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

Decided on: 22nd March, 2018

+ C.R.P. 104/2013 and CM 8648/2013 and 41805/2016

SHRI SANDEEP AGGARWAL & ORS Petitioners
Through: Mr. Tanu Singhal and Mr. Vivek
Srivastava, Advocates

versus

SHRI JAI SINGH & ANR Respondents
Through: Mr. Arvind Bhatt and Mr. Kuber
Giri, Advocates

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The revision petition at hand seeks to assail the order dated 20.02.2013 of the executing court on the file of the execution case no.27/12 whereby the objection petition of the petitioners under Order 21 Rule 99 of the Code of Civil Procedure, 1908 was held to be time barred and therefore, not maintainable, the application to this effect of the respondent (decree holder) under Order 7 Rule 11 (d) of the CPC read with Section 3(1) and Article 128 of the Limitation Act, 1963 read with Section 151 CPC being allowed and the proceedings arising out of the execution application closed, satisfaction of the decree having been recorded.

2. It is an undisputed case of both sides that the execution proceedings arise out of the judgment and the decree granted on

01.08.2011 by the court of the Civil Judge in favour of the respondents on their suit (suit no.121A/02) against the parties described as Dhian Singh and others, the said case admittedly not involving the objectors as parties. A decree of possession is stated to have been granted in respect of the suit property described as plot of land admeasuring 100 x 50 situate at Block B, Plot no.1, Jhandewalan Estate behind DTC Depot, Desh Bandhu Gupta Road, Karol Bagh, New Delhi specifically shown in red colour in the site plan (Ex. PW1/9).

3. It is the case of the petitioner that earlier a civil suit (suit no.145/1983) had been filed by the respondents against the predecessor-in-interest of the petitioners (objectors) seeking recovery of possession and other reliefs in respect of the plot of land described as admeasuring 335 sq. yds. bearing plot no.1, Block B, behind DTC depot, Jhandewalan Estate, Desh Bandhu Gupta Road, Karol Bagh, New Delhi, which suit had come to be dismissed in default on 23.01.1998, the application for restoration of which having been later submitted also having been dismissed in default on 11.08.2000, no further proceedings having been initiated thereafter in such context.

4. The decree in the suit from which the execution proceedings arose was concededly executed on 26.10.2012. It is the case of the petitioners that they learnt from their employees about the respondents having come with certain other persons and police officials to their property on 26.10.2012 and when they had rushed to find out the facts, it was discovered that under the garb of execution of the decree fraudulently and in collusion with the court official Mr. Sunil Jain,

bailiff, appointed by the court, the respondents had illegally encroached upon 900 sq. ft. of the plot of land which was in the possession of the objectors.

5. The objection petition was admittedly filed on 05.12.2012. Since the decree was executed on 26.10.2012, the objection petition had been presented nine days after the period of thirty days had elapsed, in terms of the prescription of Article 128 of the Limitation Act, 1963. The respondents took the plea of the objection petition being time barred, which has been upheld by the executing court with reference to the provision contained in Section 3(1) of the Limitation Act, 1963 rejecting the argument of the petitioners that the period of limitation would begin to run after fraud had been discovered, reference in this context being made to the provision contained in Section 17 of the Limitation Act, 1963. The executing court has observed in the impugned order that the petitioners having admittedly rushed to the property in question on 26.10.2012 upon being informed by their employees about the execution proceedings, the knowledge about the alleged fraud had been gained on the same date as of the execution of the decree.

6. Having heard the learned counsel on both sides and having gone through the record, this court finds the view taken by the executing court in the impugned order cannot be upheld, the approach adopted being too simplistic.

7. Going by the chronology of events, the petitioners had no way of being privy to the proceedings of the suit in which the decree under

execution was passed for the simple reason they were not party to such proceedings. The suit that had been filed against their predecessor-in-interest in 1983 had come to be dismissed in 1998, even the half hearted attempt to have it revived having come to an end with the dismissal of the application under Order IX Rule 4 CPC on 11.08.2000. The suit in which the decree under execution was passed was preferred later against parties with which the petitioners are not yet shown to have any connection. The execution of the decree on 26.10.2012, thus, would have come as a matter of surprise for the petitioners. Whether or not the plot of land admeasuring 900 sq.ft. which is the subject matter of the controversy raised through the objection petition under Order XXI Rule 99 CPC, was in the possession of the petitioners (objectors) is a matter which would require trial. Whether or not such parcel of the land could be the subject matter of the execution of the decree against a third party is also a question which has not been determined. For the present, it only needs to be noted that it is the case of the petitioners that they were in possession of the said portion of land which has been fraudulently taken over by the decree holder under the garb of execution carried out in collusion with the court bailiff.

8. Mere taking over of the aforesaid portion of land would not have been sufficient information to rush to the court. It was necessary for the petitioners to gather all the facts including about the authority where-under such proceedings had been taken out and executed. The objection petitioner have explained the steps taken in this regard. This

court accepts the explanation that the fraud, as is alleged, came to light only after all the necessary documents (which would include the pleadings of the case and the orders passed therein) had been gathered. In these circumstances, reliance of the petitioners on Section 17 of the Limitation Act, 1963 was correct and the plea could not have been short-shrifted in the manner done.

9. For the above reasons, the petition is allowed. The impugned order is set aside. The pending applications also stand disposed of. The parties shall appear before the executing court on 25.04.2018. The executing court is directed to hold a proper inquiry into the objections of the petitioners under Order XXI Rule 99 of the CPC and decide the same on merits.

MARCH 22, 2018

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R.K.GAUBA, J.

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