfer of property’. A transfer of property may take place not only in the present but also in the future. Some interest in the property are future. Right to receive compensation is statutory, which crystallized on acquisition of property. Right to claim enhancement in compensation is also statutorily conferred. It is this right, which has been assigned. **No doubt that enhancement in compensation is a mere possibility but that possibility is coupled with an interest to receive and realize the compensation. Clause (e) of section 6 of the Act refers to a mere right to sue, transfer of which is also prohibited. But what has been transferred is not a bare right to sue but right to receive and realize the enhanced compensation**”. [emphasis supplied]*

32. The same view was followed by this Court in ***Mahavir Goel*** (supra). I do not find any force in the submission of learned counsel for the respondent premised on the decision in ***S.S. Aggarwal*** (supra) for the reason that in the present case, neither of the parties is seeking setting aside the judgment of the Reference Court under Section 18 of the Act. That is not the scope of the present proceedings. Moreover, in the present case, the Reference Court decided the reference under Section 18 of the Act premised on an earlier judgment of this Court in RFA No. 461/95 ***Harichand*** (supra) decided on 30.03.2001, against which SLP had been dismissed. This decision is, therefore, of no avail to the respondent.

33. Reliance placed by the respondent on ***Indu Kakkar*** (supra) appears to be wholly misplaced. In the said case, the subject matter was an industrial plot which had been allotted on certain terms and conditions to the allottee. The allottee failed to meet the condition with regard to starting of construction and completion thereof. The allottee sought to assign his rights to a third party. The failure to raise construction in time resulted in the passing of orders of resumption of the allotment. The third party/transferee then sought to challenge the validity of the orders of resumption. The Supreme Court held, in these circumstances, that the assignee could not enforce the rights of the allottee without fulfilling the co-related obligations, as a third party which had no right to challenge the validity of resumption orders, and the allotter could not be compelled to recognize him as the

allottee. This decision is completely out of context and of no avail to the respondent. Thus, to the aforesaid extent, the learned ADJ fell in error.

34. I also agree with the submission of learned counsel for the appellant that the Assignment cum Sale deed is not hit by Section 3 of Delhi Land (Restrictions on Transfer) Act as the said restriction/ prohibition is in respect of “*transfer by sale, mortgage, gift, lease or otherwise*” of “*any land or part thereof ... which has been acquired under the Land Acquisition Act ...*”. The Assignment cum Sale deed is admittedly, not in respect of the acquired land. The same is in respect of the right to claim higher compensation. Thus, on the face of it, the said restriction was not attracted in the facts of this case.

35. At this stage, I may take note of some of the relevant provisions of the CPC. Order 22 Rule 10 CPC prescribes the procedure in case of an assignment before the passing of the final order in the suit. It provides;

*“In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, **the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.**”* (emphasis supplied)

36. The legislature has consciously used the expression, ‘*the suit may, by leave of the court.....*’. Therefore, it is not obligatory on the part of the assignee to seek substitution in place of the assignor before the passing of the final order/decreed. The continuation of the proceedings in the name of the

original plaintiff/defendant who has assigned his rights cannot be considered irregular.

37. Reference may be made to *Dhurandhar Prasad Singh v. Jai Prakash University & Ors.*, (2001) 6 SCC 534. In *Dhurandhar Prasad Singh* (supra), in relation to Order 22 Rule 10 CPC, the Supreme Court, inter alia, observed:

“6. In order to appreciate the points involved, it would be necessary to refer to the provisions of Order 22 of the Code, Rules 3 and 4 whereof prescribe procedure in case of devolution of interest on the death of a party to a suit. Under these Rules, if a party dies and right to sue survives, the Court on an application made in that behalf is required to substitute legal representatives of the deceased party for proceeding with a suit but if such an application is not filed within the time prescribed by law, the suit shall abate so far as the deceased party is concerned. Rule 7 deals with the case of creation of an interest in a husband on marriage and Rule 8 deals with the case of assignment on the insolvency of a plaintiff. Rule 10 provides for cases of assignment, creation and devolution of interest during the pendency of a suit other than those referred to in the foregoing Rules and is based on the principle that the trial of a suit cannot be brought to an end merely because the interest of a party in the subject matter of suit has devolved upon another during its pendency but such a suit may be continued with the leave of the Court by or against the person upon whom such interest has devolved. But, if no such a step is taken, the suit may be continued with the original party and the person upon whom the interest has devolved will be bound by and can have the benefit of the decree, as the case may be, unless it is shown in a properly constituted proceeding that the original party being no longer interested in the proceeding did not vigorously prosecute or colluded with the adversary resulting in decision adverse to the party upon whom

interest had devolved. The Legislature while enacting Rules 3, 4 and 10 has made clear-cut distinction. In cases covered by Rules 3 and 4, if right to sue survives and no application for bringing legal representatives of a deceased party is filed within the time prescribed, there is automatic abatement of the suit and procedure has been prescribed for setting aside abatement under Rule 9 on the grounds postulated therein. In cases covered by Rule 10, the Legislature has not prescribed any such procedure in the event of failure to apply for leave of the court to continue the proceeding by or against the person upon whom interest has devolved during the pendency of a suit which shows that the Legislature was conscious of this eventuality and yet has not prescribed that failure would entail dismissal of the suit as it was intended that the proceeding would continue by or against the original party although he ceased to have any interest in the subject of dispute in the event of failure to apply for leave to continue by or against the person upon whom the interest has devolved for bringing him on the record”.

(Emphasis supplied)

38. Reference may also be made to ***Raj Kumar v. Sardari Lal & Ors.***, (2004) 2 SCC 601. In view of the aforesaid decisions, the failure of Arun Kumar Gupta to move an application under Order 22 Rule 10 CPC before the decision of reference was not fatal and, in fact, it was not even necessary for him to seek correction of the decree, or the substitution of his name in place of the name of the respondent No.1-Shish Pal as decree holder No.6.

39. Now, the question arises – whether Arun Kumar Gupta could have preferred an execution petition to execute the decree passed by the Reference Court, inter alia, in favour of respondent no.1 – Shish Pal as decree holder no.6. In this regard, reference may be made to Order 21 Rule 16 CPC. The said rule,

inter alia, provides that, “*where.....the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder.*” Rule 16 of Order 21 CPC also provides that, where the transferee/ assignee applies for execution of a decree, notice of the same shall be given, inter alia, to the transferor/assignor and the decree shall not be executed until the court has heard the objections, inter alia, of the transferors /assignor.

40. Rule 16 of Order 21 CPC does not say that the transfer/ assignment should be one made after the passing of the decree, and not earlier. The executing court would, however, put the transferor/assignor to notice in relation to his claim, if any, and proceed with the execution only after considering the objections that may be raised, if any. If Order 21 Rule 16 were to be construed narrowly to cover cases of transfer of the decree after the decree has been passed, and not to cover cases where the transfer/ assignment by a party to the proceedings of his rights in the subject matter of dispute takes place prior to the passing of the decree, it would lead to a contradictory situation. This is because such a transferee/ assignee may continue the proceedings in the name of the original plaintiff/ defendant – as the case may be, but he would not be able to avail the fruit/ benefit of the decree ultimately passed. This would be contrary to the interpretation of Order 22 Rule 10 CPC taken note of hereinabove.

41. The executing court/Additional District Judge while deciding the applications in questions preferred by Arun Kumar Gupta and his legal representatives, proceeded on the basis that Order 21 Rule 16 CPC applies only to cases where - post the passing of the decree, the same is transferred or assigned. In my view, that does not appear to be a correct interpretation of Order 21 Rule 16 CPC. In the light of what has been observed in relation to Order 21 Rule 16 CPC and Order 22 Rule 10 CPC above, it is not obligatory on the part of the transferee/assignee to get himself impleaded/ substituted during pendency of the suit, and the suit could be continued in the name of the original plaintiff-defendant (who is the transferor/assignor), as the case may be. The right to seek execution of such a decree by the transferee/assignee is preserved under Order 21 Rule 16 CPC. Thus, on the basis of the assignment-cum-sale deed Arun Kumar Gupta could, in his own right, prefer the execution petition and the executing court could proceed with the execution after notice to the assignor – Shish Pal.

42. The reasoning given by the learned Additional District Judge as B-3, which reads,

“(B-3) Rule 16 of Order XXI CPC, based on assignment in writing or by operation of law comes into picture when there is decree but on the said date of assignment deed dated 22.11.2003, there was no decree as the matter was sub-judice for decision on reference petition”,

thus, cannot be accepted.

43. I now turn to Order 21 Rule 58. The said rule reads as follows:

“58 . Adjudication of claims to, or objections to attachment of, property— (1) *Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:*

Provided that no such claim or objection shall be entertained—

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claims or objection shall be conclusive.”

44. In the present case, both Arun Kumar Gupta and Shish Pal sought execution of the decree passed by the Reference Court in favour of Shish Pal – decree holder No.6. Execution would necessarily involve the attachment of the amount of the decree against the judgment debtor. Objection to such attachment of the decretal amount against the judgment debtor – Union of India, was maintainable by Shish Pal in the execution preferred by Arun Kumar Gupta, and by Arun Kumar Gupta in the execution preferred by Shish Pal, since the amount had not yet been released to either of them. Sub-rule (2) of Rule 58 provides that *“All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the*

claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit". Sub-rule (3) of Rule 58, inter alia, provides that, *"Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination"* - inter alia, (a) allow the claim or objection; (b) disallow the claim/objection; (c) continue the attachment subject to any mortgage, charge of other interest in favour of any person, or; (d) pass such order as in the circumstance of the case it deems fit. Sub-rule (5), inter alia, provides that, *"Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute."*

45. In the present case, neither of the two eventualities provided for in proviso to sub-rule (1) are present. Therefore, the objections of Arun Kumar Gupta were not dismissed by resort to the said proviso. Consequently, the filing of a separate suit was not called for. On a conjoint reading of sub-rules (2) and (3) of Rule 58 CPC, it appears that upon a dispute regarding the claim/ counter claim to a right, title or interest of the transferee/assignee arising, the executing court is obliged to deal with the same, and it may allow/ disallow the objection, and allow/ disallow the claim, and pass such order as in the circumstances of the case it deems fit. Rule (58) of Order 21 contemplates a situation, where execution of the decree by the decree holder may be objected to by a transferee/assignee of interest in the subject matter of the decree, and vice versa. Thus, the executing court was obliged to deal with the claim and counter

claim of Arun Kumar Gupta and Shishpal to the enhanced compensation decreed by the Reference Court. Consequently, it was open to the executing court while dealing with the objections of Shish Pal, to the rights claimed by Arun Kumar Gupta on the basis of the assignment-cum-sale deed, to decide the same and, against the said decision an appeal lies under sub-rule (4) of Rule 58. Therefore, the submission of learned counsel for the respondent Shish Pal that the present appeal is not maintainable has no force, since the first appeal is maintainable before a Single Judge of this Court under Section 96 CPC against the judgment and decree passed by the District Court. The objection to the maintainability of the present appeal, therefore, has no merit.

46. Reliance placed on ***Hari Ram*** (supra) by the appellants appears to be misplaced. A perusal of the said decision shows that, firstly, the assignors had not challenged the assignment *per se*. Their only stand was that the consideration for execution of the assignment deed was wholly insufficient and much below the market price of the land. However, in the present case, the respondent is seriously disputing the execution of the sale deed-cum-assignment deed on the premise that Shri Madan Lal Mittal- father-in-law of Arun Kumar Gupta, had misused the power of attorney given to him by the respondent No.1 and his wife to pursue the proceedings under Sections 30 and 31 of the Act, and executed the sale deed-cum-assignment deed for no consideration whatsoever in favour of his own son-in-law Arun Kumar Gupta. He claimed that sale deed-cum-assignment deed was bogus, since by the date of its execution i.e. 22.11.2003, the enhancement of compensation

in respect of the land of respondent No. 1 was a foregone conclusion in view of the judgment of this Court in RFA 461/1995 titled, '*Hari Ram Vs. Union of India*' decided on 30.03.2001, SLP against which had already been dismissed. Secondly, in ***Hari Ram*** (supra), the Court had formulated the question which arose for consideration, which was, "*whether the objections raised by the respondents, namely, K.L.Gandhi and Pehlad Gandhi required any further adjudication by the reception and recording of evidence,*" in the light of their admission regarding the execution of the assignment deed. However, in the present case, the issue is more basic and fundamental, namely, whether any assignment deed had ever been validly executed by the respondent No.1-Shish Pal through his attorney Madan Lal Mittal, and whether Madan Lal Mittal had the authority to execute the same.

47. I do not find merit in the submission of learned counsel for the appellants that it was obligatory for respondent No.1 – Shish Pal to take the first step to assail the sale deed-cum-assignment deed dated 22.11.2003 and, having failed to do so within the period of limitation i.e. within three years from the date of knowledge of the said instrument, the respondent No.1-Shish Pal is barred from challenging the same. Since Arun Kumar Gupta and, thereafter, the appellants are seeking to rely upon the said instrument, it is for them to take steps to enforce the said instrument. The decisions relied upon by the respondent Shishpal in ***Indraj*** (supra), ***Ramji Gupta*** (supra), ***Anguri Devi*** (supra) and ***Ram Prakash Agarwal*** (supra) support the submission of the respondent, that it is for the appellants, and not the

respondent Shishpal to initiate proceedings. I have set out the gist of the above cases earlier, except the gist of *Ramji Gupta* (supra).

48. In *Ramji Gupta* (supra), one Madhuri Saran, filed a reference under Section 18 of the Act for enhancement of compensation. During pendency of the proceedings, she died and her legal heirs were substituted. Respondent No.1-Gopi Krishan was, however, not impleaded as a party. The compensation was enhanced by the Reference Court. When Gopi Krishan learnt about the judgment of the Reference Court, he filed an application under Order 9 Rule 13 CPC read with Section 151 CPC for setting aside of the said award. The said application was rejected on the ground that such an application could be filed only by a person who was a party to the proceedings in which the order was passed, and that such an application was not maintainable at the behest of the stranger. Gopi Krishan then preferred writ petition before the High Court. The High Court allowed the said petition holding that, while an application under Order 9 Rule 13 CPC was not maintainable, the award could be set aside in exercise of powers of the Court under Section 151 CPC. The Supreme Court disagreed with the High Court, and held that the High Court could not have exercised the inherent powers under Section 151 CPC in the circumstances of the case. The inherent powers could not be used to reopen settled matters. Inherent powers could not be used to restrain the execution of a decree at the instance of one who was not a party to the suit. In para 28 of the judgment, the Supreme Court held that the proceedings stood concluded so far as the court

of the first instance was concerned, and that the respondent Gopi Krishan was not a party before the said Court. Permitting an application under Order 9 Rule 13 CPC by a non-party, would amount to adding a party to the case, which is dealt with under Order 1 Rule 10 CPC, or setting aside the ex parte judgment and decree, i.e. seeking a declaration that the decree is null and void for any reason, which declaration could be sought independently by such an aggrieved party. The Supreme Court also relied upon *Shyamali Das V. Illa Chowdhry & Ors.* AIR 2007 SC 215, where the said Court had observed that the Land Acquisition Act is a complete code by itself. It provides for remedies not only to those whose land has been acquired, but also to those who claim the awarded amount or any apportionment thereof. A Land Acquisition Judge derives his jurisdiction from the order of reference and he is bound thereby. His jurisdiction is to determine adequacy, or otherwise, of the amount of compensation paid under the award made by the Collector. It is not within his domain to entertain any application of *pro interesse suo* or in the nature thereof. The Supreme Court rejected the plea that the title dispute be decided by Reference Court itself, since the Reference Court does not have the power to enter into an application under Order 1 Rule 10 CPC.

49. The Supreme Court observed,

“it is evident from the above, that a person who has not made an application before the Land Acquisition Collector, for making a reference under Section 18 or 30 of the Act, 1894,

cannot get himself impleaded directly before the Reference Court.”

50. Thus, there is no question of the rights of Shishpal – respondent no.1 getting defeated by limitation. It is the appellants who are seeking to dislodge him from his status as the decree holder. Thus, it is for them to initiate their action, and not vice versa.

51. The said instrument of assignment-cum-sale deed, prima facie, is shrouded with doubt. Prima facie, there is no logical explanation as to why respondent No.1-Shish Pal would sell and assign his valuable rights, which already stood practically quantified at Rs.1.50 crores, for a paltry amount of Rs. 2 lakhs. As noticed above, in the face of the judgment of this Court in RFA No. 461/95, dated 30.03.2001, SLP against thereof had already been dismissed, the decision of the Reference Court in the reference preferred by Madan Lal Mittal and others, including, respondent No.1-Shish Pal, was reduced to a ministerial act, since the Reference Court was bound to follow the said decision pertaining to similarly situated lands covered by the same set of notifications under the Act. Prima facie, no prudent person would, in these circumstances, sell and assign his valuable rights for such small consideration.

52. The reason given by the appellants as to why respondent No.1-Shish Pal had assigned his rights for Rs. 2 lakhs only (when the enhanced compensation was to the tune of Rs. 1.50 crores), taken note hereinabove in para-18, needs only to be stated to be rejected. If the said logic were to be

applied, there was no justification for Madan Lal Mittal-who firstly pocketed the original sale consideration of Rs.12,000/-, to again derive benefit for his family - through his son-in-law Arun Kumar Gupta, a further hefty amount of Rs.1.50 crores. It was not the case of Arun Kumar Gupta or, even the appellants, that the sale to Shish Pal by Madan Lal Mittal was not an arms length transaction, or the sale consideration did not represent the market price when the sale took place.

53. The submission that Shish Pal waited for Madan Lal Mittal to die before filing the execution, since he knew that he did not have any rights in the enhanced compensation, also appears to be merit less. There is no explanation as to why Arun Kumar Gupta, firstly, did not move under Order 22 Rule 10 CPC to get himself substituted in place of Shish Pal when the reference was still pending, and as to why he did not also seek execution when Madan Lal Mittal and his wife Sadhna Gupta preferred the same during the life time of Madan Lal Mittal. These aspects raise a graver doubt about the conduct of Madan Lal Mittal and Arun Kumar Gupta, than against the conduct of Shish Pal.

54. The learned ADJ while dismissing the applications of Arun Kumar Gupta/his legal representatives gave the following reasons for the same:

“(B-4)moreover, it is not an undisputed sale deed-cum-assignment deed but DH No. 6 Shishpal has denied it, since it does not bear his signature but it has purported to have been signed by Shri Madan Lal Mittal as an Attorney, whereas Power of Attorney was jointly given by Smt. Krishna W/o Shri

Shishpal and by Shri Shishpal with regard to certain acts, deeds and things.

(B-5) by reading (B-1) to (B-4), above it is apparent, that there is no transaction in respect of assignment of decree dated 19.01.2004 and assignment deed 22.11.2003 prior to decree is disputed by decree holder no. 6 Sheesh Pal, as the reference petition was also prosecuted by him, the assignment deed never seen light of day during pending of reference petition.

(B-6) as per contents of assignment deed, the said Sheesh Pal through his attorney Madan Lal Mittal sold his rights in compensation for Rs. 2 lacs to Shri Arun Kumar Gupta, which has already been received by assignor, whereas there is no date, month and year mentioned when Rs. 2 lacs were received by the assignor nor any record that Shri Madan Lal Mittal as an attorney/agent of Sheesh Pal received the amount from Shri Arun Kumar Gupta and handed over the same to principle/Shri Sheesh Pal. To say, circumstances of assignment deed are disputed.

(B-7) the assignment deed clause no. 4 talks about substitution of name of Shri Arun Kumar Gupta either in the reference petition or in the execution petition, however, in view of disputed facts of assignment deed vis a vis position of law either under order XXII Rule 10(2) CPC or of Order XXI Rule 16 CPC, the names of applicants cannot be substituted in place of DH No. 6 Shish Pal in the execution petition nor to prosecute the execution petition filed by Shri Arun Kumar Gupta. The law presented on behalf of non-applicant/decreed holder No. 6, as laid down in precedent, applies to the present case and;

(B-8) the applicants' contention that when the parties are in litigation or they are continuing in litigation, there is no bar to implead them in the execution petition, is not tenable, particularly Shri Arun Kumar Gupta was not in litigation, as he

was not a party/interested person before the Land Acquisition Collector nor he was party before the reference Court nor he is a decree holder, therefore, he cannot be treated in continuous in litigation. There is no assignment deed between the decree holder Shishpal and Shri Arun Kumar Gupta subsequent to date of decision/judgment dated 19.01.2004 and the assignment deed dated 22.11.2003, prior to decision, is disputed deed, either from the execution point of view or of consideration or otherwise.”

55. In the present case, there is hardly any disputed question of fact arising between the parties from their pleadings. The respondent Shish Pal has not denied the existence of the power of attorney in favour of Madan Lal Mittal given by him and his wife. He has also not denied the factum of execution of the registered assignment-cum-sale deed in favour of Arun Kumar Gupta. However, there is nothing to show that the amount of Rs. 2 lakhs was paid by Arun Kumar Gupta. It is not the claim of Arun Kumar Gupta that Shishpal had been transferred the alleged consideration of Rs.2 lakhs. No particulars have been furnished in this regard. Pertinently, the transaction between Madan Lal Mittal and Arun Kumar Gupta could not be termed as an arm's length transaction, and Arun Kumar Gupta could not be called a *bona fide* purchaser without notice for consideration premised on the General Power of Attorney taken by Madan Lal Mittal from the respondent Shish Pal and his wife. It defies all reason and logic why Shishpal would transfer his rights – which stood crystallized at about Rs.1.50 crores, for a paltry amount of Rs.2 lakhs. If it was done by him, it was obviously out of his ignorance. In these circumstances, the reasons given by the learned ADJ/ executing court for rejecting the reliance

placed on the assignment-cum-sale deed appear to be germane. There was no need in the facts of this case to hold a formal trial.

56. For all the aforesaid reasons, I find no merit in the present appeal and the same does not call for interference by this Court. The same is accordingly dismissed.

VIPIN SANGHI, J.

JULY 12, 2016